

FINANCE AND POLICY COMMITTEE

AGENDA



Tuesday 12 February 2019

at 10.00 am

**in the Council Chamber,
Civic Centre, Hartlepool.**

MEMBERS: FINANCE AND POLICY COMMITTEE

Councillors C Akers-Belcher, S Akers-Belcher, Brewer, Brown, Cranney, Harrison, Marshall, Moore, Smith, Thomas and Young.

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

- 3.1 To receive the minutes of the meeting of the Finance and Policy Committee held on 28 January 2019.

4. BUDGET AND POLICY FRAMEWORK ITEMS

None.

5. KEY DECISIONS

- 5.1 Acquisition by Tees Valley Combined Authority of Shares in Durham Tees Valley Airport Ltd - Waiver of Pre-Emption Rights by Minority Shareholders – *Chief Solicitor*

6. OTHER ITEMS REQUIRING DECISION

None.

7. ITEMS FOR INFORMATION

None.

8. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT



FINANCE AND POLICY COMMITTEE

MINUTES AND DECISION RECORD

28 JANUARY 2019

The meeting commenced at 10.05 am in the Civic Centre, Hartlepool.

Present:

Councillors: Christopher Akers Belcher Stephen Akers-Belcher, James Brewer, Paddy Brown, Kevin Cranney, Brenda Harrison, Ann Marshall, Leisa Smith, Stephen Thomas and Mike Young.

Also Present: Councillor T Richardson.

Officers: Gill Alexander, Chief Executive
Hayley Martin, Chief Solicitor
Chris Little, Director of Finance and Policy
John Morton, Assistant Director, Finance and Customer Services
Denise Ogden, Director of Regeneration and Neighbourhoods
Steve Hilton, Communications and Marketing Team
David Cosgrove, Democratic Services Team

Councillor Kevin Cranney (Vice-Chair) in the Chair

96. Apologies for Absence

Councillor Shane Moore,

97. Declarations of Interest

None.

98. Minutes of the meeting held on 14 January 2019

Confirmed.

Councillor Christopher Akers-Belcher (Chair) in the Chair.

99. Medium Term Financial Strategy (MTFS) 2019/20 to 2021/22 *(Director of Finance and Policy)*

Type of decision

Budget and Policy Framework.

Purpose of report

The purpose of the report was to update the MTFS to reflect the final 2019/20 Local Government Finance settlement announcement and to enable Members to finalise the 2019/20 technical budget calculations to be referred to Council on 21 February 2019.

Issue(s) for consideration

The Director of Finance and Policy referred to the detailed budget proposals to balance the 2019/20 budget which had been considered and approved by Council on 20 December 2018 and included a Council Tax increase (including the Social Care precept of 1%) of 3.9% for 2019/20. These proposals reflected the provisional 2019/20 Local Government Finance Settlement, which was issued on 13 December 2018 and subject to a four week consultation ending on 10 January 2019.

The final technical budget report and Council Tax calculations were being considered in January 2019 and would reflect the final 2019/20 Local Government Finance Settlement. These proposals will then be referred to Council on 21 February 2019. At this time the final 2019/20 Local Government Finance Settlement had not been issued. It was likely that parliamentary time had been limited due to the ongoing Brexit debate. The Director did not envisage any significant change as the 2019/20 settlement was part of a multi-year settlement agreed with government. Any changes to the settlement would be reported to Council on 21 February 2019.

The Director briefly outlined the financial position as reported to Council and provided a Capital Budget update which included the Council approval of £128,000 to support businesses in Church Street / Church Square impacted by the Regeneration Scheme. Officers had contacted business in the area to promote the scheme and had followed up with site visits and reminder correspondence. It was anticipated that existing commitments and forecast outstanding grant applications would commit £58,000 of the available budget. This will leave an uncommitted balance of £70,000, which it was proposed could be allocated as follows:

- £60,000 to fund urgent structural repairs to 16 Church Street to make the building safe until funding can be secured to undertake a major renovation as part of the regeneration of Church Street.
- £10,000, and any further under spend on the Business Support Grant scheme which may arise, to be transferred to complement the Townscape Heritage scheme covering the whole of Church Street / Church Square.

As requested at Council on 20th December 2018 details of the proposed vehicle replacement programme included in the previous MTFS report were attached at Appendix A for Members consideration. As reported previously

these issues were considered and approved by Neighbourhood Services Committee on 10th October 2018.

The report also informed Members that the Local Government Act 1992 and relevant regulations also required the Council to approve the statutory Council Tax calculation incorporating the Council Tax levels set by individual precepting authorities, i.e. the Police and Crime Commissioner, Cleveland Fire Authority and individual parish councils. This would be addressed in a report to Council on 21st February 2019.

Individual 'precepting bodies' were responsible for setting their own Council Tax levels in accordance with the specific Government Council Tax referendum principles applying and which meet their own budgetary requirements. The Government has set the following Council Tax referendum limits for 2019/20:

Type of Authority	Government Council Tax Referendum Limits 2019/20
Police and Crime Commissioners	Increases of up to £24 in Band D Council Tax in 2019/20
Fire and Rescue Authorities	Increases of up to 3% in Band D Council Tax in 2019/20
Town and Parish councils	No referendum limits have been set and the Government intends to defer setting limits for three years, subject to town and parish councils exercising Council Tax restraint.

The statutory Council Tax calculations were an administrative responsibility that the Council as the statutory 'billing authority' was required to undertake once the Council has set its own Council Tax level (which was approved on 20th December 2018) and the individual precepting authorities had set their own Council Tax levels.

Due to the lateness of the final 2019/20 Local Government Finance Settlement, the Director indicated that he wished to amend recommendation (i) in the report to the following: -

- (i) Note that the final 2019/20 Local Government Finance settlement has still not been issued and approve that, subject to consultation with the Chair of Finance and Policy Committee, any minor changes to the provisional funding allocation previously announced by the Government will be managed by increasing or decreasing the use of the Budget Support Fund and details will be reported to Council on 21 February 2019.

A Member questioned what the Fire and Rescue Authority rise of 3% means in real terms. The Director of Finance and Policy indicated the figure was approximately an additional £1.50 for a Band D property.

The meeting discussed the £60,000 to fund urgent structural repairs to 16 Church Street to make the building safe questioning the need for the works and whether they had to be funded by the Council or could grant be applied for. The Director of Regeneration and Neighbourhoods stated that the works were essential and if not done soon, could result in much higher costs later. The need for the works had come to light during the inspections of the property that were necessary to complete an appropriate bid for Heritage Lottery Funding. The Heritage Lottery Fund would expect the Council to maintain the integrity of the building while applying for funding for redevelopment of the building. The Heritage Lottery Fund application process could take up to a year, however, hence the need to undertake these works. The costs were being drawn from funding already allocated to Church Street.

A Member of the public questioned why the previous owners of the property had not been required to undertake works to the building in the past and if these costs were simply to make the building safe, how much was the scheme to bring it back into use going to cost. The Director of Regeneration and Neighbourhoods stated that the Heritage Lottery Funding bid would be significant but would take time. Emergency works had been undertaken in the past to the building and had been charged back to the previous owners at that time. Details of the bid would be reported to Members in due course.

The Chair of the Neighbourhood Services Committee understood the concerns of members and the public at the expenditure but these were essential safety works that the Council was legally required to do.

In relation to the Police precept referred to in the Director of Finance and Policy's report, a member of the public made reference to the recent press coverage of Cleveland Police and sought Members support to call for the resignation of the Police and Crime Commissioner. Members stated their support for the Police and Crime Commissioner.

Decision

1. The Committee noted that the final 2019/20 Local Government Finance settlement had still not been issued and agreed that, subject to consultation with the Chair of Finance and Policy Committee, any minor changes to the provisional funding allocation previously announced by the Government would be managed by increasing or decreasing the use of the Budget Support Fund and details would be reported to Council on 21 February 2019;
2. The Committee noted that it was not expected that there would be any changes from the provisional 2019/20 grant cut and Council Tax referendum limits reflected in the budget and Council Tax proposals approved by Council in December;
3. That Council approval be sought for the statutory Council Tax

calculations, incorporating the Council Tax levels set by individual precepting authorities; i.e. the Police and Crime Commissioner, Cleveland Fire Authority and individual parish councils;

4. That Council approval be sought to allocate the forecast underspend on the Church Street/Church Square Business Support grant scheme of £70,000 as follows:
 - £60,000 to fund urgent structural repairs to 16 Church Street to make the building safe until funding can be secured to undertake a major renovation as part of the regeneration of Church Street.
 - £10,000, and any further under spend on the Business Support Grant scheme which may arise, to be transferred to complement the Townscape Heritage scheme covering the whole of Church Street / Church Square.
5. That as requested by Council on 20th December 2018 the approved Vehicle Replacement programme detailed in Appendix A to the report be noted.

100. Business Rates Retail Discount Scheme *(Director of Finance and Policy)*

Type of decision

Non Key Decision.

Purpose of report

To seek Members approval to a Business Rates Retail Discount Scheme to be fully funded by central government as announced by the Chancellor in the Autumn 2018 Budget Statement.

Issue(s) for consideration

The Assistant Director, Finance and Customer Services reported that the Government announced in the Budget on 29th October 2018 that it would fund a Business Rates Retail Discount Scheme for occupied retail properties with a rateable value of less than £51,000 in each of the years 2019/20 and 2020/21. Guidance information on the operation of the new scheme had been published in November 2018. The value of the discount was one third of the bill after mandatory reliefs and other discretionary reliefs funded by central government section 31 grant had been applied.

As this was a measure for 2019/20 and 2020/21 only, the Government would not change business rates legislation, instead the Government would reimburse local authorities that use their existing Localism Act 2011 discretionary relief powers to grant Retail Discount Relief. Central Government would reimburse the Council and Cleveland Fire Authority (as a major precepting authority) for the actual cost to them under the rates

retention scheme for relief awarded. Details of the criteria and eligibility for the grant were set out in the report.

The Government had defined those hereditaments that were considered to be eligible and ineligible for Retail Discount Relief in 2019/20 and 2020/21 and it was proposed that these lists were adopted by the Council. The Government acknowledge that their lists may not be exhaustive and Councils should determine for themselves any properties that were broadly similar in nature to those listed and can be added, therefore, to those types of uses considered eligible or ineligible. To qualify for the relief the property must be wholly or mainly used for retail purposes.

The Assistant Director reported that modelling showed that in Hartlepool about 280 properties would be eligible and additional relief of about £837,000 could be awarded in 2019/20. There would be no need for businesses to apply for this new relief as qualifying businesses would be identifiable from existing rating record details.

The new Retail Discount was temporary in nature only applying in 2019/20 and 2020/21. Other central government reliefs, notably Small Business Rates Relief (SBRR), had been in operation for a number of years and were now embedded in rating arrangements and likely to continue in the future. The Council recognised this position and had undertaken regular “take up” initiatives to ensure that eligible businesses were claiming their support. The most recent exercise undertaken in late 2018 showed that 94.9% of eligible businesses were currently receiving their SBRR entitlements totalling £3.02m in 2018/19. Ongoing engagement was continuing with the 68 businesses that have not currently accessed their potential SBRR.

The Chair of the Regeneration Services Committee commented that this was an excellent support for our retail sector which was under so much pressure at the moment. The Assistant Director and his staff were commended for their work in bringing business rate relief to so many businesses.

A Member questioned if a scheme to bring in reduced or zero business rates for larger firms moving onto the town and creating employment could be considered. The Director of Finance and Policy commented that the Council would have to meet not only its share of the business rates but also the government's if it were to offer such a scheme. The Chair of the Regeneration Services Committee added that there were the Enterprise Zones which provided a number of benefits to businesses. There was also a potential scheme for coastal towns which could potentially see the whole town declared an enterprise zone, though this was only at the discussion stage.

A member of the public commented that some small businesses in the town would benefit from an equality of car parking charges as some areas faced higher charges than those in the centre of Hartlepool. The Director of Regeneration and Neighbourhoods commented that this was one of the

considerations in a wider review of car parking across the Borough.

Decision

1. That approval be given to the adoption of the central government defined lists of eligible and ineligible hereditaments for Business Rates Retail Discount.
2. That no local additions be made to the eligible and ineligible lists in the context of properties being wholly or mainly used for retail purposes at this time.
3. That the progress made by the Council to ensure local businesses maximise their entitlements to Small Business Rates Relief be noted.

101. Corporate Complaints – 6 Months Monitoring Report (Assistant Director, Corporate Services)

Type of decision

Non-key decision.

Purpose of report

The purpose of the report was to update the Committee of the 2018/19 mid-year position in relation to corporate complaints and to seek Members approval to an amendment to the Corporate Complaints, Comments and Compliments Policy.

Issue(s) for consideration

The Director of Finance and Policy reported that a total of 16 complaints had been received in the first half of 2018/19; 6 more than at this point last year. Of those received, 7 were upheld or partly upheld. The report set out details of the complaints received by each department and an appendix to the report provided historical comparison of Corporate Complaints for information.

Although the overall increase in corporate complaints was concerning, there was no pattern in the nature of the complaints received and no specific action in respect of overall trends was, therefore, necessary. Action had been taken in relation to specific complaints where these had been upheld or partially upheld.

The Corporate Management Team (CMT) had reviewed the timescales set out in the Corporate Complaints, Comments and Compliments Policy and proposed that the overall timescale for complainants to receive a full and final response to the formal investigation of their corporate complaint should increase from 20 to 25 working days. This change would reflect the increasingly complex nature of the complaints being received which can

take longer to investigate and also the reduction in the capacity of officers to undertake investigations in addition to their normal workload. The proposed timescale was in line with the other North East authorities and would still ensure Hartlepool aims to turn around their formal responses to complaints quickly.

Decision

1. That the 2018/19 6 month position on corporate complaints received be noted;
2. That the proposed amendment to the Corporate Complaints, Comments and Compliments Policy with investigations of formal complaints to be completed in 25 working days be approved.

102. Q3 Strategic Financial Management Report' (Director of Finance and Policy)

Type of decision

For information.

Purpose of report

The purpose of this report is to inform Members of the 2018/19 Forecast General Fund Outturn; the Corporate Income Collection Performance; and the 2018/19 Capital Programme Monitoring.

Issue(s) for consideration

The Director of Finance and Policy provided the Committee with an updated assessment of the forecast 2018/19 outturn and the latest forecast was broadly in line with that previously reported – a net overspend of £545,000 (£549,000 in Quarter 2). Children's Services budget pressures were continuing in relation to the increasing number and costs of Looked after Children. The main reason for the departmental overspend in Regeneration and Neighbourhoods was Passenger Transport where the costs were continuing to rise as a result of an increase in pupil numbers accessing 'Special Educational Needs' transport, including transport outside of the borough. Detailed financial information on the projected outturn for individual Departments by Committee was provided in appendices to the report.

As previously reported, officers have been pursuing a range of actions to try and reduce the 2018/19 Forecast Overspend and to bring the overall outturn back into line with the available budget. These actions had included a review of all grants and other funding flexibilities as well as overachieving salary abatement targets and reducing discretionary spending. These actions would address the forecast overspend and at this stage of the year it was anticipated there will be no call on the Unearmarked General Fund

Reserve to fund any overspend. However, the nature of the winter period could impact on a range of departmental budgets this position would be closely monitored over the rest of the year.

The Housing Revenue Account (HRA) is a ring fenced account relating to the Council's rented housing and the forecast outturn was a deficit of £163,000 which was higher than the budgeted deficit of £29,000 due to a delay in the impact of measures approved by the Finance and Policy Committee on 18th June 2018 to reduce the number of void properties. The deficit was being met by HRA reserves.

In terms of the collection of Business Rates the Director reported that at the 31st December 2018 the Council had collected 82.03% of the 2018/19 liability, up by 1.41% compared to the same period last year (80.62%). The overall Council Tax collection rate at 31st December 2018 was 80.36% compared to 80.76% for the same period last year, down slightly by 0.40%.

The Council also collects significant Sundry Debts income for the payment of services provided by the Council. In total £24.501m of sundry debts were raised in the first nine months of 2018/19 and as at 31st December 2018, £20.814m (84.95%) of this amount had been collected.

At present no significant capital receipts were anticipated in 2018/19. Work was currently underway to secure capital receipts at a number of sites; however, these were unlikely to be received until 2019/20 at the earliest.

As detailed in the previous quarter, additional funding was being sought from the Tees Valley Combined Authority (TVCA) in relation to the BIS Managed Workspace (£338,000) as a result of unforeseen issues and delays owing to the challenges of renovating a Grade II Listed building and for Church Square (£177,000) as a result of the tenders being higher than the pre-tender estimate. A report confirming the additional funding was submitted to the TVCA Cabinet on the 24th January, 2019 and the additional funding had been granted.

Decision

The forecast 2018/19 General Fund Revenue budget over spend of £545,000 and the proposed measures to manage this as set out in the report were noted.

103. Any Other Items which the Chairman Considers are Urgent

The Chairman informed Members that following the recent announcement of the Tees Valley Combined Authority Investment Plan which would bring a significant amount of investment into Hartlepool, he had agreed with the Chair of the Regeneration Services Committee that a joint meeting would be held to discuss the proposals within the plan. Members welcomed the meeting and commended the Chair on the significant investment that had

been approved by the Combined Authority.

The Chair indicated that Members would be informed of the date of the meeting as soon as it had been determined.

The Committee noted that the next meeting would be held on Monday 11 March 2019 at 10.00 am in the Civic Centre.

The meeting concluded at 10.40 am.

H MARTIN

CHIEF SOLICITOR

PUBLICATION DATE: 1 FEBRUARY 2019

FINANCE AND POLICY COMMITTEE

12 FEBRUARY 2019



Report of: Chief Solicitor

Subject: ACQUISITION BY TEES VALLEY COMBINED
AUTHORITY OF SHARES IN DURHAM TEES VALLEY
AIRPORT LTD - WAIVER OF PRE-EMPTION RIGHTS BY
MINORITY SHAREHOLDERS

SUMMARY

This report recommends that the Council, as a minority shareholder in Durham Tees Valley Airport Limited, consent to grant a waiver of its pre-emption rights in order to facilitate a transfer of shares controlled by Peel Holdings Limited to a company established by the Tees Valley Combined Authority. In addition it is recommended that the Council maintain its existing minority shareholder protections under the current shareholders agreement with some minor modifications and clarifications.

RECOMMENDATIONS

- a. To agree to waive to the Council's pre-emption rights or rights of first refusal relating to the proposed transfer of the shares by Peel and to agree the form of waiver and release (as set out at Annex 1) and to authorise the Chief Solicitor to seal or sign all documents and complete all other actions required to give effect to this.
- b. To agree the form of Accession Deed of Adherence (as set out at Annex 2) and to authorise the Chief Solicitor to seal or sign all documents and complete all other actions required to give effect to this.

BACKGROUND

1. On 24 January the Tees Valley Combined Authority ("TVCA") agreed to acquire the shareholding of Peel Holdings Limited ("Peel") in Durham Tees Valley Airport Limited ("DTVAL") for a consideration of £40 million ("the Acquisition");
2. The current shareholding position for DTVA Ltd is as follows:-

Peel Investments (DTVA) Ltd	89.09%
Stockton	2.08%
Darlington	2.91%
Durham	1.45%
Redcar & Cleveland	1.70%
Hartlepool	1.08%
Middlesbrough	1.69%

3. The relationship between Peel and the Council Shareholders is regulated by the Articles of association of DTVL (“the Articles”) and by a Subscription and Shareholder Agreement entered into between Peel Airports Limited, Peel Holdings Plc and the Council Shareholders on 1 April 2003 (as amended) (“the SSA”).
4. The SSA provides the minority shareholders some additional protection over and above their rights as shareholders. In summary these are rights of veto over:
 - a. the operation of any activity which is outside the ordinary course of the business of the operation of the Airport;
 - b. selling a material part of the business or assets of the Airport;
 - c. changing the name of the Airport;
 - d. entering into any partnership or joint venture arrangement with the Airport's closest competitors, namely Newcastle, Leeds/Bradford or Manchester;
 - e. entering into any partnership or joint venture arrangement if such partnership or arrangement is outside the ordinary course of business of the Airport; and
 - f. subject to financial viability tests closing the Airport.
5. In 2016 agreement was reached with Peel under which DTVL would cease to be an admission body in the Teesside Pension Fund and Peel agreed that the airport would be maintained as an International Airport during an unconditional period of five years (“the Keep Open Commitment”). The Combined Authority has been advised by Peel that it intends to close the Airport as soon as it is able to under the terms of the existing Shareholders’ Agreement, in 2021.
6. There are restrictions contained within the Articles on disposal of shares including pre-emption provisions that provide for the shares in DTVL to be first offered to the existing shareholders (i.e. the local authorities) before a disposal to a third party (including TVCA or a company controlled by TVCA) can be made.
7. In relation to the proposed share transfer, the decision that the local authorities have to make is to decide if they want to exercise their pre-emption rights. Both TVCA and Peel have requested confirmation from the minority shareholders that they do not intend to exercise the pre-emption rights and have requested the local authorities grant a waiver of those rights. The waiver would enable TVCA and Peel to complete the Acquisition without a delay of up to 40 days which could be caused by the pre-emption process.
8. There is no direct commercial benefit of the pre-emption waiver for the local authorities except to enable the authorities’ to step-in ahead of TVCA and acquire a larger shareholding themselves. However unless the local authorities are minded to buy the Peel shares and potentially invest additional monies of their own in the airport to keep it open, then the pre-emption rights only serve to delay the Acquisition by TVCA.
9. If the local authorities decide not to exercise the pre-emption option and grant a waiver, then in order to maintain the status quo position in respect of the minority shareholder rights they will need to ensure that the new shareholder signs a deed of adherence to be bound by the terms of the existing SSA (as amended) in order to maintain the existing protections. The provisions to ensure that this happens are already contained in the SSA.

THE WAIVER AND RELEASE

10. With regard to the waiver, this has been drafted to ensure that it applies in the circumstances contemplated by the TVCA decision. It applies to a sale by Peel to Pacific Shelf 1860 Limited. Pacific Shelf 1860 Limited is the company that has been specifically established by TVCA to hold the shares for them (“the TVCA HoldCo”). A copy of the company incorporation is attached at annex 3.

11. The waiver and release also releases Peel from any further obligation under the SSA once its shares have transferred to the TVCA HoldCo. This provision takes effect as a consequence of the provisions contained in the SSA.

ACCESSION DEED OF ADHERENCE AND AMENDMENT

12. The Accession Deed of Adherence (“the Accession Deed”) makes provision that the TVCA HoldCo will adhere to the SSA in order to maintain the status quo for the minority local authority shareholders. The Accession Deed requires the TVCA HoldCo to accept all the obligations, liabilities and rights under the SSA in place of Peel. Importantly the local authorities existing position is protected in that the TVCA HoldCo will become bound in place of Peel to the Keep Open commitment until 2021.
13. There are a number of outdated provisions that are no longer relevant in the SAA and it is proposed that these are formally waived or amended.
 - a. Clause 12 (Compulsory further funding by Peel Investor) – This is no longer relevant given Peel have made the minimum investments required.
 - b. Clause 19 (Transfer of shares) – There was a restriction preventing Peel transferring its shares before it had made an investment of at least £12,500,000, this is no longer relevant given Peel have made the minimum investments required.
 - c. Schedule 2 (Use of Funds/No Leakage) of the Deed of Amendment. The use of funds/no leakage commitment (being the undertaking by DTVAL to apply all development receipts for the proposed development of 350 dwellings on the airport site towards capital investment in the airport or operation of the airport and that there will be no unpermitted payments as set out in the agreement). This is no longer as TVCA will not permit the development to progress.
 - d. Clause 11 (Provision of further funding for the Company) – this provided Peel with the right to provide further funding (by way of qualifying loans) in return for the conversion of such loans for the issue of shares (so long as the Councils have a catch up right). The Clause is no longer relevant once Peel ceases to be the investor.
 - e. Clause 15 (Dividend Policy); – no dividends payable until £20,000,000 investment by Peel has been made in full. Such clause to be suspended for such period that the use of funds/no leakage provisions are to apply. This is no longer relevant as Peel's investment obligations will not apply to TVCA. The dividend position will revert to the position under the Articles with the local authorities sharing in any future dividend in proportion to their shareholding.
14. TVCA have requested one relevant change to the SSA that falls outside the scope of outdated provisions which is an amendment to the non-competition requirements. The change would provide a clarification that a third party operator that is contracted by the TVCA HoldCo or DTVAL to act as operator of the Airport is not prevented from also providing airport services or other commercial services at any of Newcastle Airport or Leeds/Bradford Airport or Manchester Airport which are restricted airports under the SSA. External legal advice is that on a strict interpretation the drafting of the non-competition requirements would not be breached as they only apply to the TVCA HoldCo, and therefore accepting this change does not alter the existing position of the local authorities but does provide a degree of comfort to TVCA in respect of any future operator procurement.

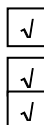
URGENCY

15. DTVL had secured planning permission for a housing development of around 350 housing units on the Northside of the airport site. Part of the TVCA acquisition decision is that construction of the a residential development of 350 houses on the periphery of the airport could frustrate, or delay the development of DTVA and its ancillary uses consequently if the acquisition proceeds then the development of the 350 housing units would not go ahead.
16. It is understood that agreement had been reached by DTVL with a housebuilder to acquire the development land. Coupled with this, under the conditions of the existing planning consent a reserved matters application for the 350 housing units would need to be submitted by 22 February.
17. Should the timescale to complete the acquisition not proceed on or before the date on which reserved matters application has to be made, then there is a risk that the acquisition may be impeded or delayed. As a result, both Peel and TVCA have expressed that it is in urgent that the acquisition proceeds within the stated timescale.

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Sign Off:-

Chief Executive
Director of Finance and Policy
Chief Solicitor





STOCKTON-ON-TEES BOROUGH COUNCIL

MIDDLESBROUGH BOROUGH COUNCIL

REDCAR & CLEVELAND BOROUGH COUNCIL

HARTLEPOOL BOROUGH COUNCIL

DURHAM COUNTY COUNCIL

DARLINGTON BOROUGH COUNCIL

PEEL LAND AND PROPERTY INVESTMENTS PLC

PEEL INVESTMENTS (DTVA) LIMITED

DURHAM TEES VALLEY AIRPORT LIMITED

**DEED OF WAIVER AND
RELEASE**

Parties

- (1) The Council of The Borough of Stockton-on-Tees, Municipal Buildings, Church Road, Stockton-on-Tees TS18 1LD
 - (2) The Council of The Borough of Middlesbrough, Municipal Buildings, Middlesbrough TS1 9TA;
 - (3) The Council of The Borough of Redcar & Cleveland, Redcar and Cleveland House, Kirkleatham Street, Redcar TS10 1RT;
 - (4) The Council of The Borough of Hartlepool, Civic Centre, Victoria Road, Hartlepool TS24 8AY;
 - (5) The Council of The County of Durham, County Hall, Durham DH1 5UE;
 - (6) The Council of The Borough of Darlington, Town Hall, Feethams, Darlington DL1 5QT;
- ((1) to (6) together, the **Councils**),
- (7) Peel Land and Property Investments PLC (No. 0166957) whose registered office is at Peel Dome, Intu Trafford Centre, Traffordcity, Manchester, M17 8PL (**Guarantor**);
 - (8) Peel Investments (DTVA) Limited (No. 07934597) whose registered office is at Peel Dome, The Trafford Centre, Manchester, M17 8PL (**Seller**); and
 - (9) Durham Tees Valley Airport Limited (No. 2020423) whose registered office is at Peel Dome, The Trafford Centre, Manchester, M17 8PL (**Company**).

Background

- (A) The relationship of the Councils, the Seller, the Guarantor and the Company in relation to, amongst other things, the operation, management and funding of the Company is governed by a subscription and shareholders' agreement dated 1 April 2003 together with the deed of adherence dated 1 April 2003 and the accession deed of adherence dated 10 February 2012 and as amended by deed of amendment dated 29 July 2016 (the **Agreement**).
- (B) The Seller proposes to sell all of the shares held by the Seller in the Company being 54,091,420 A Ordinary shares of £0.01 each and 1,225,125,000 Deferred Shares of £0.01 each in the capital of the Company (the **Sale Shares**) to Pacific Shelf 1860 Limited (No. 11800179) (the **Buyer**) (the **Transaction**) pursuant to a sale and purchase agreement between, *inter alia*, the Seller and the Buyer (the **SPA**).
- (C) In order to complete the Transaction, it is a requirement of the Agreement that the Buyer enters into an Accession Deed of Adherence.

It is agreed

1 Interpretation

- 1.1 Unless otherwise defined in this Deed, words and expressions defined in the Agreement shall have the meanings in this Deed and the provisions as to the interpretation contained in clause 1.2 of the Agreement shall apply to the interpretation of this Deed.

- 1.2 In this Deed **Effective Date** means the date on which the Buyer enters into an Accession Deed of Adherence in accordance with the requirements of the Agreement and the SPA (such date being the date of completion of the Transaction).

2 Waiver and consent

- 2.1 Each of the Councils hereby consent to the transfer by the Seller of the Sale Shares to the Buyer or a company controlled by the Buyer (and "controlled by" shall be interpreted using the definition of "control" in section 1124 of the Corporation Tax Act 2010) and each Council irrevocably waives all pre-emption rights or rights of first refusal relating to the transfer of the Sale Shares to the Buyer, whether conferred on them by the articles of association of the Company, the Agreement or otherwise.

3 Release

In accordance with the terms of the Agreement, the parties acknowledge and agree that, the Agreement shall cease to have effect in relation to the Seller and the Guarantor upon the Effective Date and that the Seller and the Guarantor are hereby irrevocably released and discharged from all obligations or liabilities whether in contract, tort or statute, at common law or equity and whether actual and/or contingent and in each case whether present or future and whether incurred alone or jointly or with any other person or persons and whether as principal or surety arising out of or in connection with or ancillary to the Agreement, with effect from the Effective Date, save in respect of:

- (a) any provision of the Agreement which is expressed to continue after such cessation;
- (b) any liability which as at the Effective Date has accrued to another party or which may accrue in respect of any act or omission of the Seller or Guarantor which has occurred prior to the Effective Date.

4 Longstop

If the Effective Date does not occur on or before 5th March 2019, this Deed shall terminate and have no effect save that the provisions of clause 1, this clause 4, and clauses 5 and 6 shall survive such termination.

5 Counterparts

This Deed may be entered into in the form of two or more counterparts, each executed by one or more of the parties but, taken together, executed by all and, provided that all the parties so enter into this Deed, each of the executed counterparts, when duly exchanged and delivered, will be deemed to be an original, but, taken together, they will constitute one instrument.

6 Governing law and jurisdiction

- 6.1 This Deed will be governed by and construed in accordance with English law and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Deed, its subject matter, negotiation or formation will be determined in accordance with English law.
- 6.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Deed.

Executed and delivered as a deed by the parties or their duly authorised representatives to take effect when the last such party executes and delivers its counterpart.

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The Borough of Stockton-On-) Council Representative
Tees
pursuant to clause 4.5 of the Agreement

Date

in the presence of

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The Borough of Middlesbrough) Council Representative
pursuant to clause 4.5 of the Agreement

Date

in the presence of

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The Borough of Redcar and) Council Representative
Cleveland
pursuant to clause 4.5 of the Agreement

Date

in the presence of

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The Borough of Hartlepool) Council Representative
pursuant to clause 4.5 of the Agreement

in the presence of Date

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The County of Durham) Council Representative
pursuant to clause 4.5 of the Agreement

in the presence of Date

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Duly authorised for and on behalf of **The**)
Council of The Borough of Darlington) Council Representative
pursuant to clause 4.5 of the Agreement

in the presence of Date

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Peel Land and Property Investments PLC)
acting by a director in the presence of) Director

Date

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Peel Investments (DTVA) Limited)
acting by a director in the presence of) Director

Date

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
Durham Tees Valley Airport Limited)
acting by a director in the presence of) Director

Date

.....
Signature of witness

Name

Address

.....

STOCKTON-ON-TEES BOROUGH COUNCIL
MIDDLESBROUGH BOROUGH COUNCIL
REDCAR & CLEVELAND BOROUGH COUNCIL
HARTLEPOOL BOROUGH COUNCIL
DURHAM COUNTY COUNCIL
DARLINGTON BOROUGH COUNCIL
PACIFIC SHELF 1860 LIMITED
DURHAM TEES VALLEY AIRPORT LIMITED

ACCESSION DEED OF ADHERENCE AND AMENDMENT

relating to a subscription and shareholders' agreement made
on 1 April 2003 and amended on 29 July 2016

THIS ACCESSION DEED OF ADHERENCE AND AMENDMENT is made by:-

- (1) The **COUNCIL OF THE BOROUGH OF STOCKTON-ON-TEES** of Municipal Buildings, Church Road, Stockton-on-Tees TS18 1LD
 - (2) The **COUNCIL OF THE BOROUGH OF MIDDLESBROUGH** of Municipal Buildings, Middlesbrough TS1 9TA;
 - (3) The **COUNCIL OF THE BOROUGH OF REDCAR & CLEVELAND** of Redcar and Cleveland House, Kirkleatham Street, Redcar TS10 1RT;
 - (4) The **COUNCIL OF THE BOROUGH OF HARTLEPOOL** of Civic Centre, Victoria Road, Hartlepool TS24 8AY;
 - (5) The **COUNCIL OF THE COUNTY OF DURHAM** of County Hall, Durham DH1 5UE;
 - (6) The **COUNCIL OF THE BOROUGH OF DARLINGTON** of Town Hall, Feethams, Darlington DL1 5QT;
- ((1) to (6) together, the "**Councils**"),
- (7) **PACIFIC SHELF 1860 LIMITED** (No. 11800179) whose registered office is at Cavendish House, Teesdale Business Park, Stockton on Tees TS17 6QY (the "**Buyer**"); and
 - (8) **DURHAM TEES VALLEY AIRPORT LIMITED** (No. 2020423) whose registered office is at Peel Dome, The Trafford Centre, Manchester, M17 8PL (the "**Company**").

INTRODUCTION:-

- (A) The relationship of the Councils, Peel Investments (DTVA) Limited ("the **Seller**"), Peel Land and Property Investments Plc ("the **Guarantor**") and the Company in relation to, amongst other things, the operation, management and funding of the Company is governed by a subscription and shareholders' agreement dated 1 April 2003 together with the deed of adherence dated 1 April 2003 and the accession deed of adherence dated 10 February 2012 and as amended by deed of amendment dated 29 July 2016 (the "**Deed of Amendment**") (together, the "**Agreement**").
- (B) This Deed is being entered into by the parties in connection with the proposed sale by the Seller of all of the shares held by the Seller in the Company being 54,091,420 A Ordinary shares of £0.01 each and 1,225,125,000 Deferred Shares of £0.01 each in the capital of the Company (the "**Sale Shares**") to the Buyer (the "**Transaction**") pursuant to a sale and purchase agreement between, *inter alia*, the Seller and the Buyer.
- (C) By entering into this Deed, the Buyer replaces the Seller as a party to the Agreement with effect from the Effective Date (defined below). The Buyer is entering into this Deed in reliance on and subject to the waivers of, and amendments to, certain provisions of this Agreement by the remaining parties to the Agreement as set out in this Deed and as previously agreed in clause 5.3 of the Deed of Amendment.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless otherwise defined in this Deed, words and expressions defined in the Agreement shall have the meanings in this Deed and the provisions as to the interpretation contained in clause 1.2 of the Agreement shall apply to the interpretation of this Deed.
- 1.2 In this Deed "**Effective Date**" means the date of completion of the Transaction.

2. BUYER ADHERENCE, WAIVER OF OUTDATED PROVISIONS, AMENDMENT AND CONSENT

2.1 Pursuant to clause 19.4 of the Agreement, no transfer of any Shares shall be registered by the Company unless the transferee shall have first executed an Accession Deed of Adherence.

2.2 The Buyer hereby confirms to all parties to the Agreement that it has been supplied with a copy of the Agreement and hereby agrees with, and covenants to, all such parties that the Buyer shall be deemed, with effect from the Effective Date, to be a party to the Agreement and that the Buyer shall be bound by and shall observe and perform all provisions of the Agreement which are capable of applying to the Seller (save to the extent that any such provisions have been fully performed prior to the Effective Date or are incapable of applying to the Buyer whether under clause 2.4 or clause 2.5 of this Deed or otherwise) as if, from the Effective Date, the Buyer were a "Shareholder", the "Investor" and "Peel" and, where the context so permits, as if each reference in the Agreement to a "Shareholder", the "Investor" and "Peel" was a reference to the Buyer in place of the Seller.

2.3 With effect from the Effective Date and subject to clause 2.4 and clause 2.5 of this Deed, the Buyer covenants, in accordance with clause 2.2, to fulfil all of the Seller's obligations under the Agreement, and the Buyer shall be entitled to enforce all rights and benefits and shall be subject to all obligations and liabilities under the Agreement, as if the Buyer were the Seller.

2.4 In consideration for the covenants given by the Buyer in clause 2.2 and clause 2.3 of this Deed, and pursuant to clause 26.1 of the Agreement, with effect from the Effective Date and insofar as the relevant obligations of the Investor have not previously been satisfied thereunder, each of the Councils irrevocably waives (as a continuing waiver) the application of the following provisions of the Agreement:

2.4.1 clause 12 (Compulsory provision of further funding by the Investor);

2.4.2 clause 19.2 (a) (Transfer of Shares); and

2.4.3 Schedule 2 (Use of Funds/No Leakage) of the Deed of Amendment.

2.5 In further consideration for the covenants given by the Buyer in clause 2.2 and clause 2.3 of this Deed, and pursuant to clause 26.2 of the Agreement, with effect from the Effective Date the continuing parties to the Agreement agree that:

2.5.1 the following provisions of the Agreement shall cease to have effect:

(a) clause 11 (Provision of further funding for the Company); and

(b) clause 15 (Dividend Policy); and

2.5.2 a new clause 30 will be inserted into the Agreement to have effect from that date:

"The Buyer undertakes that it shall not carry out the Development or any scheme similar to that set out in the Planning Consent on the Site or any other land owned by the Company."

2.6 For the purposes of clause 22 (Non-competition restrictions) of the Agreement, the Councils hereby irrevocably and unconditionally consent to any third party operator that is contracted by the Buyer to act as operator of the Airport also providing airport services or other commercial services at any of Newcastle Airport or Leeds/Bradford Airport or Manchester Airport.

3. LONGSTOP

3.1 If the Effective Date does not occur on or before 5 March 2019, this Deed shall terminate and have no effect save that the provisions of clause 1, this clause 3, and clauses 4, 5 and 6 shall survive such termination.

4. **COUNTERPARTS**

- 4.1 This Deed may be entered into in the form of two or more counterparts, each executed by one or more of the parties but, taken together, executed by all and, provided that all the parties so enter into this Deed, each of the executed counterparts, when duly exchanged and delivered, will be deemed to be an original, but, taken together, they will constitute one instrument.

5. **ENTIRE AGREEMENT**

- 5.1 This Deed and the Agreement constitute the entire agreement between the parties in connection with the Company and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing between the parties in relation to the subject matter of this Deed.
- 5.2 Each of the parties acknowledges and confirms that it has not entered into this Deed in reliance on any representation, warranty or other undertaking not fully reflected in this Deed and any warranty, condition or other undertaking implied at law or by custom is expressly excluded.
- 5.3 Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages or to rescind this Deed by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this Deed or not) and on which it has relied in entering into this Deed.
- 5.4 Nothing in this Deed operates to exclude any liability or remedy for fraud.

6. **GOVERNING LAW AND JURISDICTION**

- 6.1 This Deed will be governed by and construed in accordance with English law and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Deed, its subject matter, negotiation or formation will be determined in accordance with English law.
- 6.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Deed.

EXECUTED AS A DEED by the parties or their duly authorised representatives to take effect when the last such party executes and delivers its counterpart.

**EXECUTED as a DEED by affixing the common seal of
THE COUNCIL OF THE BOROUGH OF STOCKTON-
ON-TEES**

in the presence of

.....
Signature

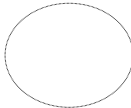
.....
Full Name

.....
Date

.....

.....

Address



Common Seal

**EXECUTED as a DEED by affixing the common seal of
THE COUNCIL OF THE BOROUGH OF
MIDDLESBROUGH**

in the presence of

.....
Signature

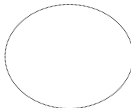
.....
Full Name

.....
Date

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.....

Address



Common Seal

**EXECUTED as a DEED by affixing the common seal of
THE COUNCIL OF THE BOROUGH OF REDCAR AND
CLEVELAND**

in the presence of

.....
Signature

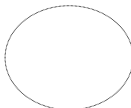
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Full Name

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Date

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Address



Common Seal

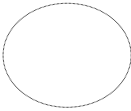
EXECUTED as a **DEED** by affixing the common seal of
THE COUNCIL OF THE BOROUGH OF
HARTLEPOOL
in the presence of

.....
Signature

.....
Full Name

.....
Date

.....
.....
.....
Address



Common Seal

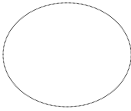
EXECUTED as a **DEED** by affixing the common seal of
THE COUNCIL OF THE BOROUGH OF DARLINGTON
in the presence of

.....
Signature

.....
Full Name

.....
Date

.....
.....
.....
Address



Common Seal

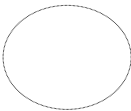
EXECUTED as a **DEED** by affixing the common seal of
THE COUNCIL OF THE COUNTY OF DURHAM
in the presence of

.....
Signature

.....
Full Name

.....
Date

.....
.....
.....
Address



Common Seal

EXECUTED as a **DEED** by
PACIFIC SHELF 1860 LIMITED
acting by

.....
Full Name (Director/Attorney)
in the presence of:

.....
Signature of Director/Attorney
.....
Date

.....
Full Name (Witness)
.....
.....
.....
Address

.....
Signature of Witness

EXECUTED as a **DEED** by **DURHAM TEES VALLEY**
AIRPORT LIMITED
acting by

.....
Full Name (Director/Attorney)
in the presence of:

.....
Signature of Director/Attorney
.....
Date

.....
Full Name (Witness)
.....
.....
.....
Address

.....
Signature of Witness



**CERTIFICATE OF INCORPORATION
OF A
PRIVATE LIMITED COMPANY**

Company Number **11800179**

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

PACIFIC SHELF 1860 LIMITED

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

Given at Companies House, Cardiff, on **31st January 2019**.

The above information was communicated by electronic means and authenticated by the
Registrar of Companies under section 1115 of the Companies Act 2006

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

of

PACIFIC SHELF 1860 LIMITED
(the "Company")

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

Name of each subscriber

Authentication by each subscriber

Tees Valley Combined Authority

Dated 31 January 2019

Company No

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

PACIFIC SHELF 1860 LIMITED

Incorporated 31 January 2019



Pinsent Masons

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Company No

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

PACIFIC SHELF 1860 LIMITED
(the "Company")

Incorporated 31 January 2019

INTERPRETATION

Defined terms

1.1 In the Articles, unless the context requires otherwise:-

"Act"	means the Companies Act 2006
"Articles"	means the Company's articles of association
"bankruptcy"	includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy
"business day"	means any day (other than a Saturday, Sunday or a public holiday in England) on which clearing banks in the city of London are open for the transaction of normal sterling banking business
"chairman"	means the person for the time being appointed to chair meetings of the directors or the members of the Company as the case may be
"Companies Acts"	means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the Company
"director"	means a director for the time being of the Company, and includes any person occupying the position of director, by whatever name called
"distribution recipient"	has the meaning given in Article 49.2
"document"	includes, unless otherwise specified, any document sent or supplied in electronic form
"electronic form"	has the meaning given in section 1168 of the Act
"fully paid"	in relation to a share, means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company
"hard copy form"	has the meaning given in section 1168 of the Act

"holder"	in relation to shares means the person whose name is entered in the register of members as the holder of the shares
"instrument"	means a document in hard copy form
"ordinary resolution"	has the meaning given in section 282 of the Act
"paid"	means paid or credited as paid
"participate"	in relation to a directors' meeting, has the meaning given in Article 13
"proxy notice"	has the meaning given in Article 63
"shareholder"	means a person who is the holder of a share
"shares"	means shares in the Company
"special resolution"	has the meaning given in section 283 of the Act
"subsidiary"	has the meaning given in section 1159 of the Act
"transmittee"	means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law
"writing"	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Company.
- 1.3 The headings to the Articles are for convenience only and shall not affect the interpretation or construction of these Articles.
- 1.4 A reference in these Articles to an Article is a reference to the relevant Article of these Articles unless expressly provided otherwise.
- 1.5 A reference to a statute, statutory provision or sub-ordinate legislation is a reference to it as it is in force from time to time, taking account of:-
 - 1.5.1 any subordinate legislation from time to time made under it, and
 - 1.5.2 any amendment or re-amendment and includes any statute, statutory provision or sub-ordinate legislation which it amends or re-enacts.

Exclusion of Model Articles

2. No articles set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies shall apply as the Articles.

LIMITATION OF LIABILITY

Liability of members

3. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

NAME

Change of Name

4. The Company may change its name by resolution of the board.

DIRECTORS' POWERS AND RESPONSIBILITIES

Directors' general authority

5. Subject to the Articles, the directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

Shareholders' reserve power

- 6.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 6.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors may delegate

- 7.1 Subject to the Articles, the directors may delegate any of the powers which are conferred on them under the Articles:-
 - 7.1.1 to such person or committee;
 - 7.1.2 by such means (including by power of attorney);
 - 7.1.3 to such an extent;
 - 7.1.4 in relation to such matters or territories; and
 - 7.1.5 on such terms and conditions;as they think fit.
- 7.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 7.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

COMMITTEES

- 8.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by directors.
- 8.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

Directors to take decisions collectively

- 9.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with Article 10.

9.2 If:-

9.2.1 the Company only has one director for the time being; and

9.2.2 no provision of the Articles requires it to have more than one director,

the general rule does not apply, and the director may (for so long as he remains the sole director) take decisions without regard to any of the provisions of the Articles relating to directors' decision-making.

Unanimous decisions

10.1 A decision of the directors is taken in accordance with this Article when all eligible directors indicate to each other by any means that they share a common view on a matter.

10.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

10.3 References in this Article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

10.4 A decision may not be taken in accordance with this Article if the eligible directors would not have formed a quorum at such a meeting.

Calling a directors' meeting

11.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the Company secretary (if any) to give such notice.

11.2 Notice of any directors' meeting must indicate:-

11.2.1 its proposed date and time;

11.2.2 where it is to take place; and

11.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

11.3 Notice of a directors' meeting must be given to each director in writing.

11.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

12.1 Subject to the Articles, directors participate in a directors' meeting, or part of a directors' meeting, when:-

12.1.1 the meeting has been called and takes place in accordance with the Articles; and

12.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

12.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

12.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

- 13.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 13.2 Subject to Article 13.3, the quorum for the transaction of business at a meeting of the directors is any two directors.
- 13.3 For the purposes of any meeting (or part of a meeting) held pursuant to Article 19 to authorise a director's conflict of interest, where there is only one director in office who is not party to the relevant conflict, the quorum for such a meeting (or part of a meeting) shall be one eligible director.
- 13.4 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision:-
 - 13.4.1 to appoint further directors; or
 - 13.4.2 to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

- 14.1 The directors may appoint a director to chair their meetings.
- 14.2 The person so appointed for the time being is known as the chairman.
- 14.3 The directors may terminate the chairman's appointment at any time.
- 14.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

- 15.1 Subject to Article 15.2 if the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall have a casting vote.
- 15.2 The chairman or other director chairing a meeting (or part of a meeting) shall not have a casting vote if, in accordance with the Articles, the chairman, or other director, is not an eligible director for the purposes of that meeting (or part of a meeting).

Alternates voting at directors' meetings

- 16. A director who is also an alternate director has an additional vote on behalf of each appointor who is:-
 - 16.1 not participating in a directors' meeting, and
 - 16.2 would have been entitled to vote if they were participating in it.

Records of decisions to be kept

- 17.1 The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.
- 17.2 Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form so that they may be read with the naked eye.

Directors' discretion to make further rules

- 18. Subject to the Articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

CONFLICTS OF INTEREST

Interests in transactions and arrangements with the Company

- 19.1 Subject to the provisions of the Act, to Articles 20 to 28, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:-
- 19.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
 - 19.1.2 may 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 otherwise interested; and
 - 19.1.3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- 19.2 For the purposes of Article 19.1:-
- 19.2.1 a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
 - 19.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.
- 19.3 For the purposes of this Article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- 19.4 Subject to Article 19.5, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
- 19.5 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
- 19.6 Subject to:-
- 19.6.1 the provisions of Sections 177 and 182 of the Act; and
 - 19.6.2 to the terms of any authorisation of a conflict made in accordance with the provisions of Articles 20 to 28,
- a director may vote at any meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty. The director shall be counted in the quorum present at a meeting when any such resolution is under consideration and if he votes his vote shall be counted.

Powers of Directors to authorise conflicts of interest

20. The directors may authorise, to the fullest extent permitted by law, any matter proposed to them which would otherwise result in a director infringing his duty under section 175 of the Act to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest.

21. Authorisation of a matter under Article 20 is effective only if:-
- 21.1 the matter has been proposed to the directors by its being submitted in writing for consideration at a meeting of the directors or for the authorisation of the directors by resolution in writing and in accordance with the Board's normal procedures or in such other manner as the Board may approve;
- 21.2 any requirement as to quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director; and
- 21.3 the matter has been agreed to without the director in question and any other interested director voting or would have been agreed to if their votes had not been counted.
22. Any authorisation of a matter under Article 20 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
23. The Board may authorise a matter pursuant to Article 20 on such terms and for such duration, or impose such limits or conditions on it, as it may decide and vary the terms or duration of such an authorisation (including any limits or conditions imposed on it) or revoke it. A director shall comply with any obligations imposed on him by the directors pursuant to any such authorisation.
24. Any terms imposed by the Board under Article 23 may include (without limitation):-
- 24.1 whether the director may vote (or be counted in the quorum) at a meeting of the Board or any committee or sub-committee of the Board in relation to any resolution relating to the relevant matter;
- 24.2 whether the director is to be given any documents or other information in relation to the relevant matter; and
- 24.3 whether the director is to be excluded from discussions in relation to the relevant matter at a meeting of the Board or any committee or sub-committee of the Board or otherwise.
25. The director shall not be required to disclose any confidential information obtained in relation to the relevant matter (other than through his position as a director of the Company) to the Company or to use or apply it in performing his duties as a director if to do so would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter.
26. A director does not infringe any duty he owes to the Company by virtue of sections 171 to 177 of the Act if he acts in accordance with such terms, limits and conditions (if any) as the Board may impose in respect of its authorisation of the director's conflict of interest or possible conflict of interest under Article 20.
27. A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under Article 20 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
28. A reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

APPOINTMENT OF DIRECTORS

Number of directors

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

Methods of appointing directors

- 30.1 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:-

30.1.1 by ordinary resolution; or

30.1.2 by a decision of the directors.

30.2 In any case where, as a result of death or bankruptcy, the Company has no shareholders and no directors, the transmittee of the last shareholder to have died or to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person) who is willing to act and is permitted to do so, to be a director.

30.3 For the purposes of Article 30.2, where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

31. A person ceases to be a director as soon as:-

31.1.1 that person ceases to be a director by virtue of any provision of the Act or these Articles or is prohibited from being a director by law;

31.1.2 a bankruptcy order is made against that person;

31.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

31.1.4 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

31.1.5 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

31.1.6 notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;

31.1.7 he is convicted of a criminal offence (other than a motoring offence or series of offences not resulting in disqualification) and the directors resolve that his office be vacated; or

31.1.8 in the case of a person who is also an employee of the Company he ceases to be such an employee; or

31.1.9 he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated; or

31.1.10 all the other directors unanimously resolve that his office be vacated.

31.2 In addition and without prejudice to the provisions of section 168 of the Act, the Company may by ordinary resolution (whether at a general meeting or in writing and without special notice) remove any director before the expiration of his period of office and may by ordinary resolution (whether at a general meeting or in writing and without any special notice) appoint another director in his place.

Directors' remuneration

32.1 Directors may undertake any services for the Company that the directors decide.

32.2 Directors are entitled to such remuneration as the directors determine:-

32.2.1 for their services to the Company as directors, and

32.2.2 for any other service which they undertake for the Company.

32.3 Subject to the Articles, a director's remuneration may:-

32.3.1 take any form; and

32.3.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

32.4 Unless the directors decide otherwise, directors' remuneration accrues from day to day.

32.5 Unless the directors decide otherwise, directors are not accountable to the Company for any remuneration which they receive as directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

Directors' and officers' expenses

33.1 The Company may pay any reasonable expenses which the officers (including alternate directors and the secretary) properly incur in connection with their attendance at:-

33.1.1 meetings of directors or committees of directors;

33.1.2 general meetings; or

33.1.3 separate meetings of the holders of any class of shares or of debentures of the Company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

ALTERNATE DIRECTORS AND SECRETARY

Appointment and removal of alternates

34.1 Any director (the "appointor") may appoint as an alternate any director, or any other person approved by resolution of the directors, to:-

34.1.1 exercise that director's powers, and

34.1.2 carry out that director's responsibilities.

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

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

34.3 The notice must:-

34.3.1 identify the proposed alternate, and

34.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

35.1 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

35.2 Alternate directors:-

35.2.1 are, subject to Articles 34 and 36, deemed for all purposes to be directors;

35.2.2 are liable for their own acts and omissions;

35.2.3 are subject to the same restrictions as their appointors; and

35.2.4 are not deemed to be agents of or for their appointors.

35.3 A person who is an alternate but not a director:-

35.3.1 may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and

35.3.2 may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for such purposes.

35.4 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

Termination of alternate directorship

36.1 An alternate director's appointment as an alternate terminates:-

36.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;

36.1.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

36.1.3 on the death of the alternate's appointor; or

36.1.4 when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Secretary

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

SHARES

Company's lien over partly paid shares

38.1 The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a share shall extend to any amount payable in respect of it.

38.2 The Company may sell in such manner as the directors determine any shares on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

- 38.3 To give effect to a sale the directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 38.4 The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls On Shares and Forfeiture

- 39.1 Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or in part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which of the call was made.
- 39.2 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
- 39.3 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 39.4 If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Act) but the directors may waive payment of the interest wholly or in part.
- 39.5 An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call, and if it is not paid when due all the provisions of the Articles shall apply as if that amount had become due and payable by virtue of a call.
- 39.6 Subject to the terms of allotment, the directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.
- 39.7 If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid, together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.
- 39.8 If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
- 39.9 Subject to the provisions of the Act, a forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and at any time before a sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the share to that person.
- 39.10 A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall

remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

- 39.11 A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

Powers to issue different classes of share

- 40.1 Subject to the Articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- 40.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

41. Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

- 42.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 42.2 Every certificate must specify:-
- 42.2.1 in respect of how many shares, of what class, it is issued;
 - 42.2.2 the nominal value of those shares;
 - 42.2.3 that the shares are fully paid; and
 - 42.2.4 any distinguishing numbers assigned to them.
- 42.3 No certificate may be issued in respect of shares of more than one class.
- 42.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 42.5 Certificates must:-
- 42.5.1 have affixed to them the Company's common seal; or
 - 42.5.2 be otherwise executed in accordance with the Companies Acts.

Replacement share certificates

- 43.1 If a certificate issued in respect of a shareholder's shares is:-

43.1.1 damaged or defaced; or

43.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

43.2 A shareholder exercising the right to be issued with such a replacement certificate:-

43.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

43.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

43.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Share transfers

44.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

44.2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

44.3 The Company may retain any instrument of transfer which is registered.

44.4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

44.5 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

Transmission of shares

45.1 If title to a share passes to a transmittee, the Company may only recognise the transmittee as having any title to that share.

45.2 A transmittee who produces such evidence of entitlement to shares as the directors may properly require:-

45.2.1 may, subject to the Articles, choose either to become the holder of those shares or to have them transferred to another person; and

45.2.2 subject to the Articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

45.3 But subject to Article 30.2 transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transmittees' rights

46.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the Company in writing of that wish.

46.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

- 46.3 Any transfer made or executed under this Article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

47. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name or the name of any person nominated by the transmittee in accordance with Article 46.2 has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

Procedure for declaring dividends

- 48.1 The Company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- 48.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 48.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 48.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 48.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 48.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 48.7 If the directors act in good faith, they do 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 shares with deferred or non-preferred rights.

Payment of dividends and other distributions

- 49.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:-
- 49.1.1 transfer to a bank or building society account specified by the distribution recipient in writing;
- 49.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient in writing;
- 49.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified in writing; or
- 49.1.4 any other means of payment as the directors agree with the distribution recipient in writing.
- 49.2 In the Articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable:-
- 49.2.1 the holder of the share; or

- 49.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
- 49.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

No interest on distributions

- 50.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:-
- 50.1.1 the terms on which the share was issued; or
- 50.1.2 the provisions of another agreement between the holder of that share and the Company.

Unclaimed distributions

- 51.1 All dividends or other sums which are:-
- 51.1.1 payable in respect of shares; and
- 51.1.2 unclaimed after having been declared or become payable,
- may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.
- 51.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 51.3 If:-
- 51.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
- 51.3.2 the distribution recipient has not claimed it,
- the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

Non-cash distributions

- 52.1 Subject to the terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any Company).
- 52.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:-
- 52.2.1 fixing the value of any assets;
- 52.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- 52.2.3 vesting any assets in trustees.

Waiver of distributions

- 53.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in writing to that effect, but if:-

53.1.1 the share has more than one holder; or

53.1.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

CAPITALISATION OF PROFITS

Authority to capitalise and appropriation of capitalised sums

54.1 Subject to the Articles, the directors may, if they are so authorised by an ordinary resolution:-

54.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and

54.1.2 appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

54.2 Capitalised sums must be applied:-

54.2.1 on behalf of the persons entitled; and

54.2.2 in the same proportions as a dividend would have been distributed to them.

54.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

54.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct.

54.5 Subject to the Articles the directors may:-

54.5.1 apply capitalised sums in accordance with Articles 54.3 and 54.4 partly in one way and partly in another;

54.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and

54.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this Article.

DECISION-MAKING BY SHAREHOLDERS AND ORGANISATION OF GENERAL MEETINGS

Attendance and speaking at general meetings

55.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

55.2 A person is able to exercise the right to vote at a general meeting when:-

55.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

55.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

55.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

55.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

55.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

56. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings

57.1 If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

57.2 If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:-

57.2.1 the directors present; or

57.2.2 (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

57.3 The person chairing a meeting in accordance with this Article is referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-shareholders

58.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

58.2 The chairman of the meeting may in his absolute discretion permit other persons who are not:-

58.2.1 shareholders of the Company; or

58.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

59.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

59.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:-

59.2.1 the meeting consents to an adjournment; or

59.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

- 59.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 59.4 When adjourning a general meeting, the chairman of the meeting must:-
- 59.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
 - 59.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 59.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):-
- 59.5.1 to the same persons to whom notice of the Company's general meetings is required to be given, and
 - 59.5.2 containing the same information which such notice is required to contain.
- 59.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

60. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

Errors and disputes

- 61.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 61.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

- 62.1 A poll on a resolution may be demanded:-
- 62.1.1 in advance of the general meeting where it is to be put to the vote; or
 - 62.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 62.2 A poll may be demanded by:-
- 62.2.1 the chairman of the meeting;
 - 62.2.2 the directors;
 - 62.2.3 two or more persons having the right to vote on the resolution; or
 - 62.2.4 a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- 62.3 A demand for a poll may be withdrawn if:-
- 62.3.1 the poll has not yet been taken, and

62.3.2 the chairman of the meeting consents to the withdrawal.

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

62.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

63.1 Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:-

63.1.1 states the name and address of the shareholder appointing the proxy;

63.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

63.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

63.1.4 is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate,

and a proxy notice which is not delivered in such manner shall be invalid unless the directors in their absolute discretion, at any time before the start of the meeting (or adjourned meeting) and otherwise determine and accept the proxy notice.

63.2 In calculating the period of 48 hours referred to in Article 63.1, no account shall be taken of any part of a day that is not a working day.

63.3 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

63.4 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

63.5 Unless a proxy notice indicates otherwise, it must be treated as:-

63.5.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

63.5.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

64.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.

64.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

64.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

64.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

- 65.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:-
- 65.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
 - 65.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 65.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:-
- 65.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
 - 65.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 65.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

- 66.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.
- 66.2 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:-
- 66.2.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
 - 66.2.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
 - 66.2.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
 - 66.2.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.
- For the purposes of this Article, no account shall be taken of any part of a day that is not a working day.
- 66.3 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.

66.4 Subject to the Articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

66.5 A director may agree with the Company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Company seals

67.1 Any common seal may only be used by the authority in writing of the directors.

67.2 The directors may decide by what means and in what form any common seal is to be used.

67.3 Unless otherwise decided by the directors in writing, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

67.4 For the purposes of this Article, an authorised person is:-

67.4.1 any director of the Company;

67.4.2 the Company secretary (if any); or

67.4.3 any person authorised by the directors in writing for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

68. Except as provided by law or authorised by the directors or an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

69. The directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

Indemnity

70.1 Subject to Article 70.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:-

70.1.1 each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:-

(a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and

(b) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him,

in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

70.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 70.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurred such expenditure.

70.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

70.3 In this Article:-

70.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

70.3.2 a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

Insurance

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

71.2 In this Article:-

71.2.1 a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any such company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor),

71.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company, and

71.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

OVER-RIDING PROVISIONS

72.1 Whenever a Company wheresoever incorporated (a "**Parent Company**") shall be the holder of not less than 90 per cent of the issued Ordinary Shares the following provisions shall apply and to the extent of any inconsistency shall have over-riding effect as against all other provisions of these Articles:-

72.1.1 the Parent Company may at any time and from time to time appoint any person to be a Director or remove from office any Director howsoever appointed, but so that in the case of a Managing Director his removal from office shall be deemed an act of the Company and shall have effect without prejudice to any claim for damages in respect of the consequent termination of his executive office;

72.1.2 no unissued securities shall be issued or agreed to be issued or put under option without the consent of the Parent Company; and

72.1.3 any or all powers of the Directors shall be restricted in such respects and to such extent as the Parent Company may by notice to the Company from time to time prescribe.

72.2 Any such appointment, removal, consent or notice shall be in writing served on the Company and signed on behalf of the Parent Company by any two of its Directors or by any one of its Directors and its Secretary or some other person duly authorised for the purpose. No person dealing with the Company shall be concerned to see or enquire as to whether the powers of the Directors have been in any way restricted hereunder or as to whether any requisite consent of the Parent Company has been obtained and no obligation incurred or security given or transaction effected by the Company to or with any third party shall be invalid or ineffectual unless the third party had at the time express notice that the incurring of such obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the Directors.