

**COMPANIES ACT 2014**

**PRIVATE LIMITED COMPANY HAVING A SHARE CAPITAL**


**CONSTITUTION**

**of**

**EUROPEAN RAIL FINANCE HOLDINGS LIMITED**

(Amended by Special Resolutions passed on 9 August 2007, 13 August 2007, 4 November 2010,  
30 September 2011, 23 April 2012, 9 December 2014, 10 October 2016, 19 December 2016, 27  
October 2017 and 28 October 2017)

**CERTIFIED TRUE COPY**

  
~~Solicitor~~ COMPANY SECRETARY  
Date: 04 / 12 / 2017  
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**COMPANIES ACT 2014**  
**PRIVATE LIMITED COMPANY HAVING A SHARE**  
**CAPITAL**  
**CONSTITUTION**  
**- OF -**  
**EUROPEAN RAIL FINANCE HOLDINGS LIMITED**  
**(the Company)**

1. The name of the Company is EUROPEAN RAIL FINANCE HOLDINGS LIMITED
2. The Company is a private company limited by shares registered under Part 2 of the Companies Act 2014.
3. The liability of the members is limited.
4. The share capital of the Company is STG£125,000,000 divided into 50,500,000 ordinary shares of STG£1 each and 49,500,000 non voting fixed rate preference shares of STG£1 each.
5. **Interpretation**
  - 5.1 **When and while the Act applies to the Company:**
    - (a) these Regulations; and
    - (b) the optional provisions of the Act (within the meaning of section 54(1) of the Act),shall apply and be construed such that:
    - (i) these Regulations continue to apply in the manner that is as close as is possible to their form and effect under the Companies Act 1963 to 2013, and
    - (ii) any provision of these Regulations that is inconsistent or incompatible with an optional provision of the Act shall be taken to be a statement in these Regulations that the relevant optional provision of the Act applies to the Company only to the extent that is consistent or compatible with the Regulations as they applied under the Companies Act 1963 to 2013.
  - 5.2 In this Constitution the following terms shall have the following meanings:
    - (a) **"Act"** means the Companies Act 2014 and every other enactment which is to be read together with that Act;  
**"Auditors"** means the auditors or auditor for the time being of the Company;  
**"Chairman"** means the person (if any) for the time being holding such office having been appointed thereto under the terms of these Regulations;  
**"Class Meeting"** means a separate general meeting of the holders of a particular class of Shares;  
**"Constitution"** means this constitution as amended, varied and supplemented from time to time;  
**"Committee"** means a committee to which the Directors have delegated powers pursuant to the provisions of these Regulations;

**"Completion Date"** means 3 December 2010;

**"Directors"** means the directors for the time being of the Company, or directors present at a meeting of directors, and reference to a "Director" will be construed accordingly;

**"electronic address"** means any address or number used for the purposes of sending or receiving documents or information by electronic means;

**"electronic means"** means any process or means provided or facilitated by electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;

**"Effective Date"** means 30 September 2011;

**"Independent Director"** means a director of the Company from time to time being an individual with business experience relevant to the business activities of the Group who has:

- (i) Not provided any material advice to any shareholder of any parent undertaking in the context of their investment in that parent undertaking; and
- (ii) No interest or duty which conflicts or may reasonably conflict with the individual's role as an independent director.

**"Independent Purchaser"** means a person who is not connected (within the meaning of section 220 the Act) with the holder of the Ordinary Shares or, if there is more than one such holder, the majority holder of the Ordinary Shares.

**"Ireland"** means Ireland excluding Northern Ireland;

**"LIBOR"** means the average British Bankers Association Interest Settlement Rate for three month sterling displayed on the appropriate page of the Reuters screen at 11.00 am, London time, on the first day of the relevant Quarter (or, if such date shall be a Saturday, Sunday or public holiday in England, on the first business day following such date) (**Relevant LIBOR Date**); and if such rate does not appear on the Reuters screen page on the Relevant LIBOR Date, the rate for the Relevant LIBOR Date will be determined on the basis of the arithmetic mean of the rates (rounded upwards to four decimal places) at which deposits for one month sterling are offered by The Royal Bank of Scotland PLC at 11.00 am, London time, on the Relevant LIBOR Date to leading banks in the London inter bank market

**"Month"** means calendar month;

**"Quarter"** means the period commencing on (and including) the day falling immediately after a Quarter End Date and ending on (and including) the next succeeding Quarter End Date;

**"Quarter End Date"** means 31 December, 31 March, 30 June and/or 30 September in each Year;

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

**"Share"** means any Shares in the capital of the Company and **Shares** shall be construed accordingly;

**"Seal"** means the common seal of the Company;

**"Secretary"** means any person appointed to perform any of the duties of secretary of the Company and includes a deputy or assistant Secretary; and

**"Year"** means calendar year.

- (b) Any word or phrase used in this Constitution the definition of which is contained or referred to in the Act shall be construed as having the meaning that is, at the date on which this Constitution becomes binding on the Company, attributed to it in the Act.

- (c) (i) Unless the contrary intention appears, any expression in this Constitution referring to writing (or any cognate word):
  - (A) shall be construed as including a reference to printing, lithography, photography and any other mode of representing or reproducing words in a legible and non-transitory form; and
  - (B) subject to the circumstances in sub-clause (ii) and to the requirements of the Act, shall not include writing in electronic form.
- (ii) The circumstances mentioned in sub-clause (c)(i) (in which writing (and cognate words) includes writing in electronic form) are:
  - (A) where such is provided in this Constitution; and
  - (B) in the case of a notice, communication, document or information to be given, served or delivered to the Company, where the Company has agreed to receipt in electronic form and such notice, communication, document or information is given, served or delivered in such electronic form and manner as may have been specified by the directors from time to time for the giving, serving or delivery of notices, communications, documents or information in electronic form.
- (d) References in this Constitution:
  - (i) to execution of any document shall include any mode of execution, whether under seal or under hand or any mode of electronic signature as may from time to time be approved by the directors;
  - (ii) to a section is to a section of the Act, unless otherwise stated; and
  - (iii) to gender includes, where a person is a body corporate, the neuter gender.
- (e) A notice, communication, document or information is given, served or delivered in electronic form if it is given, served or delivered by electronic means including, without limitation, by making such notice, communication, document or information available on a website or by sending such notice, communication, document or information by e-mail.

5.3 Where a member has provided an electronic address to the Company the member shall be deemed to have given his or her consent to the use by the Company of electronic means in sending notices or other communications, information or documentation (including without limitation, financial statements) to that member. A member may from time to time notify the Company of a change to the electronic address to be used for such member.

## SHARE CAPITAL AND VARIATION OF RIGHTS

### Capital Structure:

- 6. The capital of the Company is STG£125,000,000 divided into 50,500,000 ordinary shares of STG£1 each (the "**Ordinary Shares**") and 49,500,000 non voting rate fixed preference shares of STG£1 each (the "**FRP Shares**").
- 7. Save as expressly provided herein, the Ordinary Shares and the FRP Shares will rank equally in all respects.
- 8. The rights of the FRP Shares and the limitations and restrictions to which they are subject are as follows:
  - 8.1 **Income:** The holders of the FRP Shares shall be entitled, in priority to any payment of dividend to the holders of any other class of Shares in the Company, to be paid in respect of each financial year of the Company a fixed cumulative preferential dividend ("**FRPS Preferential Dividend**") at the rate of one per cent per annum on the nominal capital for the time being paid up or credited as paid up thereon, such dividend to be paid yearly on 30 November (or, if such date shall be a Saturday, Sunday or public holiday in England or Ireland, on the first Business Day following such date) in

respect of the previous financial year, save that the first such payment in respect of each FRP Share shall be made on 30 November 2010 on a pro rata basis in respect of the period from the date following the date the FRP Shares are issued to 30 November 2010 (both dates inclusive). Payments of FRPS Preferential Dividends shall be made to holders on the register at the day falling 5 business days prior to the dividend payment date. The holders of the FRP Shares shall not be entitled to any further right of participation in the profits of the Company.

- 8.2 **Capital:** On a return of capital on winding-up or (other than on conversion redemption or purchase of Shares) otherwise, the holders of the FRP Share shall be entitled in priority to any payment to the holders of any other class of Shares to the repayment of a sum equal to the nominal capital paid up or credited as paid up on the FRP Shares held by them respectively together with a sum equal to all arrears and accruals (if any) of the said FRP Preferential Dividend irrespective of whether or not such dividend has been declared or earned or become due and payable, to be calculated down to and including the date of commencement of the winding-up (in the case of a winding-up) or the return of capital (in any other case). The holders of the FRP Shares shall not be entitled to any further right of participation in the assets of the Company.

8.3 Voting and General Meetings:

- (a) The holders of the FRP Share shall, by virtue of and in respect of their holdings of FRP Shares, have the right to receive notice of, attend, speak and vote at a general meeting of the Company only if a resolution is to be proposed abrogating, varying or modifying any of the rights or privileges of the holders of the FRP Shares, or for the winding-up of the Company, in which case they shall only be entitled to vote on such resolution. Save as aforesaid, the FRP Shares shall not confer on the holders thereof the right to receive notice of, attend, speak or vote at any general meeting of the Company. Whenever the holders of the FRP Shares are entitled to vote at a general meeting of the Company, upon any resolution proposed at such a general meeting, on a show of hands every holder thereof who is present in person or (being a corporation) by a representative shall have one vote and on a poll every holder thereof who is present in person or by proxy or (being a corporation) by a representative shall have one vote in respect of each fully paid FRP Share registered in the name of such holder.
- (b) The creation or issue of further Shares ranking as regards participation in the profits or assets of the Company in any respect in priority to the FRP Shares (but not for the avoidance of doubt, subordinated or *pari passu*) shall be deemed to be an abrogation, variation or modification of the rights attaching to the FRP Shares and shall require the consent of the holders of the FRP Shares in accordance with the provisions of Regulation 8.3 (a).

9. [Intentionally Omitted]

10. The rights of the Ordinary Shares and the limitations and restrictions to which they are subject are as follows:

- 10.1 **Income:** The holders of the Ordinary Shares shall have the right to participate in any profits available for distribution only when the Directors resolve to pay any dividend to the holders of the Ordinary Shares and such right shall be subordinate always to the dividend rights of the holders of the FRP Shares set out above.
- 10.2 **Capital:** On a return of capital on winding-up or (other than on conversion redemption or purchase of Shares) otherwise, the holders of the Ordinary Shares shall be entitled to participate in any capital, profits or assets available for distribution only after all dividend and capital return rights of the holders of the FRP Shares set out above have been satisfied.
- 10.3 **Voting and General Meetings:** The holders of the Ordinary Shares shall have the right to receive notice of, attend, speak and vote at any general meeting of the Company

**Classes of Shares:**

11. The rights conferred upon the holders of the Shares of any class issued with preferred or other rights will not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.

**Directors' Authority to Allot Shares:**

12. Subject to the provisions of these Regulations relating to new Shares, the Shares will be at the disposal of the Directors, and they may (subject to the provisions of the Act and these Regulations) allot, grant options over or otherwise dispose of them to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the Company and its shareholders, but so that no Share will be issued at a discount except in accordance with the provisions of the Act.
13. Without prejudice to any special rights previously conferred on the holders of any existing Shares or class of Shares, any Share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time by ordinary resolution determine.
14. The Directors are generally and unconditionally authorised to exercise all powers of the Company to allot relevant securities (as defined for the purposes of section 69 of the Act) up to an amount equal to the authorised but as yet unissued Share capital of the Company as at the date of adoption of these Regulations.
15. In accordance with Section 69 (12) of the Act, section 69(6) of the Act is hereby excluded in its application in relation to all allotments by the Company of equity securities.

**Purchase of Own Shares:**

16. Subject to and in accordance with the provisions of the Act, the Company may purchase its own Shares (including any redeemable Shares).

**Financial Assistance:**

17. The Company may give any form of financial assistance which is permitted by the Act for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any Shares in the Company or in the Company's holding company.

**No Trusts Recognised:**

18. Except as required by law, no person will be recognised by the Company as holding any Share upon any trust, and the Company will not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or any interest in any fractional part of a Share or (except only as by these Regulations or by law otherwise provided) any other rights in respect of any Share except an absolute right to the entirety thereof in the registered holder. This will not preclude the Company from requiring the members or a transferee of Shares to furnish the Company with information as to the beneficial ownership of any Share when such information is reasonably required by the Company.

**Share certificates:**

19. Every person whose name is entered as a member in the register of members will be entitled without payment to receive within two Months after allotment or lodgement of a transfer (or within such other period as the terms of the issue provide) one certificate for all his Shares of any one class. If any member surrenders for cancellation a share certificate representing Shares held by him and requests the Company to issue in lieu two or more share certificates representing such Shares in such proportions as he specifies, the Directors may, if they think fit, comply with such request. Where a member transfers part only of the Shares comprised in a certificate, the old certificate shall be cancelled and a new certificate, for the balance of such Shares, issued in lieu without charge. Every certificate shall be issued under the Seal. Every certificate shall specify the Shares to which it relates and the amount paid up thereon; provided that the Company will not be bound to register more than four persons as the joint holders of any Shares (except in the case of executors or trustees of a deceased

member) and, in the case of a Share held jointly by several persons, the Company will not be bound to issue more than one certificate therefor, and delivery of a certificate to one of such persons will be sufficient delivery to all.

20. If a share certificate is defaced, lost or destroyed, a new certificate may be issued in lieu thereof on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company in investigating evidence as the Directors think fit.

### **LIEN**

21. The Company will have a first and paramount lien on every Share (not being a fully paid Share) for all moneys (whether immediately payable or not) called or payable at a fixed time in respect of that Share, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Regulation. The Company's lien on a Share will extend to all dividends payable thereon.
22. The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, but no sale will be made unless a sum in respect of which the lien exists is immediately payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is immediately payable, has been given to the registered holder for the time being of the Share, or the person entitled thereto by reason of his death or bankruptcy. To give effect to any such sale, the Directors may authorise some person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer, and he will not be bound to see to the application of the purchase money, nor will his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. The proceeds of the sale will be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is immediately payable, and the residue, if any, shall (subject to a like lien for sums not immediately payable as existed upon the Share before the sale) be paid to the person entitled to the Shares at the date of the sale.

### **CALLS ON SHARES**

23. The Directors may from time to time make calls upon the members in respect of any moneys unpaid on their Shares (whether on account of the nominal value of the Shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call will exceed a quarter of the nominal value of the Share or be payable at less than one Month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the Company at any time or times and place so specified the amount called on his Shares. A call may be revoked or postponed as the Directors may determine.
24. A call will be deemed to have been made at the time when the resolution of the Directors authorising the call was passed, and may be required to be paid by instalments. The joint holders of a Share will be jointly and severally liable to pay all calls in respect thereof. Any sum which by the terms of issue of a Share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the Share or by way of premium, will, for the purposes of these Regulations, be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these Regulations as to payment of interest and expenses, forfeiture or otherwise, will apply as if such sum had become payable by virtue of a call duly made and notified. The Directors may, in the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

### **TRANSFER OF SHARES**

**Form of transfer:**

25. Subject to the restrictions of these Regulations, any member may transfer all or any of his Shares by instrument in writing in any usual or common form or any other form which the Directors may approve.
26. The instrument of transfer of any Share shall be executed by or on behalf of the transferor and, in the case of a Share not fully paid, by or on behalf of the transferee, and the transferor will be deemed to remain the holder of the Share until the name of the transferee is entered into the register of members in respect thereof.
27. [Intentionally Omitted]

**Directors may decline to register:**

28. The Directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any Share, whether or not it is a fully paid Share. The Directors may also decline to recognise any instrument of transfer unless:
- 28.1 The instrument of transfer is accompanied by the certificate of the Shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
- 28.2 The instrument of transfer is in respect of one class of Share only.

If the Directors decline to register a transfer they shall, within two Months after the date on which the transfer was lodged with the Company, send to the transferee notice of the refusal.

**TRANSMISSION OF SHARES**

**Recognition of successor following death:**

29. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, will be the only persons recognised by the Company as having any title to his interest in the Shares; but nothing herein contained will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by him with other persons.

**Right to be registered or to transfer:**

30. Any person becoming entitled to a Share in consequence of the death or bankruptcy of a member or otherwise by operation of law may, upon such evidence being produced as may from time to time properly be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the Share or to have some person nominated by him registered as the transferee thereof, but the Directors will, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by that member before his death or bankruptcy or other event, as the case may be.
31. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he shall testify his election by executing in favour of that person a transfer of the Share. All the limitations, restrictions and provisions of these Regulations relating to the right to transfer and the registration of transfers of Shares will be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member or other event had not occurred and the notice or transfer were a transfer signed by that member.

**Successor's rights as a member:**



32. A person becoming entitled to a Share by reason of the death or bankruptcy of the holder or otherwise by operation of law will be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the Share, except that he will not, before being registered as a member in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company; so, however, that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the Share, and if the notice is not complied with within 90 days, the Directors may thereupon withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## **FORFEITURE OF SHARES**

33. If a member fails to pay any call or instalment of a call on the day appointed therefore, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the Shares in respect of which the call was made will be liable to be forfeited.
34. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit. A person whose Shares have been forfeited will cease to be a member in respect of the forfeited Shares, but will, notwithstanding, remain liable to pay to the Company all monies which, at the date of forfeiture, were payable by him to the Company in respect of the Shares, but his liability will cease if and when the Company receives payment in full of all such monies in respect of the Shares.
35. A statutory declaration that the declarant is a Director or the Secretary of the Company, and that a Share in the Company has been duly forfeited on a date stated in the declaration, will be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Share. The Company may receive the consideration, if any, given for the Share on any sale or disposition thereof and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of and he will thereupon be registered as the holder of the Share, and will not be bound to see to the application of the purchase money, if any, nor will his title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.
36. The provisions of these Regulations as to forfeiture will apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the nominal value of the Share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

## **ALTERATION OF CAPITAL**

37. The Company may from time to time by ordinary resolution:
- 37.1 increase the share capital by such sum, to be divided into Shares of such amount, as the resolution prescribes;
- 37.2 consolidate and divide all or any of its share capital into Shares of larger amount than its existing Share;

- 37.3 subdivide its existing Shares, or any of them, into Shares of smaller amount than is fixed by the Constitution subject, nevertheless, to section 83 (1)(b) of the Act; or
- 37.4 cancel any Shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person
- and may by special resolution reduce its share capital, any capital redemption reserve fund or any Share premium account in any manner and with and subject to any incident authorised, and consent required, by law.

## **GENERAL MEETINGS**

### **Annual general meetings:**

38. Subject to the next following Regulation, the Company shall in each Year hold a general meeting as its annual general meeting in addition to any other meeting in that Year, and shall specify the meeting as such in the notice calling it, and not more than 15 Months shall elapse between the date of one annual general meeting and that of the next. However, so long as the Company holds its first annual general meeting within 18 Months of its incorporation, it need not hold it in the Year of its incorporation or in the Year following. Subject as aforesaid, annual general meetings will be held at such times as the Directors appoint.
39. The first annual general meeting of the Company may be held in or outside Ireland. Without prejudice to Section 176 of the Act, subsequent annual general meetings shall be held at such locations as the Directors appoint unless in respect of any particular meeting either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting. Subject as aforesaid, annual general meetings will be held at such locations as the Directors appoint.

### **Extraordinary general meetings:**

40. All general meetings other than annual general meetings will be called extraordinary general meetings.
41. The Directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition by members, or in default may be convened by such requisitionists, as is provided by section 178 of the Act. An extraordinary general meeting may also be requisitioned by the auditors under the circumstances described in section 401 of the Act. If at any time there are not sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

### **Notice of general meetings:**

42. Subject to sections 181 and 191 of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a general meeting (other than an annual general meeting or a meeting for the passing of a special resolution) shall be called by seven days' notice in writing at the least. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the day, the place and the hour of the meeting and, in the case of special business, the general nature of that business and shall be given in manner authorised by these Regulations to such persons as are under these Regulations entitled to receive such notices from the Company.
43. A general meeting, notwithstanding that it has been called by a shorter notice than that specified in the last preceding Regulation, will be deemed to have been duly called if it is so agreed:

- 43.1 In the case of a general meeting for the purpose only of passing one or more special resolutions, by a majority in number of the members having a right to attend and vote thereat, being a majority together holding not less than 90% in nominal value of the Shares giving that right; or
- 43.2 In the case of any other general meeting, by the auditors and by all the members entitled to attend and vote thereat.
44. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice will not invalidate the proceedings at the meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **Chairman:**

45. The chairman, if any, shall preside as chairman at every general meeting of the Company, but, where there is no chairman or the chairman is not present and willing to Act, the Directors present shall elect one of their number to be chairman of the meeting; but if no Director is willing to Act as chairman or if no Director is present, the members present shall choose one of their number to be chairman of the meeting,

### **Special business:**

46. All business will be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting with the exception of declaring a dividend, the consideration of the financial statements, balance sheets and reports of the Directors and auditors, the fixing of the remuneration of the Directors, the review of the Company's affairs, the re-appointment of the retiring auditors and the fixing of the remuneration of the auditors.

### **Quorum:**

47. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; two members present in person or by proxy and entitled to vote on the business to be transacted will be a quorum.
48. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, will be dissolved; in any other case it will stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present will be a quorum.

### **Proxies:**

49. Votes may be given either personally or by proxy. A proxy may attend the general meeting to which the appointment relates and, in the absence of his appointer, may speak and vote thereat on such appointer's behalf.
50. The instrument appointing a proxy shall be in any usual or common form and in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a body corporate, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the Company.
51. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting, before

the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, before the commencement of the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid; provided that

- 51.1 In the case of a meeting which is adjourned to, or a poll which is to be taken on, a date which is less than seven days after the date of the meeting which was adjourned or at which the poll was demanded, it will be sufficient if the instrument of proxy and any such authority and certification thereof as aforesaid is deposited as aforesaid at the commencement of the adjourned meeting or the taking of the poll; and
- 51.2 An instrument of proxy relating to more than one meeting (including any adjournment thereof) having once been so deposited for the purposes of any meeting will not require to be deposited again for the purposes of any subsequent meeting to which it relates.
- 52. The deposit of an instrument of proxy in respect of a meeting will not preclude a member from attending and voting at the meeting or at any adjournment thereof. The instrument appointing a proxy will be valid, unless the contrary is stated therein, as well for any adjournment of the meeting as for the meeting to which it relates.
- 53. The instrument appointing a proxy will be deemed to confer authority to demand a poll.
- 54. A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the Share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer as aforesaid is received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the proxy is used or before the time appointed for the taking of a poll.

**Adjournment:**

- 55. The chairman of the meeting may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid section 187(6) of the Act shall not apply and it shall not be necessary it to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**Voting:**

- 56. At a general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
  - 56.1 by the chairman of the meeting; or
  - 56.2 by any member or members present in person or by proxy at the meeting and entitled, in accordance with these Regulations, to vote at that meeting. Section 189 (2) (b) shall be modified accordingly.

The demand for a poll may be withdrawn.

- 57. Unless a poll is demanded as aforesaid, a declaration by the chairman of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost, and an entry to that effect in the book containing the minutes of the proceedings will be

conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

58. A poll demanded on the election of a chairman of a meeting or on any question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such subsequent time (not being more than thirty days from the date of the meeting) and place as the chairman of the meeting may direct. No notice need be given of a poll not taken immediately. The demand for a poll will not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
59. Except as provided in the last preceding Regulation, if a poll is duly demanded it shall be taken in such manner as the chairman of the meeting directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
60. Where there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote.
61. The time period for the purposes of section 183(6) is any time before the commencement of the meeting or, as the case may be, the taking of the poll.

**Amendment to a resolution:**

62. If an amendment is proposed to any resolution under consideration but is in good faith ruled out of order by the chairman of the meeting, the proceedings on the substantive resolution will not be invalidated by any error in such ruling.

**Right to vote:**

63. Subject to any rights or restrictions for the time being attached to any class or classes of Shares, on a show of hands every member, entitled to vote in accordance with these Regulations, present in person and every proxy entitled to vote in accordance with these Regulations will have one vote, so, however, that no individual will have more than one vote, and on a poll every member, entitled to vote in accordance with these Regulations, will have one vote for each Share of which he is the holder.
64. Notwithstanding the last preceding Regulation, for so long as:
- 64.1 the Company holds Shares as treasury Shares; or
- 64.2 any subsidiary of the Company holds Shares in the Company
- the Company or the subsidiary as the case may be shall not exercise any voting rights in respect of the Shares.

**Qualification of voters:**

65. Where there are joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority will be determined by the order in which the names stand in the register of members.
66. A member of unsound mind, or in respect of whom an order has been made by any court of relevant jurisdiction, may vote, whether on a show of hands or on a poll and whether in person or by proxy by his Committee, receiver, guardian, or other person appointed by that court, if evidence to the satisfaction of the Directors of the authority of the person claiming to exercise the right to vote is deposited at the Registered Office or at such other place as is specified in accordance with these Regulations for the

deposit of instruments of proxy, before the commencement of the meeting or adjourned meeting at which the right to vote is to be exercised, and, in default, the right to vote will not be exercisable.

67. No member will be entitled to vote at any general meeting unless all calls or other sums immediately payable by him in respect of Shares in the Company have been paid.
68. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting will be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision will be final and conclusive.

#### **BODIES CORPORATE ACTING BY REPRESENTATIVES AT MEETINGS**

69. Any body corporate which is a member of the Company may, by resolution of its Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised will be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member of the Company.

#### **RESOLUTIONS IN WRITING**

70. Subject to provisions of the Act, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representatives) will be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held and, if described as a special resolution, will be deemed to be a special resolution within the meaning of the Act, and such resolution may consist of one document or two or more documents to the same effect each signed by one or more members.

#### **SINGLE-MEMBER COMPANY**

71. If at any time the Company has only one member, that is to say that all the issued Shares of the Company are registered in the name of a sole person (whether a natural person or a body corporate), it will be a single-member Company within the meaning of the Act and so long as the Company is a single-member Company, the following provisions will apply notwithstanding anything to the contrary in these Regulations:
- 71.1 **Annual general meetings:** The sole member may decide to dispense with the holding of annual general meetings. Such decision will be effective only for the Year in which it is made, but nevertheless the sole member or the auditors may require the holding of an annual general meeting in any such Year in accordance with the procedure laid down in the Act.
- 71.2 Where a decision to dispense with the holding of annual general meetings is in force, the financial statements and the Directors' and auditors' reports that would otherwise be laid before an annual general meeting shall be sent to the sole member as provided in the Act, and the provisions of the Act with regard to the annual return and the financial statements which apply by reference to the date of the annual general meeting will be construed as provided in the Act.
- 71.3 **Quorum at general meetings:** The sole member, present in person or by proxy, is a sufficient quorum at a general meeting.
- 71.4 **Resolutions of shareholders:** All matters requiring a resolution of the Company in general meeting (except the removal of the auditors from office) may be validly dealt with by a decision of the sole member. The sole member must provide the Company with a written record of any such decision or, if it is dealt with by a written resolution under Regulation 71, with a copy of that resolution, and the decision or resolution shall be recorded and retained by the Company.

- 71.5 **Contracts with sole member:** Where the Company enters into a contract with the sole member which is not in the ordinary course of business and which is not in writing, and the sole member also represents the Company in the transaction (whether as a Director or otherwise), the Directors shall ensure that the terms of the contract are forthwith set out in a written memorandum or are recorded in the minutes of the next Directors' meeting.

## **DIRECTORS**

72. Intentionally omitted.

### **No Share qualification:**

73. A Director will not be required to hold any Shares in the Company by way of qualification.

### **Directors' right to attend general meetings:**

74. A Director who is not a member of the Company will nevertheless be entitled to receive notice of, attend and speak at any general meeting or Class Meeting.

### **Directors' remuneration:**

75. The Directors' fees shall from time to time be determined by the Company in general meeting. Such fees shall be divided among them as the Directors determine. All such fees will accrue from day to day and in the case of any Director will, unless and to the extent that the Directors otherwise determine, be independent of any remuneration to which he may be entitled in respect of any other office or appointment under the Company or any subsidiary of the Company. The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of Directors or any Committee of the Directors or general meetings or in connection with the business of the Company.
76. If any Director devotes to the business of the Company or any subsidiary of the Company either his whole time and attention or more of his time and attention than in the opinion of the Directors would usually be so devoted by a person holding such office, or undertakes or performs any duties or services other than those which, in the opinion of the Directors, would usually be undertaken or performed by a person holding such office, or is called upon to perform and performs extra services or makes any special exertions for any of the purposes of the Company or any subsidiary of the Company or serves on any Committee, then and in any of such cases the Directors may remunerate the Director concerned either by a fixed sum, annual or otherwise, or in such other manner (including, without limitation, the payment of or arrangement for the purpose of providing any pension or other retirement allowance or gratuity) as may be determined by the Directors and such remuneration may at the discretion of the Directors be either in addition to or in substitution for all or any part of any other remuneration to which such Director may be entitled under these Regulations.

## **POWERS AND DUTIES OF DIRECTORS**

### **General powers:**

77. The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Act or by these Regulations, required to be exercised by the Company in general meeting, subject, nevertheless, to any of these Regulations, to the provisions of the Act and to such directions, being not inconsistent with the aforesaid Regulations or provisions, as may be given by the Company

in general meeting; but no direction given by the Company in general meeting will invalidate any prior act of the Directors which would have been valid if that direction had not been given.

**Powers to borrow and grant security:**

78. The Directors may exercise all powers of the Company conferred by the general power of management and delegation under section 158 of the Act to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

**Power to appoint attorneys:**

79. The Directors may from time to time and at any time by power of attorney appoint any Company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Regulations) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

**Power to have Seal abroad:**

80. The Company may exercise the powers conferred by section 44 of the Act with regard to having an official Seal for use abroad, and such powers will be vested in the Directors.

**Interests in contracts:**

81. A Director or shadow Director of the Company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall comply with the provisions of section 231 of the Act and those of the same section (in the case of a shadow Director, as applied by section 221 of the Act) with regard to the disclosure of such interest by declaration.

**Directors' contracts:**

82. No contract will be entered into by the Company for the employment of, or the provision of services by, a Director or a Director of a holding Company of the Company containing a term to which section 249 of the Act applies without obtaining the approval provided for in that section.

**Directors' other interests:**

83. A Director may be or become a Director or other officer of, or otherwise interested in, any Company promoted by the Company or in which the Company may be interested as Share holder or otherwise, and no such Director will be accountable to the Company for any remuneration or other benefits received by him as a Director or officer of, or from his interests in, such other Company unless the Company otherwise directs.
84. A Director may hold any other office or place of profit under the Company (other than the office of auditors) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine, and no Director or intending Director will be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor will any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided, nor will any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established.



85. Any Director may Act by himself or his firm in a professional capacity for the Company, and he or his firm will be entitled to remuneration for professional services as if he were not a Director; but nothing herein contained will authorise a Director or his firm to Act as auditors.
86. A Director may vote in respect of any contract, appointment or arrangement in which he is interested, and he will be counted in the quorum present at the meeting and shall not be treated as being in breach of his or her duty set out in section 228(1)(f) of the Act. Section 163 of the Act shall not apply.

**Cheques etc:**

87. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the Directors determine from time to time by resolution.

**Shares in other Companies:**

88. The Directors may exercise the voting powers conferred by the Shares of any other company held or owned by the Company in such manner in all respects as they think fit, and in particular they may exercise the voting powers in favour of any resolution appointing the Directors or any of them as Directors or officers of such other Company or providing for the payment of remuneration or pensions to the Directors or officers of such other Company. Any Director may vote in favour of the exercise of such voting rights, notwithstanding that he may be or may be about to become a Director or officer of such other Company, and as such or in any other manner is or may be interested in the exercise of such voting rights in manner aforesaid.
89. Unless the members of the Company shall otherwise determine, and subject always to the other regulations of this constitution, a director is permitted to use, for his or her own benefit, or anyone else's benefit, any of the Company's property where such use is directly or indirectly related to the performance of the Directors' duties to the Company or has been authorised (expressly or implicitly) by the Directors.

**Pensions etc:**

90. The Directors may provide benefits, whether by way of pensions, gratuities or otherwise, for any Director, former Director or other officer or former officer of the Company or to any person who holds or has held any employment with the Company or with any body corporate which is or has been a subsidiary or associated company of the Company or a predecessor in business of the Company or of any such subsidiary or associated company and to any member of his family or any person who is or was dependent on him, and may set up, establish, support, alter, maintain and continue any scheme for providing all or any such benefits, and for such purposes any Director may be, become or remain a member of, or rejoin, any scheme, and receive or retain for his own benefit all benefits to which he may be or become entitled thereunder. The Directors may pay out of the funds of the Company any premiums, contributions or sums payable by the Company under the provisions of any such scheme in respect of any of the persons or class of persons above referred to who are or may be or become members thereof.

**Minutes:**

91. The Directors shall cause minutes to be made in books provided for the purpose:
- 91.1 of all appointments of officers made by the Directors;
- 91.2 of the names of the Directors present at each meeting of the Directors and of any Committee; and

- 91.3 of all resolutions and proceedings at all meetings of the Company and of the Directors and of Committees.

### **DISQUALIFICATION OF DIRECTORS**

92. In addition to the circumstances provided for in Section 148 of the Act, the office of Director will be ipso facto vacated if the Director:
- 92.1 is adjudged bankrupt or makes any arrangement or composition with his creditors generally;
  - 92.2 becomes prohibited from being a Director by reason of any declaration or order made under Section 819 of the Act or by reason of any other provision of the law;
  - 92.3 (not being a Director holding for a fixed term an executive office in his capacity as a Director) resigns his office by notice in writing to the Company;
  - 92.4 is convicted of an indictable offence unless the Directors otherwise determine;
  - 92.5 is for more than six Months absent without permission of the Directors from meetings of the Directors held during that period and his alternate (if any) has not during such period attended in his place, and the Directors pass a resolution that by reason of such absence he has vacated office;
  - 92.6 is removed from the office of Director pursuant to section 146 of the Act;
  - 92.7 is removed from office by notice in writing served upon him signed by a majority of his co-Directors stating that in their opinion he has become incapable by reason of mental disorder of discharging his duties as a Director; or
  - 92.8 is removed from office by notice in writing served upon him signed by all of his co-Directors.

### **APPOINTMENT OF DIRECTORS**

#### **Co-option:**

93. Subject to Section 144 (1) of the Act, the Directors will have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors. A director appointed by the Directors to fill a casual vacancy or as an addition to the board shall not retire from office at the annual general meeting next following his appointment and Section 144 (3) (c) of the Act is modified accordingly.

#### **Statutory removal and replacement:**

94. The Company may, by ordinary resolution of which extended notice has been given in accordance with section 396 (2) of the Act if required by that section, remove any Director before the expiration of his period of office notwithstanding anything in these Regulations or in any agreement between the Company and such Director. Such removal will be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company.
95. Subject to Section 144 (1) of the Act, the Company may, by ordinary resolution, appoint another person in place of a Director removed from office under the last preceding Regulation and, without

prejudice to the powers of the Directors to appoint any person to be a Director and, may appoint any person to be a Director either to fill a casual vacancy or as an additional Director.

## **PROCEEDINGS OF DIRECTORS**

### **Notice of meetings:**

96. The chairman may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. Any Director may waive notice of any meeting, and any such waiver may be retrospective.
97. Without prejudice to Section 176 of the Act, annual general meetings shall be held at such locations as the Directors appoint unless in respect of any particular meeting either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting. Extraordinary general meetings may be held in or outside Ireland.
98. Notice of a meeting of the Directors will be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent to him in writing by delivery, post, telecopier, telex, electronic mail or any other means of communication approved by the Directors at his last-known address or any other address given by him to the Company for the purpose.

### **Regulation of meetings:**

99. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
100. The chairman, if any, shall preside as chairman at every meeting of Directors, but if there is no chairman or the chairman is not present and willing to Act, the Directors present may choose one of their number to be chairman of that meeting.
101. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed will be two.

### **Voting:**

102. Questions arising at any meeting will be decided by a majority of votes. Where there is an equality of votes, the chairman of the meeting will have a second or casting vote.
103. Subject as hereinafter provided, each Director present and voting will have one vote, and, in addition to his own vote, will be entitled to vote on behalf of any Directors not present at the meeting who have authorised him in respect of such meeting to vote for them in their absence. Any such authority may relate generally to all meetings of the Directors or to any specified meeting or meetings and shall be effected by notice in writing given under the hand of the Director giving the authority, and shall be delivered to the Secretary prior to, or shall be produced at, the first meeting at which a vote is cast pursuant thereto; provided that no Director will be entitled to vote at a meeting on behalf of another Director pursuant to this Regulation if the other Director has appointed an alternate and that alternate is present at the meeting.
104. Any decision of the Board of Directors to voluntarily wind up the Company must be approved by the Independent Director voting in favour of the resolution and the Independent Director must take account of the interests of the creditors of the Company in considering any such resolution.

### **Less than minimum number of Directors:**

105. If at any time the number of Directors holding office falls below two (or any greater number fixed by these Regulations as the minimum number of Directors), the Director or Directors holding office may act for the purpose of appointing one or more additional Directors so as to increase the number to two (or such greater minimum number as aforesaid) or summoning a general meeting of the Company for such purpose, but may not act for any other purpose.

## **COMMITTEES**

106. The Directors may delegate any of their powers to Committees as they think fit; any Committee may consist of one or more Directors, and the Directors will be entitled to appoint such other person or persons as they consider expedient to a Committee, and to fix the remuneration of any such person; provided that a majority of the members of a Committee shall at all times be Directors and that no resolution of a Committee will be effective unless a majority of the members of the Committee (or their alternates) present at the meeting at which it was passed are Directors (or their alternates).
107. Any Committee shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Directors. Subject to any such regulations, the proceedings of a Committee with two or more members will be governed by the provisions of these Regulations regulating the meetings and proceedings of Directors so far as they are capable of applying.
108. A Committee may elect a chairman of its meetings. If no chairman is elected, or if at any meeting the chairman is not present, the members may choose one of their number to be chairman of the meeting. A Committee may meet and adjourn as it thinks proper. Questions arising at any meeting will be determined by a majority of votes of the members present and, where there is an equality of votes, the chairman of the meeting will have a second or casting vote.
109. All acts done by any meeting of the Directors or of a Committee or by any person acting as a Director or a member of a Committee will, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified or that Directors were not in the majority as hereinbefore referred to, be as valid as if every person had been duly appointed and qualified and the necessary majority existed and was present.

## **RESOLUTIONS OF DIRECTORS AND COMMITTEES AT ELECTRONIC MEETINGS**

- 110.
- 110.1 All or any of the Directors, or of the members of a Committee, can take part in a meeting of the Directors, or of a Committee as the case may be, by the use of conference telephone, video-conferencing or other telecommunications equipment designed to allow all persons participating to hear each other speak (an Electronic Meeting).
- 110.2 A person taking part in this way will be counted as being present at the meeting, and an Electronic Meeting will be considered to be a meeting of Directors, or of a Committee as the case may be, for the purpose of passing resolutions but not for doing any other act or thing which, under specific requirements of the Act, must be done at a meeting of Directors.
- 110.3 Intentionally omitted.
- 110.4 Intentionally omitted.
- 110.5 The provisions of these Regulations, in so far as they relate to the summoning of meetings of Directors or of Committees, the appointment and powers of a chairman, the transaction of business, alternates, quorum, voting, adjournment and the keeping of minutes, will apply to an Electronic Meeting as if it were a meeting of Directors, or of a Committee as the case may be, at which all those taking part were in the physical presence of each other.

110.6 Section 161(6) of the Act shall apply subject to:

- (a) the meeting being deemed to take place where the chairperson of the meeting then is unless otherwise decided by the meeting; and
- (b) a Director not being able to cease to participate in the meeting by disconnecting his or her telephone or other means of communication unless he or she has previously obtained the express consent of the chairman of the meeting, and a director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairman of the meeting to leave the meeting.

#### **RESOLUTIONS OF DIRECTORS AND COMMITTEES IN WRITING**

111. A resolution in writing signed by each Director (or his alternate) will be as valid as if it had been passed at a meeting of the Directors duly convened and held. A resolution in writing signed by each member of a Committee (or, in the case of a Director, his alternate) will be as valid as if it had been passed at a meeting of that Committee duly convened and held. Such a resolution may consist of one document or two or more documents to the same effect each signed by one or more of the signatories.

#### **CHAIRMAN**

112. The Directors may from time to time elect a chairman from amongst their own number on such terms as to remuneration and otherwise and for such period as the Directors think fit but any chairman may be removed from office by the Directors before the expiry of such period.

#### **EXECUTIVE DIRECTORS**

113. The Directors may from time to time appoint one or more of themselves to be managing Director or any other category of executive Director for such period and on such terms as to remuneration and otherwise as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. The Directors may entrust to and confer upon any executive Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

#### **ALTERNATE DIRECTORS**

114. Any Director may appoint by writing under his hand any person (including another Director) to be his alternate, provided always that no such appointment of a person other than a Director as an alternate will be operative unless and until such appointment is approved by resolution of the Directors. An alternate will be entitled, subject to his giving to the Company an address to receive notices of all meetings of the Directors and of all meetings of Committees of which his appointer is a member, to receive notice of and attend and vote at any such meeting at which the Director appointing him is not personally present and in the absence of his appointer to exercise all the powers, rights, duties and authorities of his appointer as a Director (other than the right to appoint an alternate hereunder).
115. A person may Act as alternate for more than one Director, and while he is so acting will be entitled to a separate vote for each Director he is representing and, if he is himself a Director, his vote or votes as an alternate will be in addition to his own vote. An alternate will be counted for the purpose of reckoning whether a quorum is present at any meeting attended by him at which he is entitled to vote, but where he is himself a Director or is the alternate of more than one Director he will only be counted once for such purpose. Save as otherwise provided in these Regulations, an alternate will be deemed for all purposes to be a Director and will alone be responsible for his own acts and defaults and he will not be deemed to be the agent of his appointer. The remuneration of an alternate will be payable out of the remuneration paid to his appointer and will consist of such portion of the last-mentioned remuneration as may be agreed between the alternate and his appointer.

116. A Director may revoke at any time the appointment of any alternate appointed by him. If a Director dies or ceases to hold the office of Director the appointment of his alternate will thereupon ipso facto terminate, but if a Director retires but is re-appointed or deemed to have been re-appointed at the meeting at which he retires, any appointment of an alternate made by him which was in force immediately prior to his retirement will continue after his re-appointment.
117. Subject to Section 144 (1) of the Act, any appointment or revocation by a Director shall be effected by notice in writing given under his hand to the Secretary or deposited at the Registered Office, or in any other manner approved by the Directors.

#### **SECRETARY**

118. The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may be removed by them.
119. A provision of the Act or these Regulations requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary.

#### **SEAL**

120. The Seal shall be used only by the authority of the Directors or a Committee authorised by the Directors in that behalf, and every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose. An alternate Director who is not also a Director will be entitled to sign or countersign an instrument to which the Seal is affixed as if he were the Director who appointed him.

#### **DIVIDENDS AND RESERVES**

121. Subject always to the rights of shareholders with special or priority rights as to dividends:
- 121.1 the Company, in a general meeting, may declare dividends, but no dividend may exceed the amount recommended by the Directors. The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company. No dividend or interim dividend may be paid otherwise than in accordance with the provisions of the Act; and
- 121.2 any such dividends shall be declared and paid according to the amounts paid or credited are paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls will be treated for the purposes of this Regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it will rank for dividend as from a particular date, such share will rank for dividend accordingly.
122. The Directors may deduct from any dividend payable to any member all sums of money (if any) immediately payable by him to the Company on account of calls or otherwise in relation to the Shares of the Company. No dividend will bear interest against the Company.

123. Any dividend, interest or other monies payable in cash in respect of any Shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, where they are joint holders, to the registered address of that one of the joint holders who is first-named on the register of members or to such persons and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other monies payable in respect of the Shares held by them as joint holders.
124. Any interim dividends paid by the Directors in accordance with section 124(3) of the Act may be paid wholly or partly by the distribution of specific assets of the Company.

## **FINANCIAL STATEMENTS**

125. The Company will comply with the provisions of the Act and all other relevant legislation with regard to financial statements.
126. Where the Company is obliged by the Act or by this Constitution to send a member (i) copies of the Company's financial statements and of the directors' and auditors' reports or (ii) any other document, such copies or other document may be sent by electronic means to such electronic address as may have been provided to the Company by that person or be provided on a website in accordance with Regulation 132 (*Notices*).

## **CAPITALISATION OF PROFITS**

127. The Company in general meeting may upon the recommendation of the Directors resolve that any sum available for distribution as dividend which is for the time being standing to the credit of the Company's reserves or profit and loss account, or any sum for the time being standing to the credit of any capital redemption reserve fund or Share premium account, be capitalised and applied on behalf of the members who would have been entitled to receive the same if the same had been distributed by way of dividend, and in the same proportions, either in or towards paying up amounts for the time being unpaid on any Shares held by them respectively or in paying up in full unissued Shares or debentures of the Company of a nominal amount equal to the sum capitalised (such Shares or debentures to be allotted and distributed credited as fully paid up to and amongst such members in the proportions aforesaid) or partly in one way and partly in the other, so however, that the only purpose for which sums standing to the credit of the capital redemption reserve fund or the Share premium account shall be applied shall be those permitted by section 76 of the Act or section 66(4) of the Act.
128. The Company in general meeting may upon the recommendation of the Directors resolve that any sum not available for distribution as dividend for the time being standing to the credit of the Company's reserves or profit and loss account be capitalised and applied on behalf of the members who would have been entitled to receive the same if the same had been distributable and had been distributed by way of dividend, and in the same proportions, in paying up in full unissued Shares of the Company of a nominal amount equal to the sum capitalised (such Shares to be allotted and distributed credited as fully paid up to and amongst such members in the proportions aforesaid).
129. Whenever a resolution is passed pursuant to either of the last two preceding Regulations, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid Shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provision as they think fit for the case of Shares or debentures becoming distributable in fractions (and in particular, without prejudice to the generality of the foregoing, to sell the Shares or debentures represented by such fractions and distribute the net proceeds of such sale amongst the members otherwise entitled to such fractions in due proportions) and also to authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively credited as fully paid up of any further Shares or debentures to which they may become entitled on such capitalisation or, as the case may require, for the payment up by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts

remaining unpaid on their existing Shares, and any agreement made under such authority will be effective and binding on all such members.

#### **AUDITORS**

130. The auditors will be appointed and removed and their rights and duties regulated in accordance with the Act. The auditors will be entitled to attend any general meeting and to receive all notices of, and other communications relating to, any general meeting which any member is entitled to receive, and to be heard on any part of the business which concerns them as auditors.

#### **NOTICES**

131. Subject to the Act, and except where otherwise expressly provided in this Constitution, any notice, communication, document or information to be given, served or delivered to or on the Company pursuant to this Constitution shall be in writing on paper or, subject to Regulation 133, in electronic form.
132. Subject to the Act and except where otherwise expressly provided in this Constitution, a notice, communication, document or information may be given, served or delivered to or on the Company in electronic form only if this is done in such form and manner as may have been specified by the directors from time to time for the giving, service or delivery of notices, communications, documents or information in electronic form. The directors may prescribe such procedures as they think fit for verifying the authenticity or integrity of any such notice, communication, document or information given, served or delivered to or on the Company in electronic form.
133. Subject to the Act, and except where otherwise expressly provided in this Constitution, any notice, communication, document or information to be given, served or delivered by the Company pursuant to this Constitution shall be in writing on paper or in electronic form.
- 134.
- (a) Subject to the Act and except where otherwise expressly provided in this Constitution, any notice, communication, document or information to be given, served or delivered in pursuance of this Constitution may be given to, served on or delivered to any member by the Company:
    - (i) by handing same to him or her or his or her authorised agent;
    - (ii) by leaving the same at his or her registered address;
    - (iii) by sending the same by the post or other delivery service in a pre-paid cover addressed to him or her at his or her registered address; or
    - (iv) by sending the notice, communication, document (other than a share certificate) or the information in electronic form to such electronic address as may from time to time be provided by the member in accordance with sub-paragraph (e) or by making it available on a website (provided the Company sends to the member, by any of the means at (i) to (iii) above or by electronic means to such electronic address, notification complying with Regulation 143 of the fact that the notice, communication, document or information has been placed on the website).
  - (b) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (a) (i) or (a) (ii), the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the member or his or her authorised agent, or left at his or her registered address (as the case may be).
  - (c) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (a) (iii) the giving, service or delivery thereof shall be deemed to have been effected at the expiration of 24 hours after the cover containing it in paper form was posted or given to delivery agents (as the case may be). In proving such giving, service or delivery, it shall be sufficient to prove that such cover was properly addressed, pre-paid and posted or given to delivery agents.



- (d) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (a) (iv) the giving, service or delivery thereof shall be deemed to have been effected:
    - (i) if sent in electronic form to an electronic address, at the expiration of 12 hours after the time it was sent; or
    - (ii) if made available on a website, at the time that the notification referred to in parenthesis in sub-paragraph a (iv) is deemed to be given, served or delivered in accordance with sub-paragraph (b), (c) or (d) (i), as the case may be.
  - (e) Where any member has furnished his or her electronic address to the secretary, the delivery to him or her of any notice, communication, document or information by electronic mail (whether contained in the body of the electronic mail message or as an attachment to it) shall be deemed good delivery on the terms set out in sub-paragraph (d) above.
  - (f) If the Company receives a delivery failure notification following the sending of a notice, communication, document or other information in electronic form to an electronic address in accordance with sub-paragraph (a)(iv), the Company shall give, serve or deliver the notice, communication, document or information on paper or in electronic form (but not by electronic means) to the member either personally or by post or other delivery service addressed to the member at his or her registered address or (as applicable) by leaving it at that address. This shall not affect when the notice, document or information was deemed to be received in accordance with sub-paragraph (d).
135. Every person who, by operation of law, transfer or other means, shall become entitled to any share shall be bound by every notice or other document which, prior to his or her name and address being entered on the register in respect of such share, shall have been given to any person in whose name the share shall have been previously registered.
136. Any notice, communication, document or information given, served or delivered to a member in accordance with Regulation 135 shall, notwithstanding that such member be then deceased, and whether or not the Company has notice of his or her death, shall be deemed to have been duly given, served or delivered in respect of any shares, whether held solely or jointly with other persons by such member, until some other person or persons be registered in his or her place as the holder or joint holders of such shares, and such delivery or service shall for all purposes of this Constitution be deemed a sufficient service or delivery of such notice, communication, document or information on his or her executors or administrators, and all persons (if any) jointly interested with him or her in any such share.
137. The signature to any notice to be given by the Company may be written or printed.
138. A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first-named in the register of members in respect of the Share. A notice may be given by the Company to the persons entitled to a Share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of personal representatives of the deceased, or official assignee in bankruptcy, or by any like description, at the address supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
139. Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (a) every member;
  - (b) every person upon whom the ownership of a Share devolves by reason of his being a personal representative or the official assignee in bankruptcy of a member, where the member but for his death or bankruptcy would be entitled to receive notice of the meeting;
  - (c) every Director;
  - (d) the Company Secretary; and
  - (e) the Auditors.

140. A member present at a general meeting or Class Meeting in person or by proxy will be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

#### **WINDING UP**

141. If the Company is wound up (whether the liquidation is voluntary, under supervision, by the court or otherwise), the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide among the members in specie or kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division will be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member will be compelled to accept Shares or other securities whereon there is any liability.

#### **Publication on Website**

142. A notification to a member of the publication of a notice, communication, document or information on a website as permitted by this Constitution shall state:
- (a) the fact of the publication of the notice, communication, document or information on a website;
  - (b) the address of that website and, where necessary, the place on that website where the notice, communication, document or information may be accessed and how it may be accessed; and
  - (c) in the case of a notice of a general meeting of members or of a class of members:
  - (d) that it concerns a notice of a meeting served in accordance with this Constitution or by order of a court, as the case may be;
  - (e) the place, date and time of the meeting; and
  - (f) whether the meeting is to be an annual general meeting or an extraordinary general meeting; and
  - (g) the address of any other website (if such is the case) where procedures as to voting are stated or facilitated.
143. The notice, communication, document or information referred to in Regulation 143 shall be published on that website, in the case of a notice of meeting, throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting, and in any other case the notice, communication, document or information shall be published on the website for a period of not less than 21 days from the giving of the notification except that, in the case of the documents referred to in section 338(2), the documents are published on the website until the conclusion of the relevant meeting.
144. Nothing in Regulations 143 or 144 shall invalidate the proceedings of a meeting where:
- (a) any notice that is required to be published as mentioned in Regulation 145 is published for a part, but not all, of the period mentioned in that Regulation; and
  - (b) the failure to publish that notice throughout that period is attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid, including, without limitation, system, telecommunications or power outages.

#### **MISCELLANEOUS**

##### **Inspection and secrecy:**

145. The Directors shall determine from time to time whether and to what extent and at what times and places and under what conditions or regulations the financial statements and books of the Company or any of them will be open to the inspection of members who are not Directors, and no member who is not a Director will have any right of inspecting any financial statements or book or document of the Company except as conferred by the Act or authorised by the Directors or by the Company in general meeting. No member will be entitled to require discovery of any information respecting any detail of the Company's assets, rights or trading, or any matter which is or may be in the nature of a trade secret or otherwise confidential and which in the opinion of the Directors it would be inexpedient in the interests of the members of the Company to communicate to the public.

**Destruction of records:**

146. The Company will be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of six Years from the date of registration thereof, all notifications of change of address at any time after the expiration of two Years from the date of recording thereof and all Share certificates and dividend mandates which have been cancelled or ceased to have effect at any time after the expiration of one Year from the date of such cancellation or cessation. It will be presumed conclusively in favour of the Company that every entry in the register of members purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made, that every instrument duly and properly registered and every Share certificate so destroyed was a valid and effective document duly and properly cancelled, and that every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company; provided always that:
- 146.1 the provisions aforesaid will apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;
- 146.2 nothing herein contained will be construed as imposing upon the Company any liability in respect of the destruction of any document earlier than as aforesaid or in any other circumstances which would not attach to the Company in the absence of this Regulation; and
- 146.3 references herein to a document include electronically-stored data, and references to the destruction of any document include references to the disposal thereof in any manner.

**Indemnity:**

147. Subject to the Act, every Director, managing Director, Secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in relation to his Act while acting in such office, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 233 of the Act in which relief is granted to him by the court. But this Regulation shall only have effect in so far as its provisions are not avoided by section 235 of the Act.

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Names, addresses and descriptions of subscribers

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Goodbody Subscriber One Limited,  
International Financial Services Centre,  
North Wall Quay, Dublin 1.

Limited liability Company

Dated: 13 July 2007

Witness to the above signatures:

Orla Hanna  
IFSC  
Dublin