

Company Number: 1490983



**TERRITORY OF THE BRITISH VIRGIN ISLANDS**  
**THE BVI BUSINESS COMPANIES ACT (2004)**

**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**AGUA TERRA LIMITED**

**Incorporated this 3rd day of July, 2008**  
Amended 11<sup>th</sup> August, 2008  
Amended 18<sup>th</sup> day of September, 2008  
Amended this 25<sup>th</sup> day of September, 2008



**TOTALSERVE**

**TOTALSERVE TRUST COMPANY LTD**

Trust Offices  
197 Main Street  
P.O. Box 3540  
Road Town, Tortola  
British Virgin Islands

**TERRITORY OF THE BRITISH VIRGIN ISLANDS**

**THE BVI BUSINESS COMPANIES ACT, 2004**

**(as amended) (the "Act")**

**MEMORANDUM OF ASSOCIATION**

**of**

**AGUA TERRA LIMITED**

**Adopted by a Resolution of Shareholders passed on 18<sup>th</sup> day of August, 2008**

**1. DEFINITIONS AND INTERPRETATION**

In this Memorandum of Association and the attached Articles of Association, if not inconsistent with the subject or context:

**"Act"** means the BVI Business Companies Act (No. 16 of 2004) and includes the regulations made under the Act;

**"Articles"** means the attached Articles of Association of the Company;

**"Distribution"** in relation to a distribution by the Company means the direct or indirect transfer of an asset, other than shares, to or for the benefit of the Shareholder in relation to shares held by a Shareholder, and whether by means of a purchase of an asset, the redemption or other acquisition of shares, a distribution of indebtedness or otherwise, and includes a dividend;

**"Eligible Person"** mean individuals, corporations, trusts, the estates of deceased individuals, partnerships and unincorporated associations of persons;

**"Memorandum"** means this Memorandum of Association of the Company;

**"Resolution of Directors"** means either:

- (a) a resolution approved at a duly convened and constituted meeting of directors of the Company or of a committee of directors of the Company by the affirmative vote of a majority of the directors present at the meeting who voted except that where a director is given more than one vote, he shall be counted by the number of votes he casts for the purpose of establishing a majority; or
- (b) a resolution consented to in writing by all directors or by all members of a committee of directors of the Company, as the case may be;

**"Resolution of Shareholders"** means either:

- (a) a resolution approved at a duly convened and constituted meeting of the Shareholders of the Company by the affirmative vote of a majority of the votes of the shares entitled to vote thereon which were present at the meeting and were voted; or
- (b) a resolution consented to in writing by a majority of the votes of shares entitled

to vote thereon;

“**Seal**” means any seal which has been duly adopted as the common seal of the Company;

“**Securities**” means shares and debt obligations of every kind of the Company, and including, without limitation, options, warrants, and rights to acquire shares or debt obligations;

“**Share**” means a share issued or to be issued by the Company;

“**Shareholder**” means an Eligible Person whose name is entered in the register of members of the Company as the holder of one or more Shares or fractional Shares;

“**Treasury Share**” means a Share that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled; and

“**written**” or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange, electronic mail, telegram, telex or telecopy, and “in writing” shall be construed accordingly.

In the Memorandum and the Articles, unless the context otherwise requires a reference to:

- (a) a “**Regulation**” is a reference to a regulation of the Articles;
- (b) a “**Clause**” is a reference to a clause of the Memorandum;
- (c) voting by Shareholders is a reference to the casting of the votes attached to the Shares held by the Shareholder voting;
- (d) the Act, the Memorandum or the Articles is a reference to the Act or those documents as amended; and
- (e) the singular includes the plural and vice versa.

Any words or expressions defined in the Act unless the context otherwise requires bear the same meaning in the Memorandum and Articles unless otherwise defined herein.

Headings are inserted for convenience only and shall be disregarded in interpreting the Memorandum and Articles.

## **2. NAME**

The name of the Company is **Agua Terra Limited**.

## **3. STATUS**

The Company is a company limited by shares.

## **4. REGISTERED OFFICE AND REGISTERED AGENT**

The first registered office of the Company is at the office of Totalserve Trust Company Limited, Trust Offices, 197 Main Street, Road Town, Tortola, British Virgin Islands, the office of the first registered agent.

The first registered agent of the Company is Totalserve Trust Company Limited of P.O. Box 3540, Road Town, Tortola, British Virgin Islands.

## **5. CAPACITY AND POWERS**

Subject to the Act and any other British Virgin Islands legislation, the Company has:

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

For the purposes of section 9(4) of the Act, there are no limitations on the business that the Company may carry on.

## **6. NUMBER, CLASSES AND PAR VALUE OF SHARES**

- 6.1 The Company shall have power subject to the provisions of the Articles to issue an unlimited number of Shares at no par value.
- 6.2 The Company may issue fractional Shares and a fractional Share shall have the corresponding fractional rights, obligation and liabilities of a whole share of the same class or series of shares.
- 6.3 Shares in the Company shall be issued in Euros.

## **7. DESIGNATIONS, POWERS, PREFERENCE, ETC. OF SHARES**

- (a) Each Share in the Company confers upon the Shareholder:
  - (a) the right to one vote at a meeting of the Shareholders of the Company or on any Resolution of Shareholders;
  - (b) the right to an equal share in any dividend paid by the Company; and
  - (c) the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.
- (b) The directors may at their discretion by Resolution of Directors redeem, purchase or otherwise acquire all or any of the shares in the Company subject to Regulation 3 of the Articles.

## **8. VARIATION OF RIGHTS**

The rights attached to shares as specified in Clause 7 may only, whether or not the Company is being wound up, be varied in accordance with Article 3.2 of the Articles of Association.

## **9. RIGHTS NOT VARIED BY THE ISSUE OF SHARES PARI PASSU**

The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall 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.

## **10. REGISTERED SHARES**

- (a) The Company shall issue registered shares only.

- (b) The Company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

**11. TRANSFER OF SHARES**

- (a) The Company shall, on receipt of an instrument of transfer complying with Sub-Regulation 4 of the Articles, enter the name of the transferee of a Share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in a Resolution of Directors.
- (b) The directors may not resolve to refuse or delay the transfer of a Share unless the Shareholder has failed to pay an amount due in respect of the Share.
- (c) The Personal Representative of a deceased shareholder may transfer a share even though the Personal Representative is not a shareholder at the time of the transfer.

**12. AMENDMENT OF MEMORANDUM AND ARTICLES**

Subject to Clause 8, the Company may amend its Memorandum or Articles by a Resolution of Shareholders or by a Resolution of Directors, save that no amendment may be made by a Resolution of Directors:

- (a) to restrict the rights or powers of the Shareholders to amend the Memorandum or Articles;
- (b) to change the percentage of Shareholders required to pass a Resolution of Shareholders to amend the Memorandum or Articles;
- (c) in circumstances where the Memorandum or Articles cannot be amended by the Shareholders; or
- (d) to Clauses 7, 8 or 9 or this Clause 12.

We, Totalserve Trust Company Limited of Trust Offices, P.O. Box 3540, Road Town, Tortola, British Virgin Islands for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign this Memorandum of Association the 3<sup>rd</sup> day of July., 2008.

Incorporator



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Ronelle Bobb  
Authorised Signatory  
Totalserve Trust Company Limited

**TERRITORY OF THE BRITISH VIRGIN ISLANDS  
THE BVI BUSINESS COMPANIES ACT, 2004**

(as amended) (the "Act")

**ARTICLES OF ASSOCIATION**

of

**AGUA TERRA LIMITED**

1. The following regulations shall constitute the Articles of Association of the Company. In these Articles the following expressions have the following meanings unless the context otherwise requires. Words and expressions defined in the Memorandum of Association shall bear the same meaning herein except where separately defined in these Articles or where the context otherwise requires.

**the Act** means the BVI Business Companies Act, 2004 (as amended) of the laws of the British Virgin Islands including any modification, extension, re-enactment or renewal thereof and any regulations made thereunder.

**the Administrator** means Totalserve Trust Company Limited or such other person as may be appointed administrator of the Company from time to time.

**these Articles** means these Articles of Association as originally framed or as may be modified from time to time.

**BVI** means British Virgin Islands

**Business Day** means a day (except Saturdays, Sundays and public holidays) on which banks in the BVI are open for normal banking business.

**Capital** means the sum of the aggregate par value of all issued and outstanding shares plus the amounts as from time to time transferred from surplus to capital by a resolution of Directors.

**Certificated Share** has the meaning ascribed to it in Article 4.1.3.

**Class** means each class of shares which the Company is authorised to issue.

**Company** means Agua Terra Limited.

**ERISA** means the US Employee Retirement Income Security Act of 1974, (as amended).

**Financial Period** means the twelve-month period (or part thereof) ending on 31 December of each year.

**Initial Series** means the series of shares issued in connection with any initial offering of such series of shares.

**the Memorandum** means the Memorandum of Association of the Company as originally framed or as may be modified from time to time.

**Participating Securities** has the meaning ascribed to it at Article 4.1.3.

**Person** means an individual, a corporation, the trustees of a trust, the estate of a deceased individual, a partnership, an unincorporated association of persons or any other entity.

**Registrar** means the person for the time being performing the function of Registrar and Transfer Agent on behalf of the Company.

**Resolution of Directors** means a resolution approved at a duly convened and constituted meeting of Directors of the Company or of a duly authorised committee of Directors of the Company by the affirmative vote of a simple majority of the Directors present at the meeting who voted and did not abstain; or a resolution consented to in writing by all Directors or of all members of the committee, as the case may be.

**the Seal** means any seal which has been duly adopted as the Seal of the Company.

**Shares** means the shares which the Company is authorised to issue.

**Shareholder** means a person who holds any Share in the Company.

**Uncertificated Securities Relations, 2001 (as amended).**

**€ or Euro** means the legal currency of the European Union.

- 1.2 "Written" or any term of like import includes words typewritten, printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of reproducing words in a visible form, including telex, facsimile, telegram, cable or other form of writing produced by electronic communication.
  - 1.3 Save as aforesaid, any words or expressions defined in the Act shall bear the same meaning in these Articles.
  - 1.4 Whenever the singular or plural number, or the masculine, feminine or neuter gender is used in these Articles, it shall equally, where the context admits, include the others and references to persons shall include corporations and all legal entities capable of having a legal existence.
  - 1.5 A reference in these Articles to voting in relation to shares shall be construed as a reference to voting by Shareholders holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of Shareholders who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.
  - 1.6 A reference to money in these Articles is, unless otherwise stated, a reference to the legal currency of the European Union.
2. **REGISTERED SHARES**

- 2.1 Subject to Article 3, the Company shall not issue share certificates in respect of the shares, although the Directors of the Company have discretion to issue registered share certificates when so requested by the subscriber. Unless a Shareholder requests a share certificate the shares shall be registered and maintained in book entry form and in such case no Share Certificate shall be required to be delivered to the Company in respect of any transfers or redemption of such shares PROVIDED THAT the Directors may at any time resolve that all shares shall be held by a custodian as nominee on behalf of all Shareholders upon terms that such custodian shall issue such certificate or other instrument representing the Shareholders' interest in shares as the Directors shall from time to time approve. Such custodian shall on behalf of Shareholders process all permitted transfers of shares.
- 2.2 Any Shareholder receiving a share certificate for shares shall indemnify and hold the Company and its Directors and officers harmless from any loss or liability which it or they may incur by reason of any wrongful or fraudulent use or representation made by any person by virtue of the possession thereof. If a share certificate is worn out or lost it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a Resolution of Directors.
- 2.3 Any shares initially sold in the United States or to, or for the account or benefit of, U.S. Persons where the investor elects to receive shares in certificated form shall bear the legend set out below:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”), OR ANY STATE SECURITIES LAWS IN THE UNITED STATES OR, EXCEPT AS SET OUT IN THE COMPANY’S ADMISSION DOCUMENT, THE SECURITIES LAWS OF ANY OTHER STATE, AND HAVE BEEN INITIALLY PLACED PURSUANT TO EXEMPTIONS FROM THE U.S. SECURITIES ACT AND THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE “U.S. INVESTMENT COMPANY ACT”) AND MAY NOT BE RE-OFFERED, RE-SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT THAT (I) THIS SECURITY MAY BE RE-OFFERED, RE-SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF IN THE UNITED STATES OR TO U.S. PERSONS IN COMPLIANCE WITH THE U.S. SECURITIES ACT AND OTHER APPLICABLE SECURITIES LAWS TO A PERSON WHO CERTIFIES IN WRITING IN A FORM ACCEPTABLE TO THE COMPANY THAT (1) IT IS AN ACCREDITED INVESTOR AS DEFINED IN REGULATION D UNDER THE U.S. SECURITIES ACT (“AN ACCREDITED INVESTOR”); (2) IT IS NOT FORMED FOR THE PURPOSE OF INVESTING IN THE COMPANY; AND (3) IT IS ACQUIRING THE SHARES FOR ITS OWN ACCOUNT AS PRINCIPAL, OR FOR THE ACCOUNT OF ONE OR MORE PERSONS WHO ARE ABLE TO MAKE THE REPRESENTATIONS UNDER CLAUSES (1) AND (2) ABOVE AND IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; OR (II) THIS SECURITY MAY BE RE-OFFERED, RE-SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN AN OFFSHORE TRANSACTION PURSUANT TO

REGULATION S UNDER THE U.S. SECURITIES ACT (“REGULATION S”) TO A PERSON OUTSIDE THE UNITED STATES AND NOT KNOWN BY THE TRANSFEROR TO BE A U.S. PERSON BY PRE-ARRANGEMENT OR OTHERWISE, AND UPON CERTIFICATION TO THAT EFFECT BY THE TRANSFEROR IN WRITING IN A FORM ACCEPTABLE TO THE COMPANY. THE TERMS “U.S. PERSON” AND “OFFSHORE TRANSACTION” HAVE THE MEANINGS SET FORTH IN REGULATIONS.

THE COMPANY AND ITS AGENTS SHALL NOT BE OBLIGATED TO RECOGNIZE ANY RE-SALE OR OTHER TRANSFER OF THIS SECURITY MADE OTHER THAN IN COMPLIANCE WITH THESE RESTRICTIONS. THE COMPANY AND ITS AGENTS MAY REQUIRE ANY PERSON WITHIN THE UNITED STATES OR ANY U.S. PERSON WHO IS REQUIRED UNDER THESE RESTRICTIONS TO BE AN ACCREDITED INVESTOR BUT WHO IS NOT AN ACCREDITED INVESTOR AT THE TIME IT ACQUIRES THIS SECURITY, TO TRANSFER THIS SECURITY IMMEDIATELY TO A PERSON OR ENTITY THAT IS (I) WITHIN THE UNITED STATES OR THAT IS A U.S. PERSON AND WHO IS ALSO AN ACCREDITED INVESTOR OR (II) TO TRANSFER THIS SECURITY TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATION S. THE COMPANY MAY ALSO REDEEM ANY SUCH SHARES FROM ANY SUCH PERSON ON A COMPULSORY BASIS. FURTHER, THE COMPANY AND ITS AGENTS MAY, IN THEIR SOLE DISCRETION EXCLUDE ADDITIONAL BENEFIT PLAN INVESTORS OR REQUIRE BENEFIT PLAN INVESTORS TO REDEEM PART OR ALL OF THEIR SHARES TO AVOID “SIGNIFICANT PARTICIPATION” BY BENEFIT PLAN INVESTORS IN THE COMPANY. A “BENEFIT PLAN INVESTOR” IS DEFINED IN A REGULATION ISSUED BY THE DEPARTMENT OF LABOR AT 29 C.F.R. § 2510.101-3, AS MODIFIED BY SECTION 3(42) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”) (THE “PLAN ASSETS REGULATIONS”) AS ANY EMPLOYEE BENEFIT PLAN (AS DEFINED IN SECTION 3(3) OF ERISA) SUBJECT TO PART 4 OF TITLE I OF ERISA, ANY PLAN TO WHICH SECTION 4975 OF THE US INTERNAL REVENUE CODE OF 1986, AS AMENDED, APPLIES, OR ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS BY REASON OF A PLAN’S INVESTMENT IN THE ENTITY. UNDER THE PLAN ASSETS REGULATIONS, PARTICIPATION IN THE COMPANY BY BENEFIT PLAN INVESTORS IS NOT “SIGNIFICANT” WHEN BENEFIT PLAN INVESTORS HOLD LESS THAN 25% OF EACH CLASS OF THE COMPANY’S EQUITY INTERESTS, AFTER DISREGARDING INTERESTS HELD BY CERTAIN PARTIES.

THIS SECURITY IS NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. EACH TRANSFEROR OF THIS SECURITY AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET FORTH HEREIN AND IN THE COMPANY’S ADMISSION DOCUMENT TO THE TRANSFEREE AND TO ANY EXECUTING BROKER.”

If several persons are registered as joint holders of any shares, any one of such persons may give an effectual receipt for any dividend payable in respect of such shares.

### **3. SHARES AND CAPITAL**

- 3.1** Subject to the provisions of these Articles, the unissued shares and treasury shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Directors who may, without limiting or affecting any rights previously conferred on the shares, grant options over or otherwise dispose of them to such persons at such times and for such consideration, being not less than the par value of the shares being disposed of, and upon such terms and conditions as the Company may, by resolution of the Directors, determine.
- 3.2** Subject to the Act, all or any of the rights attached to any class of share may (unless otherwise provided by the terms of issue of shares of that class) be varied (whether or not the Company is being wound up) either with the written consent of the holders of not less than three-quarters in nominal value of the issued shares of that class or with the sanction of a resolution passed at a separate general meeting of such holders. The quorum at any such general meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of that class and at an adjourned meeting the quorum is one holder present in person or by proxy, whatever the amount of his shareholding. Any holder of shares of the class in question present in person or by proxy may demand a poll. Every holder of shares of the class shall be entitled, on a poll, to one vote for every share of the class held by him. Except as mentioned above, such rights shall not be varied.
- 3.3** Subject to and in accordance with the provisions of the Act, the Company may issue redeemable shares. Without prejudice to any special rights previously conferred on the holders of any existing shares, any share may be issued with such rights or such restrictions as the Company shall from time to time determine by resolution.
- 3.4** Subject to the provisions of the Articles and of the Act, the power of the Company to offer, allot, and issue any unissued shares and any shares lawfully held by the Company or on its behalf (such as shares held in treasury) shall be exercised by the Board at such time and for such consideration and upon such terms and conditions as the Board shall determine. Unless authorised by resolution of shareholders, any share issue representing more than 10 per cent (10%) of the existing issued share capital, shall first be offered to existing shareholders pro rata, as near as may be, to existing holdings of shares.
- 3.5** The Company may consolidate, divide, and sub-divide its shares or any of them into shares of a smaller amount than is fixed by its memorandum of association (and so that the resolution may determine that, as between the holders of shares resulting from the consolidation, division, or sub-division, any of the shares may have any preference or advantage or be subject to any restriction as compared with the others), 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.
- 3.6** Subject to the Act, the Company may by resolution reduce the number of shares which the Company is authorised to issue,, any capital redemption reserve or any share premium account in any way.

- 3.7** Subject to the Act, the Company may purchase, redeem, or acquire all or any of its own shares.
- 3.8** No shares of the Company may be issued until the consideration in respect of the shares is fully paid, and when issued each Share shall for all purposes fully paid and non-assessable.
- 3.9** The Company shall allot and issue shares only upon receipt by the Company or its authorised agents of an application in such form (including minimum amount) as the Directors may from time to time determine.
- 3.10** Shares in the Company shall be offered for money in €.
- 3.11** Shares in the Company shall initially be issued at €2 per share.
- 3.12** Subject to the provisions of the Act in this regard, the shares are not redeemable by the Shareholder.
- 3.13** If at any time the number of shares which the Company is authorised to issue is divided into different classes of shares, the rights attached to any Class (unless otherwise provided by the terms of issue of the shares of that Class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of not less than two thirds of the issued shares of that Class and of any other Class of shares which may be affected by such variation.
- Any such consent or resolution shall comply with the provisions of Article 3.2.
- 3.14** The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall 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.
- 3.15** Except as required by law, no person shall be recognised by the Company as holding any Share upon any trust, and the Company shall 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 other rights in respect of any share except an absolute right to the entirety thereof by the registered holder.
- 3.16** The Directors may impose such restrictions as they think necessary for the purpose of ensuring that no shares in the Company are acquired or held by any person in breach of the law of or requirements of any country or governmental authority or in contravention of these Articles.
- 3.17** The Company may issue fractions of a Share and a fractional Share shall therefore have the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole Share of the same Class or series of shares.

#### **4. TRANSFER OF SHARES**

## 4.1

- 4.1.1 The shares shall be issued and allotted in registered form.
- 4.1.2 Registered shares in the Company may be transferred by a written instrument of transfer, setting forth the number of shares to be transferred, the consideration therefor and such other information as the Company may from time to time by a Resolution of Directors require, and signed by the transferor and transferee and containing the name and address of the transferor and transferee, but in the absence of such written instrument of transfer the Directors may accept such evidence of a transfer of shares as they consider appropriate. Any written instrument or other evidence of transfer shall include the transferee's written consent to take the shares subject to the same conditions and restrictions upon which the shares were held by the transferor and shall be accompanied by the certificate or certificates held by the transferor representing the shares which are the subject of the transfer.
- 4.1.3 The Articles provide for depositary interests representing such shares to be issued by the Depositary and held in CREST accounts, or through another system for holding depositary interests in uncertificated form, such depositary interests being referred to as "**Participating Securities**". Subject to such of the restrictions in the Articles as shall be applicable, any Shareholder may transfer all or any of his depositary interests or shares. In the case of shares represented by a certificate ("**Certificated Shares**") the transfer shall be made by an instrument of transfer in the usual form or in any other form which the Board may approve. A transfer of a Participating Security need not be in writing, but shall comply with such rules as the Board may make in relation to the transfer of such depositary interests, a CREST transfer being acceptable under the current rules.
- 4.1.4 The instrument of transfer of a Certificated Share shall be executed by or on behalf of the transferor and (in the case of a partly paid share) by or on behalf of the transferee and the transferor is deemed to remain the holder of the share until the name of the transferee is entered in the register of members.
- 4.1.5 The Board may, in its absolute discretion and without assigning any reason therefor, refuse to register any instrument of transfer of shares, all or any of which are not fully paid.
- 4.1.6 The Board may also refuse to register a transfer unless:
- (a) in the case of a Certificated Share, the instrument of transfer is lodged at the registered office of the Company or at some other place as the Board may appoint accompanied by the relevant share certificate and such other evidence of the right to transfer as the Board may reasonably require;
  - (b) in the case of a Certificated Share, the instrument of transfer is in

respect of only one class of share; and

- (c) in the case of a transfer to joint holders of a Certificated Share, the transfer is in favour of not more than four such transferees.

**4.1.7** In the case of Participating Securities, the Board may refuse to register a transfer if the Uncertificated Securities Regulations 2001 (as amended) allow it to do so, and must do so where such regulations so require.

- 5.** The Company shall not be required to treat a transferee of a registered share in the Company as a Shareholder until the transferee's name has been entered in the share register.
- 6.** Subject to any limitations in the Memorandum or these Articles, the Company shall on the application of the transferor or transferee of a registered share in the Company enter in the share register the name of the transferee of any Share, pursuant to a transfer approved by the Directors, save that the registration of transfers may be suspended and the share register closed at such times and for such periods as the Company may from time to time by Resolution of Directors determine provided always that such registration shall not be suspended and the share register closed for more than sixty (60) days in any period of twelve (12) months.

## **7. TRANSMISSION OF SHARES**

- 7.1** The personal representatives, guardian, or trustees as the case may be of a deceased, incompetent, or bankrupt sole holder of a share shall be the only persons recognised by the Company as having any title to the Share. In the case of a Share registered in the names of two or more holders, the survivor or survivors, and the personal representative, guardian or trustee as the case may be of the deceased, incompetent, or bankrupt shareholder, shall be the only persons recognised by the Company as having any title to the share but they shall not be entitled to exercise any rights as a Shareholder of the Company until they have proceeded as set forth in Articles 7.2 and 7.3.
- 7.2** Any person becoming entitled by operation of law or otherwise to a share or shares in consequence of the death, incompetence or bankruptcy of any Shareholder may be registered as a Shareholder upon such evidence being produced as may reasonably be required by the Directors. An application by any such person to be registered as a Shareholder for all purposes shall be deemed to be a transfer of shares of the deceased, incompetent or bankrupt Shareholder and the Directors shall treat it as such.
- 7.3** Any person who has become entitled to a Share or shares in consequence of the death, incompetence or bankruptcy of any Shareholder may, instead of being registered himself, request in writing that some person to be named by him be registered as a transferee or such share or shares and such request shall likewise be treated as if it were a transfer.
- 7.4** What amounts to incompetence on the part of a person is a matter to be determined by the courts in the BVI having regard to all the relevant evidence and the circumstances of the case.

## **8. COMPULSORY TRANSFER OR COMPULSORY REDEMPTION**

**8.1** Where, in the opinion of the Directors, shares are being held, directly or indirectly, by any Shareholder (a "**Non-Qualifying Person**"):

- (i) whose ownership of shares may cause the Company's assets to be deemed "plan assets" for the purposes of ERISA or the Code; or
- (ii) whose ownership of shares may cause the Company to be required to register as an "investment company" under the Investment Company Act of 1940 (as amended); or
- (iii) whose ownership of shares may cause the Company to be "controlled foreign corporation" for the purposes of the US Internal Revenue Code, or may cause the Company to suffer any pecuniary disadvantage (including any excise tax, penalties or liabilities under ERISA); or
- (iv) whose ownership of shares may cause the Company to be required to comply with any registration or filing requirements in any jurisdiction with which the Company would not otherwise be required to comply;

the Company may, at its option, direct the Non-Qualifying Person (or if more than one, the Shareholder or Shareholders whose act of coming to hold shares or more shares caused the provisions of Article 8.1 (iii) to be activated) to transfer his shares to a Person who is qualified to hold the shares and would not by reason of such transfer become a Non-Qualifying Person. Notwithstanding any provisions to the contrary in these Articles, until such transfer is effected, the holder of such shares shall not be entitled to any rights or privileges attaching to such shares. If the required transfer is not effected within twenty (20) days after service of a notice to do so and the said Shareholders directed to transfer his shares has not established to the reasonable satisfaction of the Board of Directors (whose judgement shall be final and binding) that he is not a Non-Qualifying Person, the Company may instruct the Depositary to deliver (in accordance with Regulation 32(2)(c) of the Regulations) a written notification to the operator of the Relevant System requiring conversion of the relevant shares into certificated form to enable the Company and the Depositary to deal with such shares in accordance with these Articles.

At any time following the recertification of the relevant shares having taken place, any or all of such shares may be redeemed or sold by the Company on behalf of the said Shareholder.

The said Shareholder shall be entitled to receive the redemption proceeds in respect of his shares so redeemed and such redemption proceeds to be paid to such Shareholder in the manner described and subject as provided in these Articles. The consent of such Shareholder for the recertification or redemption of his shares by the Company is not required. To give effect to any such sale the Board of Directors may authorise any Person to transfer the shares to be sold.

## **9. SUBSCRIPTIONS OF SHARES**

**9.1** The Directors may suspend subscriptions for shares as the Directors may in their absolute discretion determine:

- (a) if the Company's banks are closed (other than on weekends and public holidays in the normal course of business), in which case the suspension or delay shall only be for that period of time during which such banks are closed;
- (b) when, in the opinion of the Directors it is not reasonably practicable for the Company to dispose of Investments owned by it or where any such disposal might be materially prejudicial to the interests of the remaining Shareholders;
- (c) during any period when any market on which a significant portion of the Company's investments are ordinarily traded is closed (other than for ordinary holidays) or trading thereon has been restricted or suspended;
- (d) during the existence of any state of affairs which, in the judgment of the Board of Directors constitutes an emergency which would render a disposition of the Company's investments reasonably impracticable or seriously prejudicial to the shareholders of the Company;
- (e) when for any reason, including a breakdown in the means of communication normally employed in determining the value of the Company's investments, such value cannot reasonably be promptly and accurately ascertained; or
- (f) during any period when remittance of monies which will or may be involved in the realisation of any of the Company's investments is not possible;

**9.2** Any such suspension shall be publicised by the Directors in such manner as they may deem appropriate to the persons likely to be affected thereby. Any pending applications for subscriptions of shares may be withdrawn by the subscriber or shareholder by reason of such suspension but if not so withdrawn the same shall be effected by the Company upon the next Business Day following the cessation of such suspension.

### **9.3 Disclosure of Interests in Shares**

**9.3.1** Notwithstanding the provisions of law, where a Person acquires an interest in the shares or becomes aware of acquiring such an interest or where a Shareholder ceases to have such an interest in any of the shares previously held by him, then, subject to the provisions below, such change in interest must be disclosed to the Company.

**9.3.2** An interest needs to be disclosed when one of the following conditions has been met:

- (a) where a Person or Shareholder's interest equals or is more than three percent (3%) of the total number of shares currently in issue of the

Company; or

- (b) where a Person or Shareholder's interest is already three percent (3%) or more of the total number of shares currently in issue by the Company and such interest is either raised or lowered by one percent (1%) of the total number of shares currently in issue.

**9.3.3** An obligation for disclosure arises where any of the conditions set out in Article 9.3.2 occur. When an obligation occurs the Person or member affected shall notify the Company in writing within two days of such an obligation having occurred.

**9.3.4** Notwithstanding the provisions of the law, the Company has the right to request any Member or person to disclose details of their interests in the Company for up to the previous three years from the date of such notice (a "**Disclosure Notice**"). The Company may issue a Disclosure Notice where it has reasonable cause to believe that the relevant member or Person has had an interest in the shares of the Company at any time over the previous three years.

**9.3.5** Where a Disclosure Notice is served by the Company on a Shareholder, or another Person whom the Company knows or has reasonable cause to believe to be interested in shares held by that Shareholder, and the Shareholder or other Person has failed in relation to any shares (the "**default shares**", which expression includes any shares issued to such Shareholder after the date of the Disclosure Notice in respect of those shares) to give the Company the information required within 14 days following the date of service of the Disclosure Notice, the Board may serve on the holder of such default shares a notice (a "**disenfranchisement notice**") whereupon the following sanctions apply, unless the Board otherwise decides:

- (a) the Shareholder shall not be entitled in respect of the default shares to be present or to vote (either in person or by proxy) at a general meeting or at a separate meeting of the holders of a class of shares or on a poll or to exercise other rights conferred by membership in relation to the meeting or poll; and
- (b) where the default shares represent at least 0.25 per cent. in nominal value of the issued shares of their class:
  - (i) a dividend (or any part of a dividend) or other amount payable in respect of the default shares shall be withheld by the Company, which has no obligation to pay interest on it; and
  - (ii) no transfer of any of the default shares shall be registered unless:
    - (A) the transfer is an excepted transfer; or

(B) the Shareholder is not himself in default in supplying the information required and the Shareholder proves to the satisfaction of the Board that no person in default in supplying the information required is interested in any of the shares the subject of the transfer; or

(C) registration of the transfer is required by any Relevant System,

(and, for the purpose of ensuring this Article 9.3.5(b)(ii) can apply to all shares held by the holder, the Company may, in accordance with the regulations of any Relevant System, issue written notification to the operator of the Relevant System requiring the conversion into certificated form of any shares held by the holder in uncertificated form).

**9.3.6** The provisions of Article 9.3.5 shall not apply to a Shareholder that is a Shareholder solely by reason of its role as Depositary.

**9.3.7** For the purposes of this Article 9.3, “Relevant System” means, in relation to a share, a computer –based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters.

## **10. MEETINGS OF SHAREHOLDERS WITH VOTING RIGHTS**

### **10.1**

**10.1.1** The Company shall hold a Shareholders' meeting each year in addition to any other Shareholders' meetings held at any time during the year.

**10.1.2** The Directors may convene meetings of the Shareholders with voting rights of the Company at such times and in such manner and places as the Directors consider necessary or desirable and they shall convene such a meeting upon the written request of Shareholders holding more than 50 per cent of the votes of the issued voting shares in the Company.

**10.1.3** Each Director may attend and speak at any meeting of the Shareholders.

**10.2** At least twenty one (21) clear days' written notice must be given to the Shareholders for every Shareholders' meeting to be held each year. For all other general meetings, not less than 14 days' written notice must be given to the Shareholders. The notice for any meeting shall state: (i) whether the meeting is an annual meeting or any other Shareholders' meeting; (ii) the date, time, and place of the meeting; (iii) the general nature of the business of the meeting and (iv) any intention to propose a resolution. All members

who are entitled to receive notice under the Articles shall be given notice.

- 10.3** A meeting of the Shareholders shall be deemed to have been validly held, notwithstanding that it is held in contravention of the requirement to give notice in Article 10.2, if notice of the meeting is waived by at least 60 per cent in number of the Shareholders having a right to attend and vote at the meeting, and for this purpose, the presence of a Shareholder with voting rights at the meeting shall be deemed to constitute waiver on his part.
- 10.4** The inadvertent failure of the Directors to give notice of a meeting to a Shareholder with voting rights or the fact that a Shareholder does not receive twenty-one (21) days' notice or fourteen (14) days' notice, as the case may be, shall not invalidate the meeting.

#### **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS WITH VOTING RIGHTS**

- 10.5** No business shall be transacted at any meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Subject to the provisions of Article 3.2, a quorum shall consist of two (2) members present in person or by proxy.
- 10.6** If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned to the same time and place on the date seven days after the appointed day for the meeting and if no quorum is present at such adjourned meeting then the meeting shall be cancelled.
- 10.7** At every meeting the Shareholders present shall choose some one of their number to be the Chairman. If the Shareholders are unable to choose a Chairman for any reason, then the person representing the greatest number of voting shares present at the meeting shall preside as Chairman failing which the oldest individual person shall take the chair.
- 10.8** The Chairman may, with the consent of the meeting, adjourn any 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.
- 10.9** At any meeting a resolution put to the vote of the meeting shall be decided unanimously on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- 10.9.1** by the Chairman; or
- 10.9.2** by any Shareholder or Shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Shareholders having the right to vote at the meeting.
- 10.10** Unless a poll be demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.11** If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and

the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

- 10.12** In the case of 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, shall be entitled to a second or casting vote.

## **11. VOTES OF SHAREHOLDERS**

### **11.1**

**11.1.1** Subject to any special terms as to voting upon which any shares may be issued, or may for the time being be held and any restriction on voting referred to below, every shareholder present in person at any meeting of the Company shall have one vote on a show of hands and, on a poll, every shareholder present in person or by proxy shall have one vote for every Common Share of which he is the holder.

**11.1.2** A shareholder shall not be entitled to vote unless all calls due from him have been paid.

**11.2** A resolution which has been notified to all Shareholders for the time being entitled to vote and which has been approved by the unanimous votes of those Shareholders in the form of one or more documents in writing or by facsimile, telex, telegram, cable or other written electronic communication shall forthwith, without the need for any notice, become effectual as a resolution of Shareholders.

**11.3** If a committee be appointed for any Shareholder who is of unsound mind he may vote by his committee.

**11.4** If two or more persons are jointly entitled to a registered share or shares and if more than one of such persons shall vote in person or by proxy at any meeting of Shareholders or in accordance with the terms of Article 11.1 or 11.2, the vote of that person whose name appears first among such voting joint holders in the share register shall alone be counted.

**11.5** Votes may be given either personally or by proxy. A proxy may be revoked at any time and in the event that both the proxy and the Shareholder who appointed him attend any meeting, only the vote of the Shareholder shall be counted.

**11.6** The instrument appointing a proxy shall be produced at the place appointed for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote.

**11.7** An instrument appointing a proxy shall be in such form as the Chairman of the meeting shall accept as properly evidencing the wishes of the Shareholder appointing the proxy.

**11.8** The instrument appointing a proxy shall be in writing under the hand of the appointor unless the appointor is a corporation or other form of legal entity other than one or more individuals holding as joint owners in which case the instrument appointing a proxy shall

be in writing under the hand of an individual duly authorised by such corporation or legal entity to execute the same. The Chairman of any meeting at which a vote is cast by proxy so authorised may call for a notarially certified copy of such authority which shall be produced within seven (7) days of being so requested or the vote or votes cast by such proxy shall be disregarded.

## **12. CORPORATION OR TRUST ACTING BY REPRESENTATIVES AT MEETINGS**

**12.** Any corporation or other form of corporate legal entity or any voting trust which is a Shareholder of the Company may by resolution of its Directors, trustees, or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Shareholders or of any Class of Shareholders of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation or trust which he represents as that corporation or trust could exercise if it were an individual Shareholder of the Company.

## **13. DIRECTORS**

**13.1** Subject to any subsequent amendment to change the number of Directors, the number of the Directors shall be not less than three not more than seven in number, unless otherwise determined by resolution of the Company.

### **13.2**

**13.2.1** The first Directors shall be elected by the Registered Agent to the Memorandum within six (6) months of the date of incorporation. Thereafter, additional Directors may be elected either by the Shareholders with voting rights or the existing Directors for such term as the Shareholders with voting rights or the Directors may determine.

**13.2.2** The Company shall maintain a register of directors which shall contain:

- (a) the names and addresses of the persons who are directors of the Company;
- (b) the date on which each person whose name is entered in the register was appointed as director of the Company;
- (c) the date on which each person named as director ceased to be a director of the Company; and
- (d) such other information as may be prescribed by law.

**13.2.3** Save as mentioned herein, a Director shall not vote in respect of any matter in which he has, directly or indirectly, any material interest (otherwise than by virtue of his interests in shares or debentures or other securities of, or otherwise in or through, the Company) or a duty which conflicts or may

conflict with the interests of the Company. A Director shall not be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting.

**13.2.4** A Director shall (in the absence of material interests other than those indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any of the following matters:

- (a) the giving of any guarantee, security or indemnity to him or any other person in respect of money lent to, or an obligation incurred by him or any other person at the request of or for the benefit of, the Company or any of its subsidiaries;
- (b) the giving of any guarantee, security or indemnity to a third party in respect of an obligation of the Company or any of its subsidiaries for which he himself has assumed any responsibility in whole or in part alone or jointly under a guarantee or indemnity or by the giving of security;
- (c) any proposal concerning his being a participant in the underwriting or sub-underwriting of an offer of shares, debentures or other securities by the Company or any of its subsidiaries;
- (d) any proposal concerning any other company in which he is interested, directly or indirectly, and whether as an officer or shareholder or otherwise, provided that he is not the holder of or beneficially interested in 1 per cent. or more of any class of the equity share capital of such company (or of any corporate third party through which his interest is derived) or of the voting rights available to members of the relevant company (any such interest being deemed to be a material interest in all circumstances);
- (e) any arrangement for the benefit of employees of the Company or any of its subsidiaries which does not accord to any Director any privilege or advantage not generally accorded to the employees to which such arrangement relates; and
- (f) any proposal concerning any insurance which the Company is empowered to purchase and/or maintain for the benefit of any of the Directors or for persons who include Directors, provided that for that purpose "insurance" means only insurance against liability incurred by a Director in respect of any act or omission by him in the execution of the duties of his office or otherwise in relation thereto or any other insurance which the Company is empowered to purchase and/or maintain for, or for the benefit of any groups of persons consisting of or including, Directors.

**13.2.5** The Directors shall be paid such remuneration by way of fees for their

services as may be determined by the Board. The Directors shall also be entitled to be repaid by the Company all hotel expenses and other expenses of travelling to and from board meetings, committee meetings, general meetings or otherwise incurred while engaged in the business of the Company. Any Director who by request of the Board performs special services or goes or resides abroad for any purposes of the Company may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the Board may determine.

- 13.2.6** The Company may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, to or for the benefit of past directors who held executive office or employment with the Company or any of its subsidiaries or a predecessor in business of any of them or to or for the benefit of persons who are or were related to or dependants of any such Directors.
- 13.2.7** The Directors and officers of the Company shall be entitled to be indemnified against all losses and liabilities which they may sustain in the execution of the duties of their office. The Company may provide a Director with funds to meet his expenditure in defending any civil or criminal proceedings brought or threatened against him in relation to the Company.
- 13.2.8** The Directors shall be obliged to retire by rotation and are eligible for re-election at the third Annual Shareholders' meeting after the Annual Shareholders' meeting at which they were elected. Any non-executive Director who has held office for nine years or more is subject to re-election annually. Any Director appointed by the Board holds office only until the next Annual Shareholders' meeting, when he shall be eligible for re-election.
- 13.2.9** There shall be no age limit for Directors.
- 13.3** Subject to these Articles, each Director holds office until his successor takes office or until his earlier death, resignation, or removal.
- 13.4** A vacancy arising in the board of Directors may be filled either by the Shareholders with voting rights or by the remaining Directors. Any Director appointed by the Board shall hold office until the next following Annual Shareholders' meeting and shall then be eligible for election, and unless so elected shall vacate office at the conclusion of such meeting.
- 13.5** A Director shall not require a share qualification, but nevertheless shall be entitled to attend and speak at any meeting of the holders of any class of shares in the Company.
- 13.6** A Director by writing under his hand deposited at the Registered Office of the Company may from time to time appoint another Director or any other person to be his alternate. Every such alternate shall be entitled at any such meeting at which the Director appointing him is not personally present to have and exercise all the powers, rights, duties and authorities of the Director appointing him. Every such alternate shall be deemed to be a

director of the Company and shall not be deemed to be an agent of the Director appointing him. If undue delay or difficulty would be occasioned by giving notice to a Director or a resolution of which his approval is sought, his alternate (if any) shall be entitled to signify approval of the same on behalf of that Director. The remuneration of an alternate shall be payable out of the remuneration payable to the Director appointing him, and shall consist of such portion of the last-mentioned remuneration as shall be agreed between such alternate and the Director appointing him. A Director by writing under his hand deposited at the Registered Office of the Company may at any time revoke the appointment of an alternate appointed by him. If a Director shall die or cease to hold the office of Director, the appointment of his alternate shall thereupon cease and terminate.

**13.7** The office of Director shall be vacated if the Director:

**13.7.1** is removed from office by a resolution of Shareholders with voting rights or by a Resolution of Directors, or

**13.7.2** becomes bankrupt or makes any arrangement or composition with his creditors generally, or

**13.7.3** becomes of unsound mind, or of such infirm health as to be incapable of managing his affairs, or

**13.7.4** resigns his office by notice in writing to the Company; or

**13.7.5** ceases to be a director upon his retirement by rotation or until such time as may be specified in the Articles, or

**13.7.6** dies.

**13.8**

**13.8.1** A Director may hold any other office or position of profit under the Company (except that of auditor) in conjunction with his office of Director, and may act in a professional capacity to the Company on such terms as to remuneration and otherwise as the Directors shall arrange.

**13.8.2** 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 a Shareholder or otherwise, and no such Director shall be accountable for any remuneration or other benefits received by him as Director or officer or from his interest in such other company. The Directors may also exercise the voting powers conferred by the shares in any other company held or owned by the Company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing them, or any of their number, Directors or officers of such other company, or voting or providing for the payment of remuneration to the Directors or officers of such other company. A Director may vote in favour of the exercise of such voting rights in manner aforesaid, notwithstanding that he may be, or be about to become, a Director or officer of such other

company, and as such in any other manner is, or may be, interested in the exercise of such voting rights in manner aforesaid.

- 13.9** 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, in such manner as the Directors shall from time to time by resolution determine.
- 13.10** The continuing Directors may act notwithstanding any vacancy in their body, save that if the number of Directors shall have been fixed at two or more persons and by reason of vacancies having occurred in the Board there shall be only one continuing Director he shall be authorised to act alone only for the purpose of appointing another Director.
- 13.11** No Director shall be disqualified by his office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be voided, nor shall 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. The nature of a Director's interest in any contract or arrangement with the Company shall be fully and fairly disclosed to the Directors at or prior to the meeting at which the question of entering into the contract or arrangement is first taken into consideration, and if the Director was not at the date of that meeting interested in the proposed contract or arrangement, or shall become interested in the proposed contract or arrangement, after it is made, he shall forthwith after becoming so interested advise the Company in writing of the fact and nature of his interest. A general notice to the Directors by a Director that he is a Shareholder of a specified firm or company, and is to be regarded as interested in any contract or transaction which may, after the date of notice, be made with such firm or company shall (if such Director shall give the same at a meeting of the Directors, or shall take reasonable steps to secure that the same is brought up and read at the next meeting of Directors after it is given) be a sufficient declaration of interest in relation to such contract or transaction with such firm or company. A Director may be counted as one of a quorum upon a motion in respect of any contract or arrangement which he shall make with the company, or in which he is so interested as aforesaid, and may vote upon such motion.

#### **14. BORROWING POWERS**

##### **14.1**

- 14.1.1** The Board may exercise all the powers of the Company to borrow money and to mortgage or charge all or any of its undertaking, property and assets (present and future) and uncalled capital and subject to any relevant statutes, to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligations of the Company or any third party Provided that the Board shall restrict the borrowings of the Company, and exercise all powers of control exercisable by the Company in relation to its subsidiaries, so as to secure (in relation to its subsidiaries so far as the Board is able) that the aggregate amount for the time being of all borrowings

by the Group (excluding any money owed between members of the Group) shall not at any time without the previous sanction of an ordinary resolution of the Company exceed an amount equal to 50 per cent. of the adjusted capital and reserves of the Company;

**14.1.2** These borrowing powers may be varied by an alteration to the Articles which would require a special resolution of the shareholders.

## **15. OFFICERS**

**15.1** The business of the Company shall be managed by the Directors who may pay all expenses incurred preliminary to and in connection with the formation and registration of the Company, and may exercise all such powers of the Company as are not by the Act or by these Articles required to be exercised by the Shareholders subject to any delegation of such power as prescribed by resolution of the Shareholders. But no requirement made by resolution of the Shareholders shall prevail if it be inconsistent with those Articles nor shall such requirement invalidate any prior act of the Directors which would have been valid if such requirement had not been made.

**15.2** The Board of Directors may entrust to and confer upon any Director or officer any of the powers exercisable by it upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers. The Directors may delegate any of their powers to committees consisting of such Shareholder or Shareholders of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulation that may be imposed on it by the Directors.

**15.3** The Directors may from time to 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 the 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 Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience 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 except that no officer or attorney of the Company may have any power of authority with respect to matters requiring a Resolution of Directors under the Act, nor may any officer or attorney have any power to pass or purport to pass resolutions on behalf of the Company.

**15.4** The Directors of the Company may, by a Resolution of Directors, appoint officers of the Company at such times as shall be considered necessary or expedient, and such officers may consist of a President, one or more Vice-Presidents, a Secretary and a Treasurer and such other officers as may from time to time be deemed desirable. The officers shall perform such duties as shall be prescribed at the time of their appointment subject to any modification in such duties as may be prescribed by the Directors thereafter, but in the absence of any specific allocation of duties it shall be the responsibility of the President to

manage the day to day affairs of the Company, the Vice-Presidents to act in order of seniority in the absence of the President but otherwise to perform such duties as may be delegated to them by the President, the Secretary to maintain the registers, minute books and records (other than financial records) of the Company and to ensure compliance with all procedural requirements imposed on the Company by applicable law, and the Treasurer to be responsible for the financial affairs of the Company.

**15.5** Any person may hold more than one office and no officer need be a Director or Shareholder of the Company. The officers shall remain in office until removed from office by the Directors whether or not a successor is appointed.

**15.6** Any Director who is a body corporate may appoint any person its duly authorised representative for the purpose of representing it at Board Meetings and of transacting any of the business of the Directors.

## **16. PROCEEDINGS OF DIRECTORS**

**16.1** The meetings of the Board of Directors and any committee thereof shall be held at such place or places as the Directors shall decide.

**16.2** The Directors may elect a Chairman of their meetings and determine the period for which he is to hold office; but if no such Chairman is elected, or if at any meeting the Chairman is not presented at the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.

**16.3** The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes; in case of an equality of votes the Chairman shall have a second or casting vote. A Director may at any time summon a meeting of the Directors. If the Company shall have only one Director the provisions hereinafter contained for meetings of the Directors shall not apply but such sole Director shall have full power to represent and act for the Company in all matters and in lieu of minutes of a meeting shall record in writing and sign a note or memorandum of all matters requiring a resolution of the Directors. Such note or memorandum shall constitute sufficient evidence of such resolution for all purposes.

**16.4** A Director shall be given not less than three days' notice of a meeting of the Directors.

**16.5** Notwithstanding Article 16.3 above, a meeting of Directors held in contravention of that Article shall be valid if a majority of the Directors entitled to vote at the meeting have waived the notice of the meeting, and, for this purpose, the presence of a Director at the meeting shall be deemed to constitute waiver on his part.

**16.6** The inadvertent failure to give notice of a meeting to a Director, or the fact that a Director has not received the notice, does not invalidate the meeting.

**16.7** A meeting of Directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate a majority in the Directors if there are more than two Directors and both Directors if there only two Directors.

**16.8** If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall be dissolved.

**16.9** Any one or more shareholders of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**16.10** A resolution approved by a majority of the Directors for the time being entitled to receive notice of a meeting of the Directors or of a committee of the Directors and taking the form of one or more documents in writing or by facsimile, telex, telegram, cable or other written electronic communication shall be as valid and effectual as if it had been passed at a meeting of the Directors or of such committee duly convened and held, without the need for any notice.

## **17. INDEMNITY**

**17.1** Subject to the provisions of the Act and or any other statute for the time being in force every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all or any losses or liabilities which he may sustain or incur in or about the proper execution of the duties of his office or otherwise in relation thereto, no Director or other officer shall be liable for any loss, damage or misfortune which may happen to, or be incurred by the Company in the execution of the duties of his office, or in relation thereto, except in case of willful misconduct or gross negligence by a Director or officer and in which case he shall not be entitled to be indemnified under this Article.

## **18. SEAL**

**18.1** The Directors shall provide for the safe custody of the Seal of the Company. The Seal when affixed to any instrument, except as provided in Article 2, shall be witnessed by a Director or any other person so authorised from time to time by the Directors. The Directors may provide for a facsimile of the Seal and approve the signature of any Director or authorised person which may be reproduced by printing or other means on any instrument and it shall have the same force and validity as if the Seal had been affixed to such instrument and the same had been signed as hereinbefore described. An imprint of the Seal shall be kept at the Registered Office of the Company.

## **19. DIVIDENDS AND RESERVES**

### **19.1**

**19.1.1** Subject to the Act, the Company may, by ordinary resolution, declare dividends to be paid to members of the Company according to their rights and interests in the profits of the Company available for distribution, but no dividend shall be declared in excess of the amount recommended by the Board.

- 19.1.2** The Directors may by resolution declare a dividend but no dividend shall be declared and paid except out of surplus and unless the Directors determine that immediately after the payment of the dividend:
- (a) The Company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
  - (b) the realisable value of the assets of the Company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital.
- 19.2** Dividends may be declared in money or in specie as the Directors shall determine.
- 19.3** The surplus for the purpose of resolving to declare and pay a dividend shall be computed as the Directors from time to time may determine.
- 19.4** Subject to the Act, the Board may from time to time pay to the shareholders of the Company such interim dividends as appear to the Board to be justified by the profits available for distribution and the position of the Company, on such dates and in respect of such periods as it thinks fit.
- 19.5** Except insofar as the rights attaching to, or the terms of issue of, any share otherwise provide (no such shares presently being in issue), all dividends shall be apportioned and paid pro rata according to the amounts paid or credited as paid up (other than in advance of calls) on the shares during any portion or portions of the period in respect of which the dividend is paid.
- 19.6** The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.
- 19.7** If several persons are registered as joint holders of any Share, any of them may give effectual receipt for any dividend or other monies payable on or in respect of the share.
- 19.8** The Board may, if authorised by resolution, offer the holders of shares the right to elect to receive additional shares, credited as fully paid, instead of cash in respect of any dividend or any part of any dividend.
- 19.9** Notice of any dividend that may have been declared shall be given to each Shareholder in manner hereinafter mentioned and all dividends unclaimed for twelve (12) years after having been declared may be forfeited by the Directors for the benefit of the Company.
- 19.10** No dividend shall bear interest against the Company.

**20. BOOKS AND RECORDS**

- 20.1 The Company shall keep such accounts and records as the Directors consider necessary or desirable in order to reflect the financial position of the Company.
- 20.2 The Company shall keep minutes of all meetings of Directors, Shareholders, committees of Directors, committees of officers and committees of Shareholders, and copies of all resolutions consented to by Directors, Shareholders, committees or Directors, committees of officers and committees of Shareholders.
- 20.3 The books, records and minutes required by Articles 20.1 and 20.2 shall be kept at the Registered Office of the Company or at such other place as the Directors determined, and shall be open to the inspection of the Directors at all times.
- 20.4 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the books, records and minutes of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any book, record, minute of document of the Company except as conferred by Law or authorised by resolution of the Directors.

## **21. AUDIT**

- 21.1 The Directors may at their discretion (but they have no obligation to do so) decide to arrange for the annual accounts of the Company to be examined by an auditor or auditors to be appointed by them at such remuneration as may from time to time be agreed.
- 21.2 The auditor (if one is appointed) may be a Shareholder of the Company but no Director or officer shall be eligible during his continuance in office.
- 21.3 Any auditor appointed to the Company shall have a right of access at all times to the books of account and vouchers of the Company, and shall be entitled to require from the officers of the Company such information and explanations as he thinks necessary for the performance of his duties.
- 21.4 The report of the auditor shall be annexed to the accounts upon which he reports, and the auditor shall be entitled to receive notice of, and to attend, any meeting at which the Company's audited profit and loss account and balance sheet is to be presented. Copies of the annual accounts of the Company and the report of the auditor thereon shall be delivered to each person who is a Shareholder on request but in any event, not less than 21 days before the date of any Meeting at which they are to be presented.

## **22. NOTICES**

### **22.1**

- 22.1.1 The Company may communicate electronically with its members at such electronic address as it may be given by such members.
- 22.1.2 Any notices, information or written statement required to be given to Shareholders shall be served personally, by courier or by mail (airmail

service, if available) addressed to each Shareholder at the address shown in the share register.

**22.2** All notices directed to be given to the Shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the share register, and notice so given shall be sufficient notice to all the holders of such share.

**22.3** Any notice, if served by post, shall be deemed to have been served within 5 Business Days of posting, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office. In all other cases notice shall be deemed served when received by the addressee or receipt thereof is refused.

### **23. WINDING UP AND RETURN OF CAPITAL**

**23.1** If the Company shall be wound up, the Liquidator may, in accordance with a resolution of Shareholders with voting rights divide amongst the Shareholders in specie or in kind the whole or any part of the assets of the Company (whether they shall 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 shall be carried out as between the Shareholders or different Classes of Shareholders. The Liquidator may vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the Liquidator shall think fit, but so that no Shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

### **24. ARBITRATION**

**24.1** Whenever any difference arises between the Company on the one hand and any of the Shareholders, their executors, administrators or assigns on the other hand concerning the true intent and construction or the incidence or consequences of these Articles or of the Act, or concerning or arising out of anything done or executed omitted or suffered in pursuance of these articles or the Act or concerning or arising out of any breach or alleged breach or otherwise relating to these Articles or to the affairs of the Company, such difference shall, unless the parties agree to refer the same to a single arbitrator, be referred to two arbitrators one to be chosen by each of the parties to the difference and the arbitrators shall before commencing the arbitration appoint an umpire.

**24.2** If either party to the difference makes default in appointing an arbitrator either originally or by way of substitution (in the event that an appointed arbitrator shall die, be incapable of acting or refuse to act) for ten days after the other party has given him notice to appoint the same such other party may appoint an arbitrator to act in the place of the arbitrator of the defaulting party, The Arbitrators and the Umpire shall meet and determine their own rules of procedure and notify the parties of the same and then shall meet as and when necessary, at such times and places as they shall determine, in order to hear each parties claims, defences and evidence and to give their award. The award shall be final and binding on the parties and judgment thereon may be had in any court of competent jurisdiction.

**25. AMENDMENT TO ARTICLES**

**25.1** The Company may alter or modify the conditions contained in these Articles as originally drafted or as amended from time to time by a resolution of the Shareholders with voting rights or by resolution of the Directors.

**26. VOLUNTARY WINDING UP AND DISSOLUTION**

**26.1** The Company may voluntarily commence to wind up and dissolve by a resolution of Shareholders with voting rights but if the Company has never issued shares it may voluntarily commence to wind up and dissolve by Resolution of Directors.

**27. CONTINUATION**

**27.1** The Company may by resolution of Shareholders with voting rights or by a resolution passed unanimously by all Directors of the Company continue as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands in the manner provided under those laws.

We, Totalserve Trust Company Limited of Trust Offices, P.O. Box 3540, Road Town, Tortola, British Virgin Islands for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign this Articles of Association the 3<sup>rd</sup> day of July, 2008.

Incorporator



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Ronelle Bobb  
Authorised Signatory  
Totalserve Trust Company Limited



**TOTALSERVE**

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**Trust &  
Management**  
**International**