

# Shareholders' Agreements

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#### 4. There are no nominated directors

Individual shareholders or groups of shareholders are sometimes given the right to appoint a director or directors. If this is required the appropriate provisions from the joint venture and/or private equity precedents will need to be incorporated. Note that these provisions are often included in both the shareholders' agreement and the articles of association.

#### 5. Mandatory transfers

The SHA Articles assume that most of the shareholders will also be actively involved in the running of the company and some, if not all, of them will be employees. With that in mind, provisions requiring shareholders to offer their shares for sale in the event of ceasing to be employed have been included. As part of those provisions good and bad leaver provisions have also been included. These types of provisions determine the price for the shares based on the circumstances in which the relevant shareholder has ceased to be employed. These provisions can be controversial and may not be appropriate in all situations.

#### 6. Full form

Common practice for private companies adopting Table A was simply to state in the articles of association that Table A applied and then only set out any amendments to Table A. This meant that the articles of association were kept relatively brief but had the disadvantage that anyone reading them also had to refer to Table A to understand all the provisions of the articles of association of that company. It would appear that the same approach can be adopted under the 2006 Act despite the fact that s.18(3) of the 2006 Act states that "articles of association registered by a company must be contained in a single document". Many practitioners use this approach. However, there are good reasons for not doing so. First, setting out the articles in a full form manner makes them easier to read as you do not have to refer to any other documents. If the shorter form method is adopted you also need to refer to a copy of the Private Model Articles. Secondly, there are consistency issues. As noted above, the Private Model Articles use lowercase definitions whereas most bespoke articles of association will use uppercase definitions and this can potentially give rise to confusion. Finally, it is generally safer for the person drafting the articles to start with a single document which contains all relevant provisions, as possible conflicts between the SHA Articles and the Shareholder Agreement can be identified, and it is easier to see where consequential amendments are required. When using the shorter form approach there is a greater risk that required deletions or amendments to be made to the provisions in the Private Model Articles will be neglected or will be made where they are not appropriate to the circumstances.

## COMMENTARY

### Article 1

#### *Definition of "Eligible Directors"*

**"Eligible Directors" in relation to any matter, the Directors who would have been entitled to vote on, and whose votes would have been counted in respect of, that matter had it been proposed as a resolution at a Directors' meeting.**

6-05

#### General

Article 8(3) of the Model Articles states that:

6-06

"(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."

The definition in these articles goes beyond this to allow for meetings to be quorate even where a director who has a conflict is excluded by reason of the conflict. This should allow for a resolution to be passed even without the votes of the conflicted director. A director can be in a conflict for any number of reasons including have a conflict of interest over proposed transactions or actions by the Company. Were the definition left as it is in the model articles, there would be an ambiguity as to whether the conflicted director would be entitled to form part of the quorum and to vote on the resolution.

#### *Definition of "Expert"*

**"Expert" a firm of chartered accountants (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the event of disagreement as to the nomination for a period of seven days, nominated on the application of any of the parties concerned by the President for the time being of the Institute of Chartered Accountants in England and Wales. The parties concerned shall co-operate in relation to the nomination and subsequent appointment of the firm of chartered accountants and shall not unreasonably withhold their consent to the nomination or subsequent appointment, or the terms of engagement for the appointment, of the firm of chartered accountants. In the event that after nomination there is disagreement between the parties concerned as to the terms of engagement of the nominated firm of chartered accountants for a period of seven days, the Company is unconditionally and irrevocably authorised to appoint any person as agent of those parties to sign the latest version of those terms of engagement on behalf of those parties, who shall then be bound by those terms of engagement.**

6-07

#### General

This definition is used in the provisions dealing with the transfer of shares. Any dispute regarding the value of the shares to be transferred is referred to the expert. Previously, the definition would have ended after the first sentence. However, *Cream Holdings Ltd v Davenport* [2011] EWCA Civ 1287 highlighted a potential need for the additional drafting. In that case the price of some shares fell to be

6-08

determined by an expert. Although an expert was chosen, Mr Davenport refused to agree the expert's terms of engagement. The court noted that in earlier, separate proceedings it had been decided that all parties had to agree the terms of engagement. The judge at first instance decided that, in the circumstances, two terms would be implied into the company's articles of association. The first was "a positive obligation to co-operate" in the process. The second was that the transferor (in this case, Mr Davenport) "... should not unreasonably withhold his consent to the appointment, or the relevant terms of engagement for an appointment, of the third party accountant". The Court of Appeal agreed, stating that assuming that the expert's terms "... are reasonable and consistent with the rights and obligations of the company and Mr Davenport under the articles, the implication of a term requiring the parties to co-operate in the valuation process by accepting the appointment on those terms is an obvious and necessary means of giving effect to the contract ...".

Although *Cream Holdings Ltd v Davenport* is a useful authority, given that all cases are decided on their own facts, there is no guarantee that the terms that were implied in that case would be implied in cases concerning all articles of association or other contracts which contain provisions regarding the appointment of an expert. It is therefore better practice to expressly set those terms out in the document concerned.

The drafting of the definition does, however, go further than simply including the implied terms referred to in *Cream Holdings Ltd v Davenport*. Although stating that the parties should co-operate and not unreasonably withhold their consent is helpful, there is still the potential for dispute which would have to be resolved by a court (e.g. under what circumstances is it reasonable for a party to withhold consent?). This is the reason for including the final sentence in the definition (i.e. if the parties fail to agree the expert's terms of engagement, the company can agree those terms on the parties' behalf). Some shareholders may object to this. However, it is in the interests of the company (and therefore arguably all shareholders) that any dispute is settled as quickly as possible and preferably out of court. That said, if the issue proves particularly controversial the last sentence of the definition could be omitted.

#### *Definition of "Shareholder Consent", "Shareholder Majority"*

6-09 "Shareholder Consent" has the meaning ascribed to the expression "Consent" in the Shareholder Agreement.

"Shareholder Majority" the Shareholders who are required to provide consent or not for the purposes of giving or withholding Shareholder Consent.

#### General

6-10 The definitions of "Shareholder Consent" and "Shareholder Majority" are relevant to a number of provisions in the SHA where consent is required. It is important to set the level of consent correctly in order to ensure that the shareholders have the desired amount of protection. The SHA assumes that where the term Shareholder Consent is used it will mean either the consent of all the shareholders (the highest level possible), or the consent of shareholders holding a particular percentage of the shares. In some cases it may be appropriate to state that the consent of a certain number (but not all) of the shareholders is required but this is not as common as it takes no account of the number of shares held. However,

requiring the consent of all shareholders where there are a large number of them, may incur a large commitment of time and administrative effort. Additionally the refusal of consent by one shareholder in a large group may lead to deadlock.

Specified percentages may be set depending on the decisions and consents to be given. It may be the case that different levels of consent are required for different provisions, in which case additional definitions may be required or the relevant clause will need to be amended to refer to a different level of consent. Provisions may be made to allow for the shares or vote of the Excluded Shareholder to be disregarded where necessary.

Care must be taken when setting the level of consent. It is not uncommon to provide that certain matters require the consent of all the shareholders (for example, in respect of a waiver of pre-emption rights) although this may give undue influence to an individual shareholder by reference to the number of shares he holds, leading to a "tail wagging the dog" scenario.

#### *Definition of "Leaver's Shares"*

6-11 "Leaver's Shares" means the Shares held by a Leaver, or to which that Leaver is entitled, on the Leaving Date and any Shares acquired by that Leaver after the Leaving Date and in the case of any shares held by a Leaver who is not an Employee but to whom shares were transferred or transmitted by a Leaver who has ceased to be an Employee but in relation to an A or B or C Ordinary Shareholder who is a Good Leaver the GL Relevant Percentage of such A Shares and/or B and/or C Ordinary Shares and in relation to an A or B or C Ordinary Shareholder who is a Very Bad Leaver the VBL Relevant Percentage of such shares and for this purpose the company shall within 7 days of the date on which the A Ordinary Shareholder became a Leaver instruct an Expert to determine the GL Relevant Percentage.

#### General

The revised definition ties in with the provisions of cll.3.9, 3.10 and 3.11 of the SHA where the Original Shareholders incept insurance policies to provide the funds to acquire shares of a Leaver.

As noted in the commentary in relation to those clauses in the previous chapter, it may be necessary to include additional provisions in the Articles to redefine the rights attaching to any retained shares.

#### *Definition of "Definition of Very Bad Leaver"*

6-12 "Very Bad Leaver" means a Leaver who becomes a Leaver as a result of:-

1. being dismissed for gross misconduct; or
2. his voluntary resignation at any time before the third anniversary of the Issue Date; or
3. who is convicted of an offence punishable by imprisonment which of-fence brings the Company into disrepute; or
4. being made bankrupt; or

## 5. a breach of any restrictive covenants by which he is bound at any time.

### General

The definition of Very Bad Leaver has been added to tie in with the provisions of new clause 3.6 of the SHA (please refer to the relevant commentary in the previous chapter).

### Article 1.5

#### 6-13 1.5 Unless stated to the contrary, a reference to:

**1.5.1 a statute, statutory provision or subordinate legislation includes a reference to it as modified, replaced, amended extended or re-enacted from time to time (before or after the Adoption Date) and any prior or subsequent legislation made under it but this Article 1.5 shall not operate so as to impose on any person any greater obligation than would otherwise apply.**

**1.5.2 to a statute of statutory provisions includes all subordinate legislation made from time to time under that statute of statutory provision.**

### General

6-14 Drafters can choose to have the articles subject to the legislation at the time of adoption, or to the legislation as it is amended. By choosing the legislation as it is amended, care should be taken to keep the articles under review in case there are any unintended consequences of changes in statute.

Many of the provisions relating to companies are found in secondary legislation which is why it is also included. Clauses 1.5.1 and 1.5.2 should both reflect the same provision as to the date of the law to be accepted, whether at the date of adoption or as amended.

### Article 2

#### 2. Model articles shall not apply

6-15 Neither the model articles for private companies limited by shares prescribed pursuant to the 2006 Act, nor any other articles of association (whether prescribed pursuant to the 2006 Act or set out in any other statute, statutory instrument or other subordinate legislation concerning companies) shall apply to the Company.

### General

6-16 This article is required to ensure that the Private Model Articles (or any of the other model articles) do not apply at all. By virtue of s.20(1) of the 2006 Act, even if articles of association are registered at the time a company is formed, the relevant model articles will apply in so far as they are not excluded or modified by the registered articles of association. It was the same with Table A. In some cases, the Model Articles are not excluded entirely and it can be provided that words and expressions having particular meanings in the 2006 Act have those meanings in the

SHA. However, it is best to exclude the model articles entirely to avoid a situation where a provision of those articles would still be applicable to the Company, because it had not been dealt with in the bespoke articles.

This article also makes it clear that the SHA Articles are the company's constitution and there is no need to refer to any other documents or regulations. The provisions of the 2006 Act will still apply to the company as will other applicable legislation but otherwise the SHA Articles are self-contained.

### Article 3

#### 3. Liability of Shareholders

**The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them from time to time.**

6-17

### General

This article is contained in the model articles and replicates a provision which used to be contained in the memorandum of association. It means that once shares have been fully paid up, the shareholder has no further liability. Under no circumstances should this article be deleted as otherwise the shareholders' liability may not be limited.

6-18

While this provision may on first glance seem to contradict art.28.1 (below, which states that no share may be issued for less than the aggregate value of its nominal value and any premium), art.28.2 states that art.28.1 does not apply to the shares taken on the formation of the company. It is permissible to amend art.28.1 to allow shares to be issued part or nil paid and although that would require provisions dealing with issues such as forfeiture, calls and liens to be inserted (see below) no amendment would be needed to art.3. In the model articles, art.21 states that no shares may be issued other than fully paid, so amendments may be necessary to that articles if that is not to be the case.

### Article 4

#### 4. Directors' general authority

**Subject to the other provisions of these 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.**

6-19

### General

In exercising the power conferred by this article (taken from the model articles) the directors will, among other things, be subject to s.171 of the 2006 Act which states that they must act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred. They will also be subject to the other statutory duties in ss.172–177. These statutory duties are based on the duties established at law prior to the enactment of the 2006 Act.

6-20

It is possible to restrict the directors' powers, for example, by granting certain rights to shareholders. For example, art.44 states that it is the shareholders who declare dividends rather than the directors, although under that articles the directors still have the power to pay interim dividends.

Signature:	.....
Address:	.....
	.....
Occupation:	.....

SIGNED (but not delivered until the date hereof) as a DEED by the said [NAME] in the presence of:

WITNESS:	
Signature:	.....
Address:	.....
	.....
Occupation:	.....

**ARTICLES OF ASSOCIATION**

Company Number: [NUMBER]  
 THE COMPANIES ACT 2006  
 PRIVATE COMPANY LIMITED BY SHARES  
 ARTICLES OF ASSOCIATION OF  
 [NAME] LIMITED  
 [(Adopted by Special Resolution passed on [DATE])]

**1. Definitions and interpretation**

1.1 The definitions set out in this Article 1.1 apply in these articles.

"2006 Act" the Companies Act 2006.

"A Ordinary Shares" the A ordinary shares of £0.01 each in the Company from time to time.

"A Ordinary Shareholders" the Holders of the A Ordinary Shares from time to time.

"Acceptance Period" has the meaning given in Article 36.5.1.2.

"Acting in Concert" has the meaning given by the City Code on Takeovers and Mergers as in force and construed on the Adoption Date.

"Adoption Date" the date of adoption of these articles.

"Allocated Person" has the meaning given in Article 36.8.1.

"Alternate" has the meaning given in Article 25.1.

"Appointor" has the meaning given in Article 25.1.

"Authorisation" has the meaning given in Article 16.2.

"Authorised Person":

- (a) any Director;
- (b) the company secretary (if any); or
- (c) any person authorised by the Directors for the purpose of signing documents to which the common seal is applied.

"B Ordinary Shares" the B ordinary shares of £0.01 each in the Company from time to time.

"B Ordinary Shareholders" the Holders of the B Ordinary Shares from time to time.

"Bad Leaver" a Leaver who is not a Very Bad Leaver becomes a Leaver as a result of ceasing to be an Employee except where that cessation occurs as a result of:

- (a) death;
- (b) bankruptcy;
- (c) wrongful dismissal;
- (d) permanent disability or permanent incapacity through ill health; or
- (e) retirement at normal retirement age.

"Business day" a day excluding Saturdays, Sundays and public holidays in England when the banks in London are open for business.

"C Ordinary Shares" the C ordinary shares of £0.01 each in the Company from time to time.

"C Ordinary Shareholders" the Holders of the C Ordinary Shares from time to time.

- "Capitalised Sum" has the meaning given in Article 50.1.2.  
 "Chairman" the chairman of the Company from time to time.  
 "Chairman of the Meeting" the person chairing the relevant general meeting in accordance with Article 53.  
 "Committed Shareholder" has the meaning given in Article 39.1.  
 "Company" [NAME] Limited.  
 "Completion" completion of the sale of the relevant Sale Shares in accordance with these articles.  
 "Conflict" has the meaning given in Article 16.1.  
 "Conflicted Director" has the meaning given in Article 16.1.  
 "Connected Person" a person connected with another within the meaning of section 1122 of the Corporation Tax Act 2010.  
 "Controlling Interest" an interest (within the meaning of Schedule 1 to the 2006 Act) in more than 50% of the Equity Shares.  
 "Controlling Shares" has the meaning given in Article 39.1.  
 "Close Date" has the meaning given in Article 38.2.2.  
 "Director" a director of the Company, including any person occupying the position of director, by whatever name called.  
 "Distribution Amount" the amount available for distribution in accordance with the provisions of Article 45.  
 "Distribution Recipient" in relation to a Share in respect of which a dividend or other sum is payable:  
 (a) the Holder of that Share;  
 (b) if that Share has two or more joint Holders, whichever of them is named first in the register of members; or  
 (c) if the Holder is no longer entitled to that Share by reason of death or bankruptcy, or otherwise by operation of law, the Transmitter.  
 "Dragged Shareholders" has the meaning given in Article 38.1.  
 "Dragged Shares" has the meaning given in Article 38.1.  
 "Drag Notice" has the meaning given in Article 38.2.  
 "Drag Option" has the meaning given in Article 38.1.  
 "Drag Price" has the meaning given in Article 38.2.3.  
 "Electronic Form" has the meaning given in section 1168 of the 2006 Act.  
 "Eligible Directors" in relation to any matter, the Directors who would have been entitled to vote on, and whose votes would have been counted in respect of, that matter had it been proposed as a resolution at a Directors' meeting.  
 "Eligible Shareholders" each Shareholder who is a Shareholder at the Transfer Notice Date (excluding the relevant Seller, any Excluded Person and any other Shareholder who at any time before that date has given (or is deemed to have given) a current Transfer Notice in respect of any Share or who is bound under these articles to give a Transfer Notice in respect of any Share).  
 "Employee" a director and/or employee of any Group Company.  
 "Equity Securities" has the meaning given in section 560(1) of the 2006 Act.  
 "Equity Shareholders" the Holders of the Equity Shares from time to time.  
 "Equity Shares" the Shares in the capital of the Company.  
 "Excluded Person" a person who is:  
 (a) a Leaver; or  
 (b) an Employee who has given or been given notice to terminate his contract of employment with any Group Company and, following that termination, will cease to be an Employee.  
 "Expert" a firm of chartered accountants (acting as an expert and not as an

- arbitrator) nominated by the parties concerned or, in the event of disagreement as to the nomination for a period of seven days, nominated on the application of any of the parties concerned by the President for the time being of the Institute of Chartered Accountants in England and Wales. The parties concerned shall co-operate in relation to the nomination and subsequent appointment of the firm of chartered accountants and shall not unreasonably withhold their consent to the nomination or subsequent appointment, or the terms of engagement for the appointment, of the firm of chartered accountants. In the event that after nomination there is disagreement between the parties concerned as to the terms of engagement of the nominated firm of chartered accountants for a period of seven days, the Company is unconditionally and irrevocably authorised to appoint any person as agent of those parties to sign the latest version of those terms of engagement on behalf of those parties, who shall then be bound by those terms of engagement.  
 "Fair Price" the price per Sale Share agreed between the relevant Seller and the Company within 10 days after the Transfer Notice Date or, failing such agreement, the price determined by the Expert pursuant to Article 36.4.  
 "Family Members" in relation to any Shareholder, that Shareholder's spouse, civil partner and children (including step and adopted children) provided in each case they are at least 18 years old.  
 "Family Trust" in relation to a Shareholder, a trust:  
 (a) of which that Shareholder is the settlor;  
 (b) which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of:  
 (i) that Shareholder and/or a Family Member of that Shareholder; or  
 (ii) any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income from it when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities); and  
 (c) under which no power of control is capable of being exercised over the votes of any Shares which are the subject of the trust by any person other than the trustees, that Shareholder or any Family Member of that Shareholder; and "trust" includes a trust arising under a settlement, or declaration of trust, inter vivos but excludes testamentary disposition or a trust arising on an intestacy.  
 "Fully Paid" in relation to a Share, that the nominal value and any premium to be paid to the Company in respect of that Share have been Paid to the Company.  
 "Good Leaver" means:  
 (a) a Leaver who is not a Bad Leaver or a Very Bad Leaver; or  
 (b) a Leaver who becomes a Leaver as a result of ceasing to be an Employee but the Directors [(with Shareholder Consent)] resolve that he is to be treated as a Good Leaver in circumstances where that Leaver would otherwise be a Bad Leaver.  
 "Group" the Company, any Subsidiary or Holding Company from time to time of the Company.  
 "Group Company" any company which is a subsidiary from time to time of the Holding Company.

"Hard Copy Form" has the meaning given in section 1168 of the 2006 Act.  
 "Holder" in relation to a Share, the person whose name is entered in the register of members as the holder of that Share from time to time.

"Interested Shareholders" has the meaning given in Article 39.1.  
 "Issue Date" in relation to any Share the date upon which it is issued or in the case of a Share transferred in accordance with the provisions of Article 11.3 the date upon which it is transferred or in the case of a Share acquired pursuant to the exercise of an option granted by the Company the date on which the option was granted.

"Issue Price" in relation to any Share which is issued to the Holder, the price at which that Share is issued (being the aggregate of the amount Paid in respect of the nominal value of that Share and any share premium on that Share) or in the case of a Share which has been acquired by the Holders, the price paid therefor.

"Leaver":

- (a) any Shareholder (other than a trustee of a Family Trust of any Shareholder) who:
  - (i) dies;
  - (ii) has a bankruptcy order made against him; or
  - (iii) otherwise ceases to be an Employee;
- (b) any Shareholder who:
  - (i) is a trustee of a Family Trust of any Shareholder who becomes a Leaver;
  - (ii) is a Family Member of a Shareholder who becomes a Leaver (provided that Family Member shall only be deemed to be a Leaver in respect of any Shares he holds which were either transferred to him by that Shareholder or any Family Trust of that Shareholder pursuant to Article 35.1 or Article 35.2 or were obtained as a result of Shares that were so transferred); or
  - (iii) transfers or purports to transfer any Shares other than in accordance with the provisions of these articles;
- (c) any person who is a Transmittee of any Shareholder; or
- (d) [any person who becomes entitled to any Shares on the exercise of an option after ceasing to be an Employee].

"Leaver's Shares" means the Shares held by a Leaver, or to which that Leaver is entitled, on the Leaving Date and any Shares acquired by that Leaver after the Leaving Date and in the case of any shares held by a Leaver who is not an Employee but to whom shares were transferred or transmitted by a Leaver who has ceased to be an Employee but in relation to an A or B or C Ordinary Shareholder who is a Good Leaver the GL Relevant Percentage of such A Shares and/or B and/or C Ordinary Shares and in relation to an A or B or C Ordinary Shareholder who is a Very Bad Leaver the VBL Relevant Percentage of such shares and for this purpose the Company shall within 7 days of the date on which the A Ordinary Shareholder became a Leaver instruct an Expert to determine the GL Relevant Percentage.

"Leaving Date" in relation to any Leaver, the date on which he becomes a Leaver (which, in the case of any Leaver who becomes a Leaver by virtue of any person ceasing to be an Employee, shall be the Termination Date in relation to that former Employee).

"Listing" the admission of any Shares (or securities representing Shares) to, or the grant of permission for any Shares (or securities representing Shares)

to be traded on, the Official List of the United Kingdom Listing Authority, AIM or any other recognised investment exchange (as defined in section 285(1)(a) of the Financial Services and Markets Act 2000).

"Non-Cash Consideration" has the meaning given in Article 38.2.2.

"Majority Decision" a majority decision taken at a Directors' meeting.

"Offer" has the meaning given in Article 28.2.

"Offer Notice" has the meaning given in Article 28.2.

"Offer Period" has the meaning given in Article 28.2.4.

"Offered Securities" has the meaning given in Article 28.2.1.

"Ordinary Resolution" has the meaning given in section 282 of the 2006 Act.

"Paid" paid or credited as paid.

"Participate" has the meaning given in Article 11.1 and "Participating" shall be construed accordingly.

"Persons Entitled" has the meaning given in Article 50.1.2.

"Proceeds" the proceeds of a Share Sale.

"Proposed Controller" has the meaning given in Article 39.1.

"Proxy Notice" has the meaning given in Article 59.1.

"Proxy Notification Address" has the meaning given in Article 60.1.

"Qualifying Person" means:

- (a) an individual who is a Shareholder; or
- (b) a person appointed as proxy of a Shareholder in relation to the relevant general meeting.

"Relevant Director" any director or former director of any Group Company.

"Relevant Loss" any loss or liability which has been or may be incurred by a Relevant Director in connection with his duties or powers in relation to any Group Company or any pension fund or employees' share scheme of any Group Company.

"Relevant Proportions" in relation to the relevant Shareholders, in proportion (as nearly as possible without involving fractions) to the nominal value of the Shares held by them respectively at the date of the Offer Notice.

"Relevant Shares" has the meaning given in Article 38.1.

"Sale Notice" has the meaning given in Article 36.8.2.

"Sale Price" the price per Share at which the relevant Sale Shares are offered to the relevant Eligible Shareholders.

"Sale Shares" has the meaning given in Article 36.2.1.

"Seller" has the meaning given in Article 36.1.

"Shareholder" a person who is the Holder of a Share in the Company.

"Shareholder Agreement" the agreement dated the ..... day of ..... 20[...], and made between (1) the Company and (2) the Shareholders.

"Shareholder Authorisation" has the meaning given in Article 16.4.

"Shareholder Consent" has the meaning ascribed to the expression "Consent" in the Shareholder Agreement.

"Shareholder Majority" the Shareholders who are required to provide consent or not for the purposes of giving or withholding Shareholder Consent.

"Shares" shares in the capital of the Company from time to time.

"Share Sale" the completion of any sale of any interest in any Share (whether in one transaction or a series of related transactions) resulting in the transferee (either alone or together with its Connected Persons) holding a Controlling Interest.

"Special Resolution" has the meaning given in section 283 of the 2006 Act.

"Subsidiary" any company which is a subsidiary of the Company from time to time.

## 2. Model articles shall not apply

Neither the model articles for private companies limited by shares prescribed pursuant to the 2006 Act, nor any other articles of association (whether prescribed pursuant to the 2006 Act or set out in any other statute, statutory instrument or other subordinate legislation concerning companies) shall apply to the Company.

## 3. Liability of Shareholders

The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them from time to time.

## 4. Directors' general authority

Subject to the other provisions of these 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.

## 5. Shareholders' reserve power

5.1 The Shareholders may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.

5.2 No Special Resolution passed pursuant to Article 5.1 invalidates anything which the Directors have done before the passing of that resolution.

## 6. Directors may delegate

6.1 Subject to the other provisions of these articles, the Directors may delegate any of the powers which are conferred on them under these articles:

- 6.1.1 to such person or committee;
- 6.1.2 by such means (including by power of attorney);
- 6.1.3 to such an extent;
- 6.1.4 in relation to such matters or territories; and
- 6.1.5 on such terms and/or conditions;

as they think fit.

6.2 If the Directors so specify, any delegation pursuant to Article 6.1 may authorise further delegation of the Directors' powers by any person to whom they are delegated.

6.3 The Directors may at any time revoke any delegation made pursuant to Article 6.1 in whole or part, or alter its terms and/or conditions.

## 7. Committees of Directors

7.1 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 these articles which govern the taking of decisions by Directors.

7.2 The Directors may make rules of procedure for all or any committees, which shall prevail over rules derived from these articles if they are not consistent with them.

## 8. Directors to take decisions collectively

8.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a Majority Decision or a Unanimous Decision.

8.2 If at any time the Company only has one Director, the general rule in this Article does not apply and that Director may (until such time as he ceases to be the only Director) take decisions without regard to any of the provisions of these articles relating to Directors' decision-making.

## 9. Unanimous Decisions

9.1 A decision of the Directors is a unanimous decision (a "Unanimous Decision"):

9.1.1 if all Eligible Directors indicate to each other by any means that they share a common view on a matter; and

9.1.2 had the matter in question been proposed as a resolution at a Directors' meeting, the Eligible Directors would have formed a quorum at that meeting.

9.2 A Unanimous Decision may take the form of a resolution in Writing (where each Eligible Director has signed one or more copies of it or to which each Eligible Director has otherwise indicated agreement in Writing).

## 10. Calling a Directors' meeting

10.1 Any Director may call a Directors' meeting by giving notice of that meeting to the Directors or by authorising the company secretary (if any) to give such notice.

10.2 Notice of any Directors' meeting must indicate:

10.2.1 its proposed date and time;

10.2.2 where it is to take place; and

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

10.3 Notice of a Directors' meeting must be given to each Director but need not be in writing.