

Public Document Pack

**Democratic Services Section
Chief Executive's Department
Belfast City Council
City Hall
Belfast
BT1 5GS**



**Belfast
City Council**

14th June, 2016

**MEETING OF BELFAST WATERFRONT AND ULSTER HALL LTD
SHAREHOLDERS' COMMITTEE**

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room - City Hall on Tuesday, 21st June, 2016 at 5.00 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. **Routine Matters**

- (a) Apologies
- (b) Minutes
- (c) Declarations of Interest
- (d) Dates of Future Meetings (Pages 1 - 2)

2. **Restricted Items**

- (a) 2016/17 Business Plan for approval (Pages 3 - 144)

3. **Audit, Governance & Risk**

- (a) Governance Update (Pages 145 - 150)

(b) Articles of Association (Pages 151 - 162)



Subject:	Future dates for Committee meetings
Date:	Tuesday, 21st June, 2016
Reporting Officer:	Donal Durkan, Director of Development
Contact Officer:	Louise McLornan, Democratic Services, 6077

Is this report restricted?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

1.0	Purpose of Report
1.1	To consider agreeing future dates and times for the Belfast Waterfront and Ulster Hall Shareholders' Committee.
2.0	Recommendations
2.1	The Committee is asked to consider and agree the following dates for its future meetings in 2016/17: <ul style="list-style-type: none"> • Monday, 22nd August, 2016 • Monday, 21st November, 2016 • Thursday, 12th January, 2017 • Monday, 20th February, 2017 • Monday, 19th June, 2017
2.2	The Committee is also asked to consider agreeing a commencement time for each meeting.
3.0	Main report
	The Belfast Waterfront and Ulster Hall Shareholders' Committee is asked to consider the aforementioned dates and a commencement time for future meetings.

	<u>Financial & Resource Implications</u> n/a <u>Equality or Good Relations Implications</u> No equality or good relations implications.
4.0	Appendices – Documents Attached
	None

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By virtue of paragraph(s) 3 of Part 1 of Schedule 6
of the Local Government Act (Northern Ireland) 2014.

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Subject:	Governance update report
Date:	21 st June 2016
Reporting Officers:	Donal Durkan, Director of Development
Contact Officers:	Eve Bremner, Programme Manager

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	This report provides members with a brief update on the new governance arrangements in place to manage the new Belfast Waterfront & Ulster Hall company and its relationship with the Council.
2.0	Recommendations
	The Committee is asked to note the report.
3.0	Main report
3.1	Members will be aware that since the previous meeting work has been ongoing to finalise the legal framework for the new Belfast Waterfront & Ulster Hall Limited. It can now be confirmed, however, that the Contract and Shareholders Agreement were signed by both the Council and BWUH Ltd on 3 rd June 2016. As such a contract is now in place for a period of 10 years with an option to extend by a further 5 years.
3.2	In order to support the relationship between both parties an internal governance structure has therefore been put in place and consists of the following. A schematic of the following is represented in Appendix 1: <ul style="list-style-type: none"> 1. BWUH Shareholders' Committee – the Committee will represent the interests of the Council i.e. the Shareholder, scrutinise performance and finance, approve the Business Plan and make decisions on reserved matters. 2. Corporate Management Team – CMT will act as a project board providing assurance and leadership. The Chief Executive and Director of Finance & Resources will also act as Observers on the Board of BWUH Ltd. 3. The Director of Development, Donal Durkan, is the Senior Responsible Officer

within Council going forward. In this role the Director will assume responsibility for developing and maintaining the strategic relationship with the Managing Director and will report to Committee, the Corporate Management Team and funders on performance, finance, risk and issues. The Director will be supported by Eve Bremner (Programme Manager) and Lynda Bailie who will provide day-to-day contract management support for the company, Council and members.

4. **An Internal delivery team** consisting of representatives from key services such as Finance and Resources, Legal Services, AGRS, HR/OD, Property and Projects and Digital Services will provide operational support to the company (as per agreed SLAs) and also report through the Director of Development as appropriate.

3.3 The contract documentation between the Company and the Council also includes a number of provisions to ensure that appropriate governance arrangements are put in place within the new company, in line with good practice. The table below highlights the key provisions and the current position:

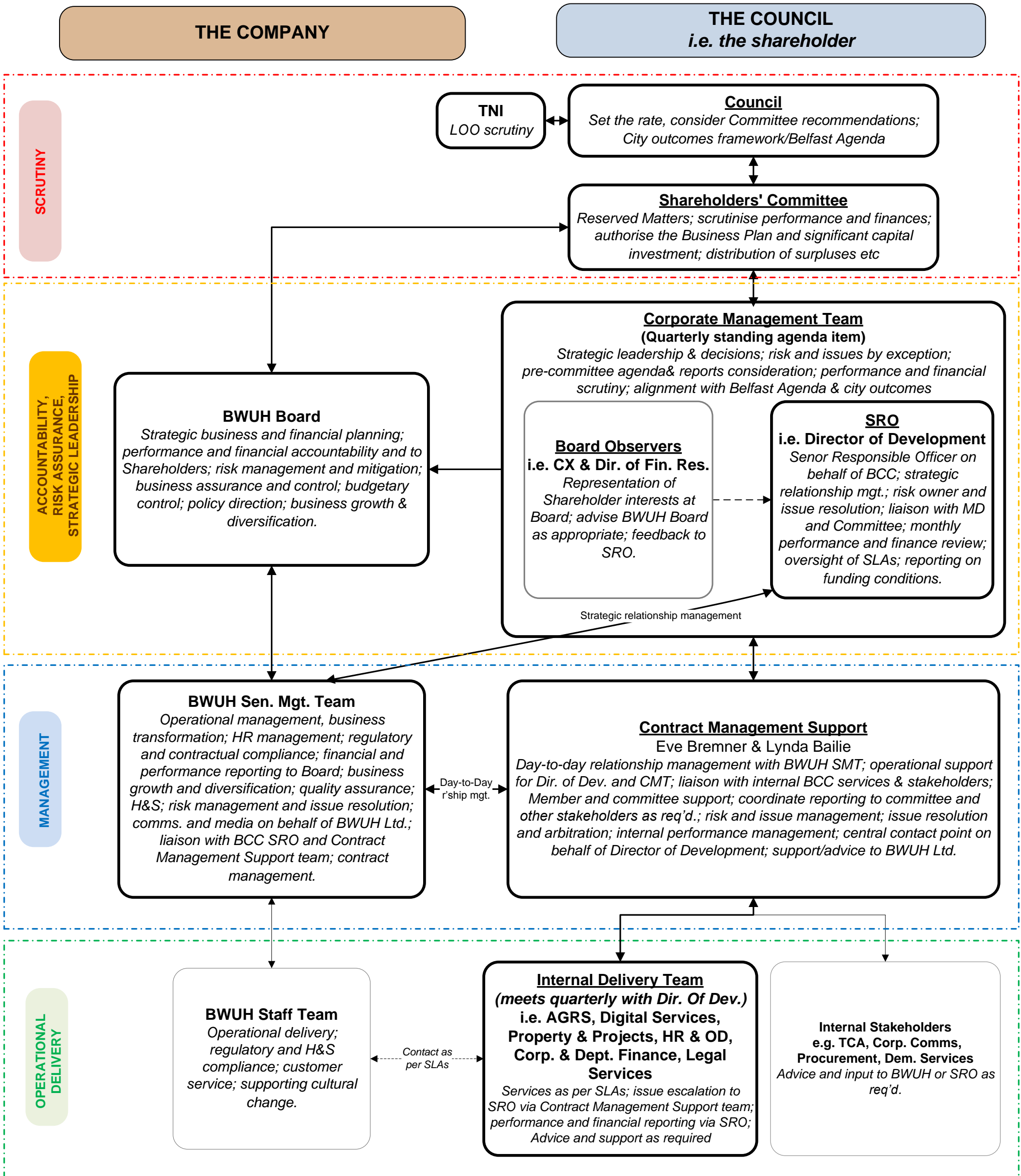
Financial Regulations & procedures	<ul style="list-style-type: none"> – Financial procedures in place – Scheme of Delegation in place
Audit & Risk Committee	<ul style="list-style-type: none"> – BWUH Board has agreed to form an Audit & Risk Committee – Terms of reference to be confirmed at BWUH Board meeting scheduled for 8 August 2016
Internal Audit	<ul style="list-style-type: none"> – Provided by Council's Audit, Governance & Risk Services (yr 1) – Indicative Terms of Reference prepared - to be discussed at Audit & Risk Committee meeting 8 August 2016. This will include consideration of provision of assurances (through the internal audit process) to the Board and Shareholders' Committee.
External Audit	<ul style="list-style-type: none"> – A specification for the appointment of an external auditor has been developed by the Company. Steps underway to procure as per the Company's Financial Regulations. Committee will be updated on any subsequent appointment.
Risk management	<ul style="list-style-type: none"> – Board has held a workshop to identify and assess Company risk profile and discuss related risk management process.
Health and Safety	<ul style="list-style-type: none"> – Responsibility of the Company, assistance provided by Council's Corporate H&S Unit under a Service Level Agreement.

3.4 The Committee is asked to note the progress made to date and to note and that further updates on the AGRS programme will be brought to Committee as part of regular quarterly

	reporting on performance and progress.
4.0	<u>Financial & Resource Implications</u> None
5.0	<u>Equality or Good Relations Implications</u> None
6.0	Abbreviations
	BWUH - Belfast Waterfront & Ulster Hall AGRS - Audit, Governance & Risk Services SLA - Service Level Agreement
7.0	Appendices – Documents Attached
	Appendix 1 - Schematic of BWUH governance arrangements

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APPENDIX 1 - BWUH Governance Arrangements (June 2016)



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Subject:	Belfast Waterfront & Ulster Hall Ltd – Articles of Association
Date:	21 st June 2016
Reporting Officers:	Colin Campbell-Divisional Solicitor
Contact Officers:	Colin Campbell-Divisional Solicitor

Is this report restricted?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	This report is to amend the Company's Articles of Association.
2.0	Recommendations
	The Committee is asked to: <ul style="list-style-type: none"> – Recommend that the Company pass a Special Resolution to adopt amended Articles of Association.
3.0	Main report
3.1	All Limited Companies are required to have a Memorandum and articles of Association. These are the Company's main Constitutional documents, and regulate how the Company operates. The Company's Articles deal primarily with the appointment and removal of Directors, voting at Company meetings, and the powers etc of the Directors. When the Company was registered, in common with nearly all Companies, it adopted a model set of Articles. These are standard Articles that have not yet been tailored to the needs of the individual Company.
3.2	The Council's legal Services have amended the Articles to better reflect what is actually required by BWUH Ltd, and to ensure that they are consistent with the Shareholder's Agreement entered into between the Council and the Company, and with the Letters of Appointment that were sent to the Company's directors.

3.3	The new Articles are appended to this report, and the primary amendments that have been made are to insert a set term of Office for company Directors, and to make it easier, within the confines of Company Law, for the council to dismiss a Director.
3.4	The Committee is asked to recommend that the company adopt the new Articles.
4.0	<u>Financial & Resource Implications</u> None.
5.0	<u>Equality or Good Relations Implications</u> None.
6.0	Abbreviations
	BWUH - Belfast Waterfront & Ulster Hall Limited
7.0	Appendices – Documents Attached
	Appendix 1 - BWUH Ltd Articles of Association

Articles of Association

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ

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f +44 (0)20 7423 8001
www.trowers.com

Private company limited by shares

Articles of Association

of

Belfast Waterfront and Ulster Hall Limited

adopted by special resolution on

2016

Model Articles

- 1 The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles (the **Model Articles**), shall apply to the Company save in so far as they are excluded or varied hereby and such Model Articles (save as so excluded or varied) together with the following articles shall be the articles of association of the Company. References to **these articles** shall be to the following articles as amended from time to time together with such Model Articles as apply to the Company.

Objects clause

- 2 The Company's objects are unrestricted.

Unanimous decisions

- 3 A decision of the directors which takes the form of a resolution in writing may consist of several copies each signed by one or more eligible directors. Article 8 of the Model Articles shall be modified accordingly.

Calling a directors' meeting

- 4 A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the Company to that effect. Where a director gives such notice to the Company after the meeting has been held, that does not affect the validity of the meeting or of any business conducted at it. Article 9(4) of the Model Articles shall be modified accordingly.
- 5 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is. Article 10(3) of the Model Articles shall not apply to the Company.

Quorum for directors' meetings

- 6 The quorum for the transaction of business of the directors shall be two unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Article 11(2) of the Model Articles shall be modified accordingly.
- 7 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:
- 7.1 to appoint such number of further directors as are required to make up the quorum required; or
- 7.2 to call a general meeting so as to enable the shareholders to appoint further directors. Article 11(3) of the Model Articles shall not apply to the Company.

Authorisation of directors' conflicts of interest

- 8 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the Shareholders shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 9 Unless otherwise determined by the Shareholders, any authorisation of a matter under article 8 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 10 Any authorisation of a matter under article 8 shall be on such terms and/or conditions as the Shareholders may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the Shareholders at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the director in question and any other interested director from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the Shareholders pursuant to any such authorisation.
- 11 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 11.1 disclose any such information to the Company, the directors or any other director or employee of the Company; or
- 11.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the

director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this article shall apply only if such situation or relationship has been authorised by the Shareholders.

- 12 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the Shareholders under article 8 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

Appointment and removal of directors

- 13 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one.

- 14 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the Company may at any time and from time to time:

- 14.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or

- 14.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

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

- 16 Notwithstanding any other provision of these articles, the term of office for any director shall be three years, at the end of such they will retire. A director shall be eligible for reappointment in accordance with article 14.

Appointment and removal of alternate directors

- 17 Any director (the **appointor**) may appoint as an alternate any other director, or any other natural person:

- 17.1 to exercise that director's powers;

- 17.2 to carry out that director's responsibilities; and

- 17.3 generally to perform all the functions of his appointor as a director;

in the absence of the alternate's appointor. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors. The notice must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

18 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions, are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one director for such purposes.

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

Termination of alternate directorship

20 An alternate director's appointment as an alternate terminates:

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

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

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

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

Company secretary

21 The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

Nil- or partly-paid shares permitted

22 Article 21 of the Model Articles shall not apply to the Company. If the Company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

Purchase of own shares

23 Subject to the provisions of the 2006 Act but without prejudice to any other provision of these articles, the Company may purchase its own shares in accordance with Chapter 4 of Part 18 of the 2006 Act, including (without limitation) with cash up to any amount in a financial year not exceeding the lower of:

23.1 £15,000; or

23.2 the value of 5% of its share capital.

Treasury shares

24 Subject to the provisions of the 2006 Act, the Company may hold shares as treasury shares. References in these articles to a holder of shares shall include the Company in respect of shares held as treasury shares except where to do so would otherwise conflict with the provisions of the 2006 Act.

Allotment of shares: exclusion of pre-emption rights

25 Sections 561 and 562 of the 2006 Act shall not apply to any allotment of equity securities (as defined in section 560 of the 2006 Act) by the Company.

Payment of commissions on subscription for shares

26 Article 44 of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

Share certificates

27 Every share certificate must specify the amount paid up on the shares to which it relates. Article 24(2)(c) of the Model Articles shall not apply to the Company.

Share transfers

28 The instrument of transfer of any share taken on formation of the Company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

Calculation of dividends

- 29 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:
- 29.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 29.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount. Article 30 of the Model Articles shall be modified accordingly.

Appropriation of capitalised sums

- 30 For the purposes of Article 36 of the Model Articles:
- 30.1 the Company shall be deemed to be a "person entitled" in relation to any shares held as treasury shares which, if not so held, would have ranked for any such distribution by way of dividend, but only insofar as the appropriated sum is to be applied in paying up in full new shares of the Company; and
- 30.2 a capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled.

Proceedings at general meetings

- 31 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given to all the Shareholders. Article 41(5) of the Model Articles shall be modified accordingly.

Poll votes

- 32 A poll may be demanded by any Shareholder (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation. Article 44(2)(c) of the Model Articles shall be modified accordingly.
- 33 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Article 44(3) of the Model Articles shall not apply to the Company.

Proxies and corporate representatives

- 34 The failure of any proxy or corporate representative to vote in accordance with any instructions given by the Shareholder by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the Company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

Written resolutions

- 35 A proposed written resolution of the Shareholders (or of a class of Shareholders) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the 2006 Act).

Means of communication to be used

- 36 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

36.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

36.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;

36.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and

36.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 37 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the 2006 Act.

Indemnity

- 38 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)) **provided that this**

article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the 2006 Act. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the 2006 Act and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled. Article 52 of the Model Articles shall not apply to the Company.

- 39 To the extent permitted by, and subject to the restrictions in, the 2006 Act and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the 2006 Act, or to enable him to avoid incurring such expenditure.
- 40 Without prejudice to the provisions of Article 53 of the Model Articles, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.
- 41 In these articles:
- 41.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;
- 41.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

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