

LEGAL NOTICE NO. [                      ]

## **THE COMPANIES ACT**

(No. of 2015)

### **THE COMPANIES (GENERAL) REGULATIONS, 2015**

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IN EXERCISE of the powers conferred by section 1022 of the  
Companies Act, 2015, the Attorney General makes the following  
regulations:

## **PART I—PRELIMINARY PROVISIONS**

### **1. Citation and commencement**

- (1) These regulations may be cited as the Companies (General) Regulations, 2015.
- (2) Except as provided by subsection (3), these regulations come into operation on the fourteenth day after their publication in the Gazette.
- (3) Those provisions of these regulations that relate to provisions of the Act that have not come into operation by the day specified in paragraph (2) come into operation on the day on which those provisions of the Act come into operation.

### **2. Definition of “the Act” for the purposes of these regulations**

In these regulations—

“the Act” means the Companies Act, 2015.

### **3. Prescribed forms**

The forms set out in the First Schedule are the forms that are prescribed for use under the provisions of the Act specified in the forms.

### **4. Provisions supplementing definitions of “parent undertaking” and subsidiary undertaking”**

- (1) For the purposes of the definition of “parent undertaking” in section 3(1) of the Act, an undertaking is also a parent undertaking of another undertaking if—
  - (a) it has the power to exercise, or actually exercises, dominant influence or control over it; or
  - (b) it and the subsidiary undertaking are managed on a unified basis.
- (2) An undertaking is also a subsidiary undertaking of another undertaking if, because of paragraph (1), the other undertaking is the parent of the undertaking.
- (3) A parent undertaking is taken to be the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are taken to be, parent undertakings; and references to its subsidiary undertakings are to be interpreted accordingly.

- (4) The Second Schedule contains provisions explaining the definition of “parent undertaking” and “subsidiary undertaking” as used in the Act and otherwise supplementing those definitions.
- (5) In this paragraph and the Second Schedule, references to shares (of an undertaking) are to allotted shares.

## **PART II—COMPANIES AND COMPANY FORMATION**

### **5. Additional documents to accompany application for registration of company**

In addition to the documents required by section 13 of the Act, the following documents are required to be attached to an application for the registration of a company:

- (a) a copy of the personal identification number (PIN) certificate of each person proposed to be a director;
- (b) a copy of the identity card or passport of each such person;
- (c) a passport size photograph of each such person;
- (d) in the case of a non-Kenyan citizen, a copy of the person’s passport and a passport size photograph



## **5. Statement of capital and initial shareholdings**

For the purposes of section 14(2)(c) of the Act, the following particulars of the rights attached to the shares are prescribed:

- (a) voting rights that attach to the shares (including voting rights that arise only in certain circumstances);
  - (b) rights to dividends or distributions attached to the shares ;
  - (c) any right to participate in a return of capital (including on the liquidation of the company);
  - (d) whether the shares will be redeemed or may be redeemed at the option of the company or the shareholder ;
  - (e) any terms or conditions relating to redemption of the shares.
- (2) For the purposes of section 14(3) of the Act, the statement of capital and initial shareholdings is required to include the name and address of each subscriber to the memorandum of association.

## **6. Statement of guarantee**

For the purposes of section 15(1) of the Act, the statement of guarantee is required to specify the name and address of each subscriber to the memorandum of association.

## **7. Model articles for companies**

- (1) The articles prescribed by the Third Schedule are model articles that are applicable to a public company.
- (2) The articles prescribed by the Fourth Schedule are model articles that are applicable to a private company.
- (3) The articles prescribed by the Fifth Schedule are model articles that are applicable to a company limited by guarantee.

## **PART III—COMPANY NAMES**

### **8. Names that indicate connection with public authorities**

- (1) If an application for the approval by the Registrar of a name for a proposed company could in the Registrar's opinion give the impression that the company would, if registered with that name, be connected with a public authority, the Registrar shall require the applicant to request the authority to give its view on the matter.
- (2) On being required by the Registrar to do so under paragraph (1), the applicant shall request the authority to give its view as to—
  - (a) whether it considers that the name, if approved, would give the impression referred to in paragraph (1); and

- (b) if the authority considers that the name would have that effect, whether it would object or not object to the name being approved for the company by the Registrar.
- (3) As soon as practicable after receiving a request under paragraph (2), the public authority shall—
  - (a) give its view on the proposed name of the company; and
  - (b) if it considers that that name would give the impression that the company is, if registered under that name, connected with that authority, state whether it objects or does not object to the approval by the Registrar of the name for the company.

## **9. Characters permitted to be use in company’s name**

- (1) For the purposes of section 52 of the Act, the characters, signs, symbols (including accents and other diacritical marks) and punctuation set out Part 1 of the Sixth Schedule can be used in the name of a company registered or to be registered under the Act.
- (2) The following characters can be used in any part of a company name:
  - (a) any character that has an accent or other diacritical mark, sign or symbol set out in Part 1 of the Sixth Schedule ;
  - (b) 0, 1, 2, 3, 4, 5, 6, 7, 8 or 9;

- (c) a full stop, comma, colon, semi-colon or hyphen;
  - (d) any other punctuation referred to in column 1 of Part 2 of the Sixth Schedule but only in one of the forms set out opposite that punctuation in column 2 of that Part.
- (3) The signs and symbols set out in Part 3 of the Sixth Schedule are characters that can be used but not if they are one of the first three characters of a company's name.
- (4) The name of a company may not consist of more than 160 permitted characters.

**10. Circumstances in which a company name will not be registered**

A company name may not be registered if—

- (a) it is the same as a name appearing in the Registrar's Index of Company Names, Business Names, Limited Liability Partnerships or Partnerships;
- (b) it has a close phonetic resemblance to the name of company, business name, limited liability partnership or partnership that is already registered;
- (c) it differs from the name of another company, business name, limited liability partnership or partnership that is already registered only by the addition of the name of a place, locality or region within Kenya;

- (d) it is identical to, or closely resembles, that of a name that has been reserved by the Registrar for use in connection with a proposed company, business name, limited liability partnership or partnership;
- (e) it is identical to, or closely resembles, the name of a company or limited liability partnership that has been dissolved, or has been struck off the register of companies or register of limited liability partnerships, or the entry of a business in the register of business names or partnerships kept under the Registration of Business Names Act 2015 has been cancelled;
- (f) it is the same as a name of a body corporate or established under a written law;
- (g) the Registrar believes on reasonable grounds that its use would involve the commission of a criminal offence; or
- (h) the Registrar believes on reasonable grounds that it is offensive or undesirable or contrary to public interest.

**11. Criteria for determining offensive or undesirable names**

The Registrar is required to apply the following criteria in determining whether a particular name is offensive or undesirable or contrary to the public interest:

- (a) the name includes “co-operative”, “society” or “trade union “or any variant or synonym of those words;
- (b) the name suggests an association with, or the patronage of, the State or any of its agencies, unless there are circumstances that justify its use;
- (c) the name suggests an association with, or the patronage of, a foreign government or an embassy, high commission or consulate representing such a government in Kenya;
- (d) the name suggests an association with, or the patronage of, a county government;
- (e) the name comprises an acronym that will render its use vague or uncertain;
- (f) the name includes the name of a registered trade mark unless a document signed by the owner of the trade mark and indicating consent to its use is provided;
- (g) the name is such that the Registrar believes on reasonable grounds that there is reasonable possibility that it could offend members of a particular community or ethnic or racial group.

**12. Consent to registration of a name which is the same as another in the Registrar’s index of company names.**

- (1) In this regulation—

“existing corporation” means a body corporate whose name already appears in the Registrar’s index of company names.

- (2) For purposes of section 57(2) of the Act, a company (the applicant company) may be registered Act by a proposed name that is the same as, or similar to—
  - (a) the name of an existing company; or
  - (b) a name already reserved for a proposed company that is proposed to be registered, if the conditions specified in paragraph (3) are satisfied.
- (3) The conditions are as follows:
  - (a) the existing company consents, or the promoters of the proposed company, consent, to the proposed name being the name of the applicant company;
  - (b) the applicant company forms, or is to form, part of the same group as the existing company or the proposed company;
  - (c) the applicant company provides the Registrar with a copy of a statement made by that corporation specifying—
    - (i) the consent of the existing company or the promoters of the proposed company as referred to in subparagraph (a); and

- (ii) that the applicant company forms, or is to form, part of the same group as the existing company.
- (4) The Registrar may accept the statement referred to in paragraph (3)(c) as sufficient evidence that the conditions referred to in paragraph (3)(a) and (b) have been satisfied.
- (5) If the consent referred to in paragraph (3)(a) is given by the existing company or by the promoters of a proposed company, a subsequent withdrawal of the consent does not affect the registration of the applicant company by the proposed same name.

## **PART IV—DISPLAY OF COMPANY NAMES AND OTHER INFORMATION**

### **13. Interpretation: Part IV**

- (1) In this Part—
  - “business venue”, in relation to a company, means an office or a place, other than its registered office—
    - (a) where it carries on its business; and
    - (b) that is open to the public;
  - “communication document”, in relation to a company, means any business letter, notice or other official publication of the company;



“registered name”, in relation to a company, means the name by which the company is registered under the Ordinance;

“transaction instrument”, in relation to a company, means—

- (a) any contract or deed purporting to be signed by or on behalf of the company;
  - (b) any bill of exchange, promissory note or endorsement purporting to be signed by or on behalf of the company;
  - (c) any cheque or order for money or goods purporting to be signed by or on behalf of the company; or
  - (d) any consignment note, invoice, receipt or letter of credit of the company.
- (2) In this Part, a reference to a communication document or transaction instrument is a reference to it in hard copy form, electronic form or any other form.
- (3) In this Part, a reference to the website of a company includes any part of a website relating to the company which the company has caused or authorised to appear.

#### **14. Display of registered name at registered office, etc**

- (1) A company shall display continuously its registered name in legible characters at—
- (a) its registered office; and

- (b) every business venue of the company.
- (2) A company shall also ensure that its registered name is positioned so that it can be easily seen by any visitor to the office or business venue.
- (3) If a location is the registered office or a business venue of more than six companies, and any of the companies, in purported compliance with paragraphs (1) and (2), displays its registered name through an electronic device, the registered name is taken to be displayed continuously for the purposes of those paragraphs if—
  - (a) the registered name is displayed for at least fifteen continuous seconds at least once in every four minutes; or
  - (b) the registered name is capable of being displayed within four minutes after a request to make the display is made through the electronic device.
- (4) Paragraphs (1), (2) and (3) do not apply to a company that has had no accounting transaction at any time since its incorporation.
- (5) If—
  - (a) a liquidator or administrator of a company has been appointed; and
  - (b) the registered office or any business venue of the company is also a place where the business of the liquidator, receiver or manager is carried on,

paragraphs (1), (2) and (3) do not apply to that registered office or business venue.

**15. Registered name to appear in communication documents, etc.**

A company shall state its registered name in legible characters—

- (a) in any communication document of the company;
- (b) in any transaction instrument of the company; and
- (c) on any website of the company.

**16. Adequacy of certain descriptions of companies**

The description of a company is not inadequate or incorrect only because the company—

- (a) uses the abbreviation “Co.” or “Coy.” instead of the word “Company” contained in the name of the company;
- (b) uses the abbreviation “Ltd.” instead of the word “Limited” contained in the name of the company;
- (c) uses the symbol “&” instead of the word “and” contained in the name of the company;
- (d) uses any of those words instead of the corresponding abbreviation or symbol contained in the name of the company; or

- (e) uses any type or case of letters, spaces between letters, accents or punctuation marks that are not the same as those appearing in the name of the company; or
- (f) inserts uses or omits the word “The” or “the” as the first word in its name.

## **17. Offences under this Part**

- (1) If a company contravenes regulation 14(1) or (2) or 15 the company, and each officer of the company who is in default, commit an offence and, on conviction, each of them is liable to a fine not exceeding two hundred thousand shillings.
- (2) If, on behalf of a company, a person other than an officer of the company—
  - (a) issues or authorises the issue of any communication document of the company in respect of which regulation 16is contravened;
  - (b) signs or authorises to be signed on behalf of the company any contract, deed, bill of exchange, promissory note, endorsement, cheque or order for money or goods in respect of which regulation 16(b) is contravened;
  - (c) issues or authorises the issue of any consignment note, invoice, receipt or letter of credit of the company in respect of which regulation 15(b) is contravened; or

- (d) causes or authorises the appearance of a website of the company in respect of which regulation 15(c) is contravened,

the person commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

## **PART V—PROVISIONS RELATING TO DIRECTORS**

### **Division 1—Introductory provisions**

#### **18. Provisions for interpreting this Part**

- (1) In this Part—
  - (a) a reference to a director, in relation to an undertaking that is not a company, is a reference to the person holding an office in that undertaking corresponding to that of a director of a company; and
  - (b) a reference to a connected entity, in relation to a director, is a reference to a body corporate connected with the director within the meaning of the First Schedule to the Act.
- (2) For the purposes of this Part, a body corporate is controlled by a director if—
  - (a) the director is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at any general meeting of the body; or

- (b) the directors, or a majority of the directors, of the body are accustomed to act in accordance with the directions or instructions of the director.
- (3) In paragraph (2), a reference to voting power the exercise of which is controlled by a director includes voting power the exercise of which is controlled by another body corporate if the director is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at any general meeting of that other body corporate.

**Division 2—Disclosure of directors’ remuneration and other benefits payable for directors’ services**

**19. Interpretation of Division 2**

- (1) In this Division—
  - “contributions”, in relation to a retirement benefits scheme means the payments (including insurance premiums) made under the scheme by or in respect of persons rendering services in respect of which retirement benefits are payable under the scheme; but does not include payments made in respect of two or more such persons if the amount of the payments made in respect of each of those persons cannot be ascertained;
  - “qualifying services”, in relation to a person, means—

- (a) the person's services as a director of the company concerned; or
- (b) while the person is a director of the company—
  - (i) the person's services as a director of a subsidiary undertaking of the company; or
  - (ii) the person's other services in connection with the management of the affairs of the company or a subsidiary undertaking of the company;

“retirement benefits”, in relation to a person, includes any lump sum, allowance, gratuity, periodical payment or other like benefit, any other property, or any other benefit whether in cash or otherwise—

- (a) given or to be given on or after the retirement or death of the person (including any annuity or other benefit paid or payable under any insurance policy on or after the retirement or death of the person);
- (b) given or to be given in anticipation of the retirement of the person; or
- (c) given or to be given in connection with the person's service rendered before the retirement or death of the person;

but does not include—

- (d) any benefit which has been or is to be afforded solely because of the person’s personal injury (including any incapacity or death caused by that injury) by accident arising out of and in the course of employment; and
- (e) any retirement gift of a value (or, in the case of a retirement gift made otherwise than in cash, an estimated money value) not exceeding KSh500,000;

“retirement benefits scheme” means a scheme for the provision of retirement benefits, and includes a retirement insurance scheme;

“retirement insurance scheme” means a scheme for the provision of insurance coverage—

- (a) on or after the retirement or death of a person; or
- (b) in connection with a person’s service rendered before the retirement or death of the person,

but does not include a scheme for the provision of insurance coverage for a person’s personal injury (including any incapacity or death caused by that injury) by accident arising out of and in the course of employment.

- (2) In this Part, a reference to a director includes a former director;



- (3) In this Division, a reference to a subsidiary undertaking of a company—
- (a) in relation to a person who, while a director of the company, is or was also a director of any other undertaking by virtue of the company’s nomination (whether direct or indirect), includes that other undertaking, whether or not that other undertaking is or was in fact a subsidiary undertaking of the company;
  - (b) for the purposes of regulation 23, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
  - (c) in subparagraph (b) of the definition of “qualifying services” in paragraph (1)—
    - (i) for the purposes of regulations 20, 21 and 23, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
    - (ii) for the purposes of regulation 22, is a reference to a subsidiary undertaking of the company immediately before the loss of office as a director of the company.

**20. Information about directors’ remuneration to be included in notes to financial statements**

- (1) The information about directors' remuneration prescribed by paragraph (2) is information required to be included in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in paragraph (1) is—
  - (a) the aggregate amount of the remuneration paid to or receivable by the directors of the company in respect of their qualifying services; and
  - (b) if any such remuneration consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information is required to distinguish between—
  - (a) the remuneration paid or receivable in respect of a person's services as a director, whether of the company or its subsidiary undertaking; and
  - (b) the remuneration paid or receivable in respect of that person's other services in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) Any remuneration paid or receivable in respect of a person accepting office as a director are to be treated as remuneration paid or receivable in respect of that person's services as a director.
- (5) For the purposes of this regulation, if any remuneration consisting of a benefit otherwise

than in cash, to that extent, a reference to the amount of the remuneration is a reference to the estimated money value of that benefit.

- (6) In this regulation—
- “remuneration”, in relation to a director includes includes—
- (a) the director’s fees, percentages, salaries and bonuses;
  - (b) any sums paid to the director by way of expenses allowance less the amounts actually spent on the expenses for which the allowance was made;
  - (c) any contributions paid under a retirement benefits scheme, by any person other than the director, in respect of the director; and
  - (d) any other benefits received by the director, whether in cash or otherwise,
- but does not include any retirement benefits to which the director is entitled under any retirement benefits scheme.

## **21. Information about directors’ retirement benefits to be included in notes to financial statements**

- (1) The information about directors’ retirement benefits prescribed by paragraph (2) is information required to be included in the notes to the financial statements of a company for a financial year.

- (2) The information referred to in paragraph (1) is—
  - (a) the aggregate amount of the retirement benefits paid to or receivable by the directors of the company in respect of their qualifying services; and
  - (b) if any such retirement benefits consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information is required to distinguish between—
  - (a) the retirement benefits paid or receivable in respect of a person's services as a director, whether of the company or its subsidiary undertaking; and
  - (b) the retirement benefits paid or receivable in respect of that person's other services in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) For the purposes of paragraphs (2) and (3), any amount of the retirement benefits paid or receivable under a retirement benefits scheme is to be disregarded if the contributions made under the scheme are substantially adequate for the maintenance of the scheme.
- (5) For the purposes of this regulation, if any retirement benefits consist of a benefit otherwise than in cash, to that extent, a reference to the

amount of the retirement benefits is a reference to the estimated money value of that benefit.

**22. Information about payments made or benefit provided in respect of termination of directors' services**

- (1) The information prescribed by paragraph (2) about payments made, or benefits provided, in respect of the termination of the services of directors (whether in the capacity of directors or in any other capacity while directors) is information required to be included in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in paragraph (1) is—
  - (a) the aggregate amount of the payments for loss of office (as defined by section 180 of the Act) made to or receivable by the directors of the company, whether in cash or otherwise, in respect of the termination of the qualifying services of the directors; and
  - (b) if any such payments for loss of office consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information is required to distinguish between—
  - (a) the payments made to or receivable by a person for the loss of office as a director,

whether of the company or its subsidiary undertaking; and

- (b) the payments made to or receivable by that person for the loss of any other office in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) The information is also required to distinguish between—
- (a) the amounts paid by or receivable from the company;
  - (b) the amounts paid by or receivable from the subsidiary undertakings of the company; and
  - (c) the amounts paid by or receivable from any other person.
- (5) For the purposes of this regulation, if any payments for loss of office consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the payments is a reference to the estimated money value of that benefit.

**23. Information about consideration provided to or receivable by third parties for making available directors' services**

- (1) The information prescribed by paragraph (2) about consideration provided to or receivable by any third party for making available the services of a person as a director of a company, or in any other capacity while a director, is information

required to be included in the notes to the financial statements of a company for a financial year.

- (2) The information referred to in paragraph (1) is—
  - (a) the aggregate amount of the consideration provided to or receivable by the third party, whether in cash or otherwise, for making available the qualifying services of such a person; and
  - (b) if any such consideration consists of a benefit otherwise than in cash—the nature of that benefit.
- (3) In this regulation, a reference to any third party is a reference to any person other than—
  - (a) the director;
  - (b) a connected entity of the director;
  - (c) the company; or
  - (d) a subsidiary undertaking of the company.
- (4) For the purposes of this regulation, if any consideration consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the consideration is a reference to the estimated money value of that benefit.

**24. Only information included in company's records required to be given**

This Division requires information to be given by a company only in so far as—

- (a) the information is included in the company's records; or
- (b) the company has the right to obtain it from the persons concerned.

**25. Amounts paid or receivable in which period to be shown**

- (1) For the purposes of this Division, an amount shown in the notes to the financial statements for a financial year is required to be the amount of—
  - (a) all relevant sums receivable in respect of that year (whenever paid); or
  - (b) in the case of sums not receivable in respect of a period, the sums paid during that year.
- (2) If an amount is shown for a financial year in the notes to the financial statements for that year in relation to the information prescribed by this Division, the corresponding amount for the immediately preceding financial year must also be shown in the notes.

**26. Payments made by or to which person to be shown**

- (1) For the purposes of this Division, an amount shown in the notes to the financial statements of a company in relation to the information prescribed by this Part is to include all relevant sums, whether paid by or receivable from the company or its subsidiary undertaking or any other person.



- (2) In this Division, a reference to a payment to or receivable by a director includes—
  - (a) a payment to or receivable by a connected entity of the director; and
  - (b) a payment to a person made or to be made at the direction of, or for the benefit of, the director or a connected entity of the director.
- (3) In this Division, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.

**27. Payments accounted for not to be included until liability released or not enforced**

- (1) For the purposes of this Division, an amount shown in the notes to the financial statements of a company is not to include the amount of a payment—
  - (a) that is to be accounted for to the company or any subsidiary undertaking of the company; or
  - (b) that is to be accounted for under section 187 of the Act (Payments made without approval: civil consequences)—to those who have sold their shares as a result of a takeover offer (within the meaning of section 584 of the Act) made.
- (2) If—

- (a) the amount of any payment received in a financial year is not shown in the notes to the financial statements for that year on the ground that the person receiving the payment is liable to account for it; and
- (b) the liability is, wholly or partly, released subsequently or is not enforced within 2 years after the date on which the payment is received by the person,

the amount of the payment must (to the extent that the liability is so released or not enforced) be shown in the notes to the first financial statements in which it is practicable to show it, and is required to be distinguished from the amounts to be shown apart from this provision.

## **28. How to distinguish between different payments**

Subject to any express provision to the contrary, if any distinction is required to be made in any information to be shown in accordance with this Part, the directors may, for the purpose of complying with the requirement, apportion any payment between the matters in respect of which the payment is made or receivable in the manner that the directors think fit.

### **Division 3—Disclosure of loans, quasi-loans and other dealings in favour of directors**

## **29. Interpretation of Division 3**

- (1) In this Division—

“bank” means a bank to which the Banking Act (Cap 488) applies;

“credit transaction” has the meaning given by section 155 of the Act for the purposes of Division 5 of Part IX of the Act;

“guarantee” includes indemnity;

“holding company” includes a parent undertaking that is a company;

“quasi-loan” has the meaning given by section 156 of the Act;

“specified company” means—

- (a) a public company; or
- (b) a private company or company limited by guarantee that is a subsidiary of a public company;

“transaction” means—

- (a) any loan, quasi-loan or credit transaction; or
- (b) any guarantee or security in connection with any loan, quasi-loan or credit transaction.

- (2) In this Division, a reference to a subsidiary undertaking of a company, in relation to a transaction, is a reference to such an undertaking at the end of the company’s financial year, whether or not it was in fact a subsidiary

undertaking of the company on the date of the transaction.

- (3) In this Division, a reference to a loan, quasi-loan or credit transaction, or a guarantee or security in connection with a loan, quasi-loan or credit transaction, includes—
  - (a) any arrangement under which the loan or quasi-loan is made or the credit transaction is entered into, or under which the guarantee is given or security is provided; and
  - (b) any arrangement for an assignment or assumption of any rights, obligations or liabilities under the loan, quasi-loan or credit transaction or under the guarantee or security.
- (4) In this Division, a reference to a person for whom a transaction is entered into is a reference to a director, a body corporate controlled by a director, or an entity connected with a director, for whom a transaction is entered into—
  - (a) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, is a reference to the director, controlled body corporate or connected entity to whom the loan or quasi-loan is made; or
  - (b) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, is a reference to the director or connected entity to whom goods,

land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.

**30. Application of Division 3**

- (1) This Division applies to a transaction that—
  - (a) was entered into during a particular financial year; or
  - (b) subsisted at any time during that year.
- (2) This Division applies whether or not the transaction is prohibited under Division 5 of Part IX of the Act.

**31. Information to be included in notes to company's financial statements**

- (1) The information about loans, quasi-loans and other dealings in favour of directors, their controlled bodies corporate and their connected entities prescribed by paragraph (2) is required to be included in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in paragraph (1) is—
  - (a) the particulars of any transaction entered into by the company for a person who at any time during the financial year was—
    - (i) a director of the company or of its holding company;

- (ii) a controlled body corporate of such a director; or
    - (iii) in the case of a specified company, a connected entity of such a director; and
  - (b) the particulars of any transaction entered into by a subsidiary undertaking of the company for a person who at any time during the financial year was a director of the company.
- (3) The particulars referred to in paragraph (2)(a) and (b) are—
  - (a) the name of the person for whom the transaction was entered into, and—
    - (i) if the person was a controlled body corporate of a director of the company or of its holding company, the name of that director; or
    - (ii) if the person was a connected entity of a director of the company or of its holding company, the name of that director and the nature of the connection;
  - (b) if the transaction consists of a loan, quasi-loan or credit transaction—
    - (i) the principal terms of the loan, quasi-loan or credit transaction, including the amount payable under it (whether in a lump sum or by instalments, or by way of periodical payments or otherwise), the

- rate of interest (if any) and the security for it (if any);
- (ii) the amount outstanding on the loan, quasi-loan or credit transaction, in respect of the principal and interest or otherwise, at the beginning of the financial year;
  - (iii) the amount so outstanding at the end of the financial year;
  - (iv) if, at different times during the financial year, the amounts so outstanding are different, the greater of those amounts;
  - (v) the amount (if any) that, having fallen due, has not been paid; and
  - (vi) the amount of any provision made in respect of any failure or anticipated failure to repay the whole or part of the loan, quasi-loan or credit transaction, or to pay the whole or part of any interest or otherwise on the loan, quasi-loan or credit transaction; and
- (c) if the transaction consists of a guarantee or security in connection with a loan, quasi-loan or credit transaction—
- (i) the amount representing the maximum liability that may be incurred under the

guarantee or security at the beginning of the financial year;

- (ii) the amount representing the maximum liability that may be so incurred at the end of the financial year;
- (iii) (if, at different times during the financial year, the amounts representing the maximum liability that may be so incurred are different) the greatest of those amounts; and
- (iv) the amount paid and the amount of any liability incurred during the financial year for the purpose of fulfilling the guarantee or discharging the security, including any loss incurred by reason of the enforcement of the guarantee or security.

**32. Provisions for statement instead of information prescribed by regulation 31**

- (1) If the requirement prescribed by paragraph (2) is complied with, the financial statements for a financial year do not need to include—
  - (a) the particulars specified in regulation 31(3)(b) in respect of a quasi-loan or credit transaction; and
  - (b) the particulars specified in regulation 31(3)(c) in respect of a guarantee or security



in connection with a quasi-loan or credit transaction.

- (2) The requirement referred to in paragraph (1) is that the notes to the financial statements for the financial year must contain a statement showing, in respect of each person named in the notes under regulation 31(3)(a), the following information—
  - (a) in relation to all quasi-loans made to, and all credit transactions entered into for, each such person—
    - (i) the aggregate of the amounts outstanding referred to in regulation 31(3)(b)(ii) on those quasi-loans and credit transactions;
    - (ii) the aggregate of the amounts outstanding referred to in regulation 31(3)(b)(iii) on those quasi-loans and credit transactions;
    - (iii) the aggregate of the amounts referred to in regulation 31(3)(b)(v) in respect of those quasi-loans and credit transactions; and
    - (iv) the aggregate of the amounts of provision referred to in regulation 31(3)(b)(vi) in respect of those quasi-loans and credit transactions; and
  - (b) in relation to all guarantees and security in connection with all quasi-loans made to, and

all credit transactions entered into for, each such person—

- (i) the aggregate of the amounts representing the maximum liability referred to in regulation 31(3)(c)(i) that may be incurred under those guarantees and security;
- (ii) the aggregate of the amounts representing the maximum liability referred to in regulation 31(3)(c)(ii) that may be incurred under those guarantees and security; and
- (iii) the aggregate of the amounts referred to in regulation 31(3)(c)(iv) in respect of those guarantees and security.

**33. Provisions applicable to company that is, or if its subsidiary undertaking, is a bank**

- (1) If a company is a bank, the notes to the financial statement of the company for a financial year are required to include a statement showing the amounts calculated in accordance with paragraph (2).
- (2) The amounts referred in paragraph (1) are to be calculated by adding together the following amounts at the end of the company's financial year:

- (a) the amount outstanding, in respect of the principal and interest or otherwise, on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as a creditor for, persons each of whom was, at any time during the financial year—
    - (i) a director of the company or of its holding company;
    - (ii) a controlled body corporate of such a director; or
    - (iii) in the case of a specified company, a connected entity of such a director; and
  - (b) the amount representing the maximum liability that may be incurred under all guarantees given, and all security provided, by the company in connection with all loans and quasi-loans made to, and all credit transactions entered into for, the persons referred to in subparagraph (a).
- (3) If, at different times during the financial year, the aggregates of the amounts referred to in paragraph (2)(a) and (b) are different, the amount to be shown in the notes to the company's statement is the greater of those aggregates.
- (4) If a subsidiary undertaking of a company is a bank, the notes to the financial statements of the company for a financial year are required to

contain a statement showing the amount calculated in accordance with paragraph (5).

- (5) For the purposes of paragraph (4), the amount is to be calculated by adding together the aggregate of the following amounts at the end of the financial year:
  - (a) the amount outstanding, in respect of the principal and interest or otherwise, on all loans and quasi-loans made by the bank to, and all credit transactions entered into by the bank as a creditor for, persons each of whom was, at any time during the financial year, a director of the company; and
  - (b) the amount representing the maximum liability that may be incurred under all guarantees given, and all security provided, by the bank in connection with all loans and quasi-loans made to, and all credit transactions entered into for, the persons referred to in subparagraph (a).
- (6) If, at different times during the financial year, the aggregates of the amounts referred to in paragraph (5)(a) and (b) are different) the amount to be shown in the statement is the greater of those aggregates.
- (7) In the case of a transaction entered into for any person by a company that is, or a company's subsidiary undertaking that is, a bank, the information prescribed by regulation 31 does not need to be included in the financial statements of the company for a financial year if—

- (a) the value of the transaction is not greater, and the terms of it are not more favourable, than what is reasonable to expect the bank to have offered to a person of the same financial standing but unconnected with the bank; or
  - (b) in any other case, the aggregate of the amounts specified in paragraph (8) does not exceed KSh100,000,000 or an amount equivalent to 10 per cent of the paid up capital and reserves of the bank, whichever is the lower.
- (8) The following are the amounts referred to in paragraph (8)(b):
- (a) the amount outstanding, in respect of the principal and interest or otherwise, during the financial year on all loans and quasi-loans (except those falling within paragraph (7)(a)) made by the bank to, and all credit transactions (except those falling within that paragraph) entered into by the bank as a creditor for, that person or, if, at different times during the financial year, the amounts so outstanding are different, the greater of those amounts; and
  - (b) the amount representing the maximum liability that may be incurred during the financial year under all guarantees (except those falling within paragraph (7)(a)) given, and all security (except those falling within that paragraph) provided, by the bank in

connection with all loans and quasi-loans made to, and all credit transactions entered into for, that person or, if, at different times during the financial year, the amounts representing the maximum liability that may be so incurred are different, the greater of those amounts.

### **34. Exemption for employee**

This Division does not apply to a loan or quasi-loan made by a company to an employee of the company or by a subsidiary undertaking of the company to an employee of the subsidiary undertaking, or a credit transaction entered into by a company as a creditor for an employee of the company or by a subsidiary undertaking of the company as a creditor for an employee of the subsidiary undertaking, if—

- (a) the value of the loan, quasi-loan or credit transaction does not exceed KSh1,000,000;
- (b) the loan or quasi-loan is certified by the directors of the company or the subsidiary undertaking to have been made, or the credit transaction is so certified to have been entered into, in accordance with the relevant practice adopted or about to be adopted by the company or the subsidiary undertaking;
- (c) the loan or quasi-loan is not made, or the credit transaction is not entered into, by the company under a guarantee given, or security provided,

by a subsidiary undertaking of the company;  
and

- (d) the loan or quasi-loan is not made, or the credit transaction is not entered into, by the subsidiary undertaking under a guarantee given, or security provided, by the company or any other subsidiary undertaking of the company.

### **35. How to determine value of transaction**

For the purposes of this Division, Part XVI of the Act (General provisions relating to independent valuation and report) applies in determining the value of a transaction.

## **Division 4—Disclosure of directors’ material interests in transactions, arrangements or contracts**

### **36. Application of Division 4**

This Division applies to a transaction, arrangement or contract that—

- (a) was entered into during a particular financial year; or
- (b) subsisted at any time during that year.

### **37. Information about material interests of directors in transactions, arrangements or contracts**

- (1) The information prescribed by paragraph (2) about material interests of directors in transactions, arrangements or contracts entered

into by a company is information required to be included in the notes to the financial statement of the company for a financial year.

- (2) The information referred to in paragraph (1) is the particulars of any transaction, arrangement or contract—
  - (a) entered into by the company; and
  - (b) in which a person who at any time during the financial year was a director of the company had, directly or indirectly, a material interest.
- (3) The particulars referred to in paragraph (2) are—
  - (a) the principal terms of the transaction, arrangement or contract;
  - (b) a statement of the fact that the transaction, arrangement or contract was entered into or subsisted during the financial year;
  - (c) the names of the parties to the transaction, arrangement or contract;
  - (d) the name of the director having the material interest and the nature of that interest; and
  - (e) if that director is treated as having the material interest because of paragraph (4), the name of the director's connected entity and the nature of the connection.
- (4) For the purposes of this regulation, a director of a public company is treated as having a material interest in a transaction, arrangement or contract entered into by the public company if a connected



entity of that director has a material interest in that transaction, arrangement or contract.

- (5) In this regulation, a reference to a transaction, arrangement or contract is a reference to a transaction, arrangement or contract that is significant in relation to the company's business.
- (6) For the purposes of paragraph (5), a transaction, arrangement or contract is not significant in relation to the company's business if, after consideration, the directors of the company are of the opinion that it is not significant in relation to the company's business.
- (7) For the purposes of this regulation, an interest that a director of a company has in a transaction, arrangement or contract is not material if, after consideration, the directors of the company are of the opinion that it is not material.

### **38. Exemption under Division 4**

This Division does not apply to—

- (a) a transaction, arrangement or contract between the company and another undertaking in which a director of the company has an interest only because the director is also a director of that other undertaking; or
- (b) a director's contract of service.

### **Division 5—Directors' liability**

### **39. Provisions protecting directors from liability**

A non-contractual document to which a company is a party is a document prescribed for the purpose of section 194(1)(c) of the Act if it contains provisions purporting to exempt a director of the company from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company.

## **PART VI—FURTHER REQUIREMENTS FOR DIRECTORS’ REPORTS**

### **40. Interpretation: Part VI**

In this Part—

“directors’ report” means the report required to be prepared under section 653 of the Act;

“parent company” means a parent undertaking that is a company;

“specified undertaking”, in relation to a company, means—

- (a) a parent company of the company;
- (b) a subsidiary undertaking of the company; or
- (c) a subsidiary undertaking of the company’s parent company.

### **41. Directors’ report to include details of directors’ interests**

- (1) A directors' report for a financial year is required to include a statement that complies with paragraph (3) if, at the end of the financial year, there exist arrangements—
  - (a) to which the company or a specified undertaking of the company is a party; and
  - (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- (2) A directors' report for a financial year is required to include a statement that complies with paragraph (3) if at any time in the financial year there existed arrangements—
  - (a) to which the company or a specified undertaking of the company was a party; and
  - (b) whose objects were, or one of whose objects was, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- (3) The statement is required—
  - (a) to explain the effect of the arrangements referred to in paragraph (1) or (2); and
  - (b) to give the names of the persons who at any time in that financial year were directors of the company and held, or whose nominees

held, shares or debentures acquired under the arrangements.

- (4) Paragraphs (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.

**42. Directors' report to give details of certain donations made by company**

- (1) If a company (not being the wholly owned subsidiary of a company incorporated in Kenya)—
  - (a) has no subsidiary undertakings; and
  - (b) has in a financial year made donations for charitable or other purposes to a total amount of not less than KSh100,000,a directors' report for the financial year is required to state the total amount of those donations.
- (2) If—
  - (a) a company (not being the wholly owned subsidiary of a company incorporated in Kenya) has subsidiary undertakings; and
  - (b) the company has in a financial year made donations (whether on its own or by its subsidiary undertakings) for charitable or other purposes to a total amount of not less than KSh100,000,

a directors' report for the financial year is required to state the total amount of those donations.

- (3) Paragraphs (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.
- (4) For the purposes of paragraphs (1) and (2), a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as members:
  - (a) that other body corporate;
  - (b) a wholly owned subsidiary of that other body corporate;
  - (c) a nominee of that other body corporate or such a wholly owned subsidiary.

#### **43. Shares issued by company during financial year**

If, in any financial year of a company, the company has issued any shares, a directors' report for the financial year is required to state—

- (a) the reason for making the issue;
- (b) the classes of shares issued; and
- (c) for each class of shares, the number of shares issued and the consideration received by the company for the issue.

#### **44. Debentures issued by company during financial year**

If, in any financial year of a company, the company has issued any debentures, a directors' report for the financial year is required to state—

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) for each class of debentures, the amount issued and the consideration received by the company for the issue.

#### **45. Equity-linked agreements**

- (1) If, in any financial year of a company, the company has entered into an equity-linked agreement, a directors' report for the financial year is required to state—
  - (a) the reason for entering into the agreement;
  - (b) the nature and terms of the agreement including, if applicable—
    - (i) the conditions that are required to be met before the company issues any shares;
    - (ii) the conditions that is required to be met before a third party may require the company to issue any shares; and
    - (iii) any monetary or other consideration that the company has received or will receive under the agreement;
  - (c) the classes of shares issued under the agreement; and

- (d) for each class of shares, the number of shares that have been issued under the agreement.
- (2) If, at the end of a financial year of a company, there exists an equity-linked agreement entered into by the company, a directors' report for the financial year is required to state—
  - (a) the classes of shares that may be issued under the agreement;
  - (b) for each class of shares, the number of shares that may be issued under the agreement;
  - (c) any monetary or other consideration that the company has received or will receive under the agreement; and
  - (d) any other conditions or terms that remain to be met before the shares are issued.
- (3) In this regulation, “equity-linked agreement”—
  - (a) means—
    - (i) an agreement that will or may result in the company issuing shares; or
    - (ii) an agreement requiring the company to enter into the agreement specified in sub-subparagraph (i); and
  - (b) includes—
    - (i) an option to subscribe for shares;
    - (ii) an agreement for the issue of securities that are convertible into, or entitle the

- holder to subscribe for, shares in the company;
- (iii) an employee share scheme; and
  - (iv) a share option scheme; but
- (c) does not include—
- (i) an agreement to subscribe for shares in a company that is entered into pursuant to the company’s offer of its shares to the public; and
  - (ii) an agreement to subscribe for shares in a company that is entered into pursuant to an offer made to the members of the company in proportion to their shareholdings;
- “offer” includes an invitation to the public to subscribe for shares in a company.

**46. Dividend recommended by directors**

A directors’ report for a financial year is required to state the amount (if any) that the directors of the company recommend should be paid by way of dividend for the financial year.

**47. Directors’ report to include reasons for resignation of director, etc.**

- (1) This regulation applies if—



- (a) a director of a company has in a financial year resigned from the office or has refused to stand for re-election to the office; and
  - (b) the company has received a notice in writing from the director specifying that the resignation or refusal is due to reasons relating to the affairs of the company (whether or not other reasons are specified).
- (2) A directors' report for the financial year is required to include a summary of the reasons for the director's resignation or refusal to stand for re-election in so far it relates to the affairs of the company.
- (3) This regulation does not apply to a company that is exempt from the audit requirements of Part XXVII of the Act.

**48. Details of permitted indemnity provision to be included in directors' report**

- (1) If, when a directors' report prepared by the directors of a company is approved in a financial year of the company in accordance with section 658 of the Act (Directors to approve and sign directors' report), a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or of any associated company, the directors' report for the financial year is required to include a statement that the permitted indemnity provision is in effect

as provided by section 197 of the Act (Directors to disclose qualifying indemnity provision in directors' report).

- (2) If, at any time in the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, or of an associated company, the directors' report for the financial year is required to include a statement that the permitted indemnity provision was in effect as provided by section 197(2) of the Act.

- (3) In this regulation—

“permitted indemnity provision”, in relation to a company, means a provision that—

- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) has effect as provided by section 197(2) of the Act;

“third party”, in relation to a company, means a person other than the company or an associated company.

**49. Details of material interests in transaction, arrangement or contract to be included in directors' report**

- (1) A directors' report for a financial year of a company is required to state the particulars of any transaction, arrangement or contract—
  - (a) entered into by a specified undertaking of the company; and
  - (b) in which a person who at any time in the financial year of the company was a director of the company had, directly or indirectly, a material interest.
- (2) The particulars referred to in paragraph (1) are—
  - (a) the principal terms of the transaction, arrangement or contract;
  - (b) the fact that the transaction, arrangement or contract was entered into or existed in the financial year;
  - (c) the names of the parties to the transaction, arrangement or contract;
  - (d) the name of the director having the material interest and the nature of that interest; and
  - (e) if the director is treated as having the material interest because of paragraph (3), the name of the director's connected entity and the nature of the connection.
- (3) For the purposes of this regulation, a director of a public company is treated as having a material interest in a transaction, arrangement or contract entered into by a specified undertaking of the company if a connected entity of that director has

a material interest in that transaction, arrangement or contract.

- (4) In this regulation, a reference to a transaction, arrangement or contract is a reference to a transaction, arrangement or contract that is significant in relation to the company's business.
- (5) For the purposes of paragraph (4), a transaction, arrangement or contract is not significant in relation to the company's business if, after consideration, the directors of the company are of the opinion that it is not significant in relation to the company's business.
- (6) For the purposes of this regulation, an interest that a director of a company has in a transaction, arrangement or contract is not material if, after consideration, the directors of the company are of the opinion that it is not material.
- (7) This regulation does not apply in respect of—
  - (a) a company that falls within the reporting exemption for the financial year;
  - (b) a transaction, arrangement or contract unless it was entered into in the financial year or existed at any time in that year;
  - (c) a transaction, arrangement or contract between the company and its specified undertaking in which a director of the company has a material interest; or
  - (d) a director's contract of service.

- (8) In this regulation—
  - (a) a reference to a director includes a shadow director; and
  - (b) a reference to a connected entity, in relation to a director, is a reference to a body corporate connected with the director (within the meaning of the First Schedule to the Act).

## **PART VII—DISQUALIFICATION OF DIRECTORS**

### **50. Additional statement to be lodged with Registrar in relation to persons disqualified from being directors**

- (1) If the statement of proposed officers lodged with the Registrar under section 16 of the Act relates (wholly or partly) to a person who is a person subject to a disqualification order or a disqualification undertaking disqualifying the person from being a director or secretary of a company, the applicant for registration of the company shall attach to, or enclose with, the statement an additional statement giving such information about that person as referred to in section 230(2) of the Act.
- (2) If the statement or notice lodged by a company with the Registrar under section 138 or 249 of the Act relates (wholly or partly) to a person who is a person subject to a disqualification order or disqualification undertaking from being a director or secretary of a company, the company shall

attach to, or enclose with, the statement or notice an additional statement giving the information about that person as referred to in section 230(2) of the Act.

- (3) If a person who applies for registration of a company fails to comply with paragraph (2), the person commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.
- (4) If, after a person is convicted of an offence under paragraph (3), the person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.
- (5) If a company fails to comply with paragraph (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.
- (6) If, after a company or any of its officers is convicted of an offence under paragraph (3), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

## **PART VIII—SHARE CAPITAL OF COMPANY**

### **51. Returns of allotment by limited companies**

The information required to be included in a return of an allotment of shares required to be lodged with the Registrar under section 333 of the Act is as follows:

- (a) the number of shares allotted;
- (b) the amount paid up and the amount (if any) unpaid on each allotted share (whether on account of the nominal value of the share or by way of premium);
- (c) if the shares are allotted as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash, the consideration for the allotment.

### **52. Communication of pre-emption offers to shareholders.**

For purposes of section 339 of the Act, a pre-emption offer made under section 338 of the Act is effective if accepted within a period of twenty eight days after the date on which the offer is made and section 339(3) of the Act is modified accordingly.

### **53. Meaning of payment in cash for purposes of section 359(2)(e) of Act**

For purposes of section 359(2)(e) of the Act, cash consideration includes—

- (a) the creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the allotment of a share to a system-member by means of a relevant system;
- (b) the creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the payment up of a share by a system-member by means of a relevant system; and
- (c) the creation of an obligation on the part of a settlement bank to make a relevant payment in respect of the transfer by a company to a system-member, by means of a relevant system, of a share held by the company as a treasury share.

**54. Meaning of arrangement for purposes of section 385 of the Act.**

For purposes of section 385(b) of the Act, “arrangement” includes any agreement or scheme approved in accordance with a provision of the Insolvency Act, 2015.

**PART IX—CONTENTS OF ANNUAL RETURN AND DOCUMENTS REQUIRED TO ACCOMPANY ANNUAL RETURNS**

**55. Additional information to be included in company’s annual return**



- (1) In addition to the contents specified in section 706 of the Act, an annual return of a company is required to include the following information in respect of the company:
  - (a) the company name, its registered number and business name (if any);
  - (b) the date to which the company makes up the return;
  - (c) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under the Act;
  - (d) in the case of a company having a share capital, particulars relating to members and share capital of the company;
  - (e) in the case of a company not having a share capital (except for a company registered with an unlimited number of members)—the number of members of the company;
  - (f) particulars with respect to—
    - (i) any person who at the date of the return is a director or alternate director of the company; and
    - (ii) any person who at that date is a company secretary of the company,that by the Act are required to be contained with respect to them in the register of

directors and register of company secretaries of a company.

- (2) In the case of a listed company, the particulars relating to members as required under paragraph (1)(d)(i) are limited to those relating to members who held 5 per cent or more of the issued shares in any class of the company's shares as at the date of the return.
- (3) If a director or alternate director is a natural person, the particulars as required under paragraph (1)(g) do not include—
  - (a) an address contained in the register of directors as the usual residential address of the director or alternate director; and
  - (b) the full number of the identity card or passport of the director or alternate director.
- (4) If a company secretary is a natural person, the particulars as required under paragraph (1)(g) do not include the full number of the identity card or passport of the company secretary.

**56. Additional information to be included in annual return of private company**

An annual return required to be lodged with the Registrar under section 705 of the Act in respect of a private company is also required to include the following information :

- (a) a statement that the company has not—

- (i) since the date of the last return; or
  - (ii) in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and
- (b) if the annual return discloses the fact that the number of members of the company exceeds 50—a statement that the excess consists wholly of persons who, under section 9(2) of the Act, are excluded in the calculation of the number of members of the company.

**57. Documents to accompany annual return of public company or company limited by guarantee**

An annual return for a public company or a company limited by guarantee is required to be accompanied by—

- (a) copies of the documents required to be sent to every member of the company under section 666 of the Act (Duty of company to send financial statements and reports to persons entitled)—certified by a director or company secretary of the company to be true copies; and
- (b) if any of the documents mentioned in paragraph (a) is in a language other than English, a certified translation (to be annexed

to that document) in English of the document.

## **PART X—COMPANY CHARGES**

### **58. Particulars of charges newly created charges**

For purposes of section 878(1) of the Act (Charges created by a company), the particulars of a charge required to be registered with the Registrar are as follows:

- (a) the date of creation of the charge;
- (b) the amount secured by the charge;
- (c) the person entitled to the charge;
- (d) in the case of a floating charge—a statement of any of the provisions of the charge, and of any instrument relating to it, that—
  - (i) prohibit or restrict or regulate the company's power to grant further securities ranking in priority to, or equally with, the floating charge; or
  - (ii) vary or otherwise regulate the order of ranking of the floating charge in relation to other subsisting securities.

### **59. Particulars of charges over existing property acquired by company**

For purposes of section 879(2) of the Act, the particulars of a charge required to be registered with the Registrar are as follows:

- (a) the date on which the company that acquired property that is already subject to a charge;
- (b) the amount secured by the charge;
- (c) the person entitled to the charge;
- (d) in the case of a floating charge—a statement of any of the provisions of the charge, and of any instrument relating to it, that—
  - (i) prohibit or restrict or regulate the company’s power to grant further securities ranking in priority to, or equally with, the floating charge; or
  - (ii) vary or otherwise regulate the order of ranking of the floating charge in relation to other subsisting securities.

## **PART XI—COMPANY COMMUNICATIONS PROVISIONS**

### **60. Effect of this Part and Seventh and Eighth Schedules**

- (1) This Part and the Seventh and Eighth Schedules have effect for the purposes of any provision of the Act that requires or permits documents or information to be sent or supplied by or to a company.

- (2) The company communications provisions have effect subject to any requirements imposed, or contrary provision made, by or under any other enactment.
- (3) For the purpose of paragraph (2), a provision is not contrary to the company communications provisions only because it expressly permits a document or information to be sent or supplied in a hard copy form or in an electronic form or by being published on a website.

**61. Sending or supplying documents or information by companies**

Documents or information required or permitted to be sent or supplied to a company are to be sent or supplied in accordance with the Seventh Schedule.

**62. Sending or supplying documents or information to companies**

Documents or information required or permitted to be sent or supplied by a company are to be sent or supplied in accordance with the Eighth Schedule.

**63. Sending or supplying documents or information to companies.**

The Eighth Schedule applies (and the Seventh Schedule does not apply) in relation to documents or information that are required or permitted to be sent or supplied by one company to another.

**64. Right to require company to provide hard copy version of company document or information.**

- (1) A member of a company, or a holder of a company's debentures, who has received a document or information from the company otherwise than in hard copy form is entitled to require the company to send to the member or debenture holder a version of the document or information in hard copy form.
- (2) The company shall send the document or information in hard copy form within twenty-one days after being requested to do so by the member or debenture holder.
- (3) The company may not impose or attempt to impose a charge for providing the document or information in that form.
- (4) If a company fails to comply with this paragraph (2), or contravenes paragraph (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding fifty thousand shillings.
- (5) If, after a company or officer is convicted of an offence under paragraph (4) in relation to a failure to send a document or information in hard form, the company continues to fail to send the document or information, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a

fine not exceeding five thousand shillings for each such offence.

**65. Requirements for authentication of documents and information**

- (1) A document or information sent or supplied to a company in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.
- (2) A document or information sent or supplied in electronic form is sufficiently authenticated—
  - (a) if the identity of the sender is confirmed in a manner specified by the company; or
  - (b) when no such manner has been specified by the company—if the communication contains, or is accompanied by, a statement of the identity of the sender and the company has no reason to doubt the truth of the statement.
- (3) If a document or information is sent or supplied by a person on behalf of another, nothing in this paragraph affects a provision of the company's articles under which the company may require reasonable evidence of the authority of the person to act on behalf of the other.

**66. When documents and information are taken to have been sent or supplied by company**



- (1) This paragraph applies in relation to documents and information sent or supplied by a company.
- (2) If—
  - (a) a document or information is sent by post (whether in hard copy or electronic form) to an address in Kenya; and
  - (b) the company is able to establish that it was properly addressed, prepaid and posted, the document or information is taken to have been received by the intended recipient forty-eight hours after it was posted.
- (3) If—
  - (a) the document or information is sent or supplied by electronic means; and
  - (b) the company is able to show that it was properly addressed, it is taken to have been received by the intended recipient forty-eight hours after it was sent or supplied.
- (4) If the document or information is sent or supplied by publishing it on a website, it is taken to have been received by the intended recipient—
  - (a) when the material was first made available on the website; or
  - (b) if later, when the recipient received (or is taken to have received) notice that the material was available on the website.

- (5) In calculating a period of hours for the purposes of this paragraph, any part of a day that is not a working day is to be disregarded.
- (6) This paragraph has effect subject—
  - (a) in its application to documents or information sent or supplied by a company to its members—to any contrary provision of the company’s articles;
  - (b) in its application to documents or information sent or supplied by a company to its debentures holders—to any contrary provision in the document constituting the debentures; and
  - (c) in its application to documents or information sent or supplied by a company to a person otherwise than in the person’s capacity as a member or debenture holder—to any contrary provision in an agreement between the company and that person.

## **PART XII—FEES PRESCRIBED FOR THE PURPOSES OF THE ACT**

### **67. Fees payable in relation to registration of companies or documents relating to companies**

- (1) A fee specified in column 3 of Part 1 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a

company having a share capital or for the registration of a document lodged to the Registrar in respect of such a company.

- (2) A fee specified in column 3 of Part 2 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a company limited by guarantee or for the registration of a document lodged to the Registrar in respect of such a company.
- (3) A fee specified in column 3 of Part 3 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a company limited by guarantee or for the registration of a document lodged to the Registrar in respect of such a company.
- (4) The fee specified in column 3 of Part 4 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of an unlimited company that has no share capital.

**68. Fees payable to Registrar for inspecting documents or obtaining documents or information**

A fee specified in column 3 of Part 5 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.

**69. Miscellaneous fees payable under the Act**

A fee specified in column 3 of Part 6 of the Ninth Schedule is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.

**70. Fees payable to High Court or Attorney General under the Act**

A fee specified in column 3 of Part 7 of the Ninth Schedule is payable to the Court or the Attorney General in respect of the matter described, opposite the fee, in column 2 of that Part.

**71. Fees payable to companies under the Act**

A fee specified in column 3 of Part 8 of the Ninth Schedule is payable to a company in respect of the matter described, opposite the fee, in column 2 of that Part.

**FIRST SCHEDULE—FORMS FOR USE UNDER THE  
ACT AND THESE REGULATIONS**

[Reg. 3]

## FORM CR1

[Section 13 of the Companies Act, 2015]

### **APPLICATION TO REGISTER COMPANY LIMITED BY SHARES OR GUARANTEE OR IS UNLIMITED**

1. The name of the company is .....limited (*Insert name of company as reserved*)
2. The company is—
  - (a) a public company; or
  - (b) a private company; or
  - (c) a company limited by guarantee.
  - (d) an unlimited company (either public or private).

*(Strike out whichever kind of company does not apply)*

3. The company—
  - (a) has prepared its own articles of association; or

- (b) will adopt the model articles of association appropriate to the company; or
- (c) will adopt some of those model articles and has prepared its own articles of association to supplement or modify those model articles.

*(Strike out the words that do not apply)*

If the company has prepared its own articles or articles to supplement or modify the model articles, those articles have been printed, dated and signed by the applicants and are attached to this application.

4. The registered office of the company will be located at

*(Here state the address where the company's registered office is or will be located*

.....  
 .....

5. The following are the details of the first directors, secretary and authorised signatory of the company

<i>No.</i>	<i>Name</i>	<i>Address</i>	<i>Identity card or</i>	<i>Nationality</i>	<i>Tel no. and email address</i>	<i>Consent to act as director/ secretary</i>
------------	-------------	----------------	-------------------------	--------------------	----------------------------------	--

			<i>passport number<sup>1</sup></i>			

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<sup>1</sup> Add issuing country and place and date of issue if a passport number is provided.


*(Attach copies of national I.D, KRA-PIN and passport photograph)*

6. The objects (if any) for which the company is established are as follows:<sup>2</sup>

.....  
 .....

7. The liability of the members—

- (a) is limited by shares; *or*
- (b) is limited by guarantee; *or*
- (c) is unlimited.

*(Delete the items that do not apply to the company).*

---

<sup>2</sup> **Note:** Unless the articles of a company specifically restrict the objects of the company, its objects are unrestricted.



8. If the company is limited by shares, its share capital is KShs ..... (*Insert amount of share capital*) divided into ..... shares of KShs ..... each.

<i>Class of shares</i>	<i>Nominal value of shares</i>	<i>Number of shares</i>	<i>Total number of shares</i>

9. The amount to be paid up (if any) and the amount to be unpaid on each share KShs .....

Date of this application: ..... 20 ...

This application is lodged by:

.....

Address of the person lodging this application:

.....

.....

*(Subscriber/Agent) (Strike out whichever does not apply)*

---

For official use only

<i>Verified by</i>	
<i>Received by</i>	
<i>Approved/ not approved</i>	
<i>Reason for rejection</i>	

FORM CR2

[Section 13 of the Companies Act, 2015]

# MODEL MEMORANDUM FOR A COMPANY WITH SHARE CAPITAL

## MEMORANDUM OF ASSOCIATION

This is the Memorandum of Association of: .....

*[Here insert the name of the company]*

Each subscriber to this memorandum of association wishes to form a company under the Companies Act, 2015 and agrees to become a member of the company and to take at least one share.

The name and address of each subscriber:

*[Insert below the name and address of each subscriber followed by the subscriber's signature]*

*Note: Insert more rows, if there are more subscribers.*

<i>Names, postal address and occupation of subscribers</i>	<i>Number of shares taken</i>	<i>Nominal value of shares taken</i>	<i>Class of shares taken</i>	<i>Rights (if any) attached to each class of shares</i>	<i>Signature of subscriber</i>

					r

Dated: \_\_\_\_\_ 20 \_\_

*[Here insert the date on which the memorandum is signed by the subscribers]*

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## FORM CR3

[Section 13 of the Companies Act, 2015]

# MODEL MEMORANDUM FOR A COMPANY LIMITED BY GUARANTEE

## MEMORANDUM OF ASSOCIATION

This is the memorandum of association of:

---

*[Here insert name of the company]*

### **Statement of guarantee in support of registration for a company limited by guarantee**

Each person who is a member of the company undertakes to contribute to the assets of the company if is liquidated while the person is a member, or within 12 months afterwards, for payment of the debts and liabilities of the company contracted before ceasing to be a member, and the costs, charges and expenses of liquidation, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding KSh20,000.

The following persons have subscribed to this memorandum:

*[Here insert the name and address of each subscriber followed by the subscriber's signature]*

<i>Name of subscriber</i>	<i>Address of subscriber</i>	<i>Signature of subscriber</i>


*Note: If there are more than 10 subscribers, insert more rows.*

Dated: \_\_\_\_\_ 20 \_\_

*[Here insert the date on which the memorandum is signed by the subscribers]*

\_\_\_\_\_

**FORM CR4**

[Section 13 of the Companies Act, 2015]

**MODEL MEMORANDUM FOR A COMPANY WHOSE  
LIABILITY IS UNLIMITED**

**MEMORANDUM OF ASSOCIATION**

This is the memorandum of association of:

---

*[Here insert name of the company]*

The following persons have subscribed to this memorandum:

*[Here insert the name and address of each subscriber followed by the subscriber's signature]*

<i>Name of subscriber</i>	<i>Address of subscriber</i>	<i>Signature of subscriber</i>


*Note: If there are more than 10 subscribers, insert more rows.*

Dated: \_\_\_\_\_ 20 \_\_\_\_

*[Here insert the date on which the memorandum is signed by the subscribers]*

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## FORM CR5

### **FORM OF ASSENT TO ACCOMPANY APPLICATION FOR REGISTRATION OF A CONVERSION OF A PRIVATE LIMITED COMPANY INTO UNLIMITED COMPANY**

[Section 83(b) of the Companies Act, 2015]

Name and number of the company:

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The members of the company declare that they have assented to the registration under section 84 of the Companies Act, 2015, of the conversion of the company from a private limited company to an unlimited company and have subscribed their respective assents as indicated below:



<i>Name of member</i>	<i>Signature of member</i>

Authenticated by:

\_\_\_\_\_

[Director]

\_\_\_\_\_

[Director or secretary]

Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_ [dd/mm/yyyy]

\_\_\_\_\_

## **SECOND SCHEDULE—PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS**

[Reg. 4]

### **1. Introduction**

This Schedule explains expressions that are used in the definitions of “parent undertaking” and “subsidiary undertaking” in section 3(1) of the Act and otherwise supplement those definitions.

### **2. Voting rights in an undertaking**

(1) In paragraphs (a) and (e) of the definition of “parent undertaking”, the references to the voting rights in an undertaking are to the rights—

- (a) conferred on shareholders in respect of their shares; or
- (b) in the case of an undertaking not having a share capital—conferred on members,

to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) In relation to an undertaking that does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking are taken to be references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

### **3. Right to appoint or remove a majority of the directors.**

- (1) In paragraph (b) of the definition of “parent undertaking”, the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
- (2) An undertaking is taken to have the right to appoint to a directorship if—
  - (a) a person’s appointment to the directorship follows necessarily from being a director of the undertaking; or
  - (b) the directorship is held by the undertaking itself.
- (3) A right to appoint a person to, or to remove a person from, a directorship that is exercisable only with the consent of another person is to be disregarded unless no other person has a right to appoint, or to remove, a person to or from that directorship.

**5. Right to exercise dominant influence.**

- (1) For the purposes of paragraph (c) of the definition of “parent undertaking”, an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.
- (2) A contract is a control contract for the purposes of paragraph (c)(ii) of the definition of “parent undertaking” if it is in writing and confers such a right that—

- (a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable; and
- (b) is permitted by the law under which that undertaking is established.

**5. Rights exercisable only in certain circumstances or temporarily incapable of being exercised**

- (1) Rights that are exercisable only in certain circumstances are to be taken into account only—
  - (a) when the circumstances have arisen, and for so long as they continue to obtain; or
  - (b) when the circumstances are within the control of the person having the rights.
- (2) Rights that are normally exercisable but are temporarily incapable of being exercised are nevertheless to be taken into account.

**6. Rights held by person in fiduciary capacity**

Rights held by a person in a fiduciary capacity are to be treated as not held by the person.

**7. Rights held by a person as nominee**

- (1) Rights held by a person as nominee for another are taken to be held by the other.
- (2) Rights are taken to be held as nominee for another person if they are exercisable only on the other person's instructions or with the other person's consent.

**8. Rights attached to shares held as security**

Rights attached to shares held as security are taken to be held by the person providing the security—

- (a) if, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions; and
- (b) if the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

**9. Rights taken to be held by parent undertaking if held its subsidiary undertakings**

- (1) Rights are taken to be held by a parent undertaking if they are held by any of its subsidiary undertakings.
- (2) Nothing in paragraph 7 or 8 requires rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.
- (3) For the purposes of paragraph 8, rights are exercisable in accordance with the instructions, or in the interests, of an undertaking if they are exercisable in accordance with the instructions of, or in the interests of, a group undertaking.

**10. Disregard of certain rights.**

The voting rights in an undertaking are reduced by any rights held by the undertaking itself.

**11. Supplementary provision**

References in a provision of paragraphs 6 to 10 to rights held by a person include rights that are taken to be held by the person because of any other provision of those paragraphs but not rights that because of any such provision are taken not to be held by the person.

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## **THIRD SCHEDULE—MODEL ARTICLES FOR PUBLIC COMPANIES LIMITED BY SHARES**

[Reg 7(1)]

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## PART 1—INTERPRETATION

## 1. Definition of expressions used in these articles

(1) In these articles—

*the Act* means the Companies Act, 2015;

*alternate* and *alternate director* mean a person appointed by a director as an alternate under article 30(1);

*appointor*—see article 30(1);

*articles* means the articles of association of the company;

associated company means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

*call*—see article 70(1);

*call notice*—see *article* 70(1);

*distribution recipient* means, in relation to a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;
- (b) if the share has 2 or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share because of death or bankruptcy or otherwise by operation of law, the transmittee;

*fully paid*, in relation to a share, means the price at which the share was issued has been fully paid to the company;

**holder**, in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

**managing director** means any director who has day to day responsibility for managing the affairs of the company, irrespective the title by which the director is known;

**mentally disordered person** means a person who is found under the Mental Health Act (Cap 243) to be incapable, because of mental disorder, of managing his or her affairs;

**notice** means notice in writing;

**paid** means paid or credited as paid;

**partly paid**, in relation to a share, means part of the price at which the share was issued remains unpaid;

**proxy notice**—see article 53(1);

**register of members** means the register of members of the company;

**transmittee** means a person entitled to a share because of the death or bankruptcy of a member or otherwise by operation of law.

- (2) Other words or expressions used in these articles have the same meaning as in the Act as in force on the date these articles become binding on the company.
- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which the Act provides for documents or information to be authenticated for the purposes of the Act.

## PART 2—DIRECTORS AND COMPANY SECRETARY

## Division 1—Directors’ powers and responsibilities

### **2. Directors’ general authority**

- (1) Subject to the Act and these articles, the directors are responsible for managing the business and affairs of the company and may exercise all the powers of the company.
- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.
- (4) A directors’ meeting at which a quorum is present may exercise all powers exercisable by the directors.

### **3. Members’ reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

### **4. Directors may delegate their powers**

- (1) Subject to these articles, the directors may, if they consider appropriate, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;

- (b) by any means (including by power of attorney);
  - (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
- (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

**5. Committees of directors**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees to comply with the rules.

Division 2—Decision-taking by directors

**6. Directors to take decision collectively**

A decision of the directors can be taken only—

- (a) at a directors' meeting; or
- (b) in the form of a directors' written resolution.

**7. Convening directors' meetings**



- (1) Any director may convene a directors' meeting.
- (2) The company secretary shall convene a directors' meeting if a director requests it.
- (3) A directors' meeting is convened by giving notice of the meeting to the directors.
- (4) A notice of a directors' meeting is not effective unless it indicates—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (5) The company shall give notice of a directors' meeting to each director, but the notice need not be in writing.
- (6) If a notice of a directors' meeting has not been given to a director (the failure) but the director waives his or her entitlement to the notice by giving notice to that effect to the company not more than 7 days after the meeting, the failure does not affect the validity of the meeting, or of any business conducted at it.

## **8. Participation in directors' meetings**

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been convened and takes place in accordance with these articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.

- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

## **9. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to convene another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed it is 2.

## **10. Meetings if total number of directors less than quorum**

- (1) This article applies if the total number of directors for the time being is less than the quorum required for directors' meetings.
- (2) If there is only one director, that director may appoint sufficient directors to make up a quorum or convene a general meeting to do so.
- (3) If there is more than one director—
  - (a) a directors' meeting may take place, if it is convened in accordance with these articles and at least 2 directors participate in it, with a view to appointing sufficient directors to make up a quorum or convening a general meeting to do so; and
  - (b) if a directors' meeting is convened but only one director attends at the date and time fixed for it, that director may appoint sufficient directors to make up a quorum or convene a general meeting to do so.

## **11. Who is to preside at general meetings**

- (1) The directors may appoint a director to preside at their meetings.
- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may appoint other directors as deputy or assistant chairpersons to preside at directors' meetings in the chairperson's absence.
- (4) The directors may terminate the appointment of the chairperson, or deputy or assistant chairperson at any time.
- (5) If neither the chairperson nor the deputy or assistant chairperson is participating in a directors' meeting within 10 minutes of the time at which it was to start or is willing to preside at the meeting, the participating directors may appoint one of themselves to preside over it.

## **12. Voting at directors' meetings: general rules**

- (1) Subject to these articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.
- (2) Subject to these articles, each director participating in a directors' meeting has one vote.

## **13. Casting vote of person presiding at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the person presiding at the directors' meeting has a casting vote.

- (2) Subarticle (1) does not apply if, in accordance with these articles, the person presiding is not to be counted as participating in the decision-making process for quorum or voting purposes.

#### **14. Alternates voting at directors' meetings**

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

#### **15. Conflicts of interest**

- (1) This article applies if—
  - (a) a director or a body corporate connected with the director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
  - (b) the director's or the entity's interest is material.
- (2) The director shall declare the nature and extent of the director's or the entity's interest to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).
- (3) The director and the director's alternate must neither—
  - (a) vote in respect of the transaction, arrangement or contract in which the director or the entity is so interested; nor

- (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Subarticle (3) does not preclude the alternate from—
  - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
  - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director’s alternate contravenes subarticle (3)(a), the vote may not be counted.
- (6) Subarticle (3) does not apply to—
  - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
  - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or
  - (d) an arrangement to subscribe for or underwrite shares.
- (7) A reference in this article to a body corporate connected with a director has the meaning given by section 124 of

the Act (When director connected with a body corporate for the purposes of Part IX of the Act).

(8) A reference in this article (except in subarticles (6)(d) and (9)) to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.

(9) In this article—

***arrangement to subscribe for or underwrite shares*** means—

- (a) a subscription or proposed subscription for shares or other securities of the company;
- (b) an agreement or proposed agreement to subscribe for shares or other securities of the company; or
- (c) an agreement or proposed agreement to underwrite any of those shares or securities.

## **16. Supplementary provisions as to conflicts of interest**

(1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.

(2) A director or intending director is not disqualified by the office of director from contracting with the company—

- (a) with regard to the tenure of the other office or position of profit mentioned in subarticle (1); or
- (b) as vendor, purchaser or otherwise.

- (3) The contract mentioned in subarticle (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in subarticle (2) or is interested in a transaction, arrangement or contract mentioned in subarticle (3) is not liable to account to the company for any profit realised by the transaction, arrangement or contract because of—
  - (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (5) Subarticle (1), (2), (3) or (4) applies only if the director has declared the nature and extent of the director's interest under the subarticle to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).
- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
  - (a) any company promoted by the company; or
  - (b) any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Act, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

## **17. Proposing directors' written resolutions**

- (1) Any director may propose a directors' written resolution.
- (2) The company secretary shall propose a directors' written resolution if a director requests it.
- (3) A directors' written resolution is proposed by giving notice of the proposed resolution to each director.
- (4) A notice of a proposed directors' written resolution has no effect unless it indicates—
  - (a) the proposed resolution; and
  - (b) the time by which it is proposed that the directors should adopt it.
- (5) Any decision that a person giving notice of a proposed directors' written resolution takes regarding the process of adopting the resolution is to be regarded as having been made in good faith.

## **18. Adoption of directors' written resolutions**

- (1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it.
- (2) Subarticle (1) applies only if those directors would have formed a quorum at the directors' meeting.
- (3) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

## **19. Effect of directors' written resolutions**



If a proposed directors' written resolution has been adopted, it is as valid and effectual as if it had been passed at a directors' meeting duly convened and held.

**20. Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

**21. Record of decisions to be kept**

The directors shall ensure that the company keeps a written record of every decision taken by the directors under article 6 for at least 10 years from the date of the decision.

**22. Directors' discretion to make further rules**

Subject to these articles, the directors may make any rule that they consider appropriate about—

- (a) how they take decisions; and

- (b) how the rules are to be recorded or communicated to directors.

### Division 3—Appointment and retirement of directors

#### **23. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) A director appointed under subarticle (1)(a) is subject to article 24.
- (3) An appointment under subarticle (1)(b) may only be made to—
  - (a) fill a casual vacancy; or
  - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under subarticle (1)(b) is required to retire from office at the next annual general meeting following the appointment.

#### **24. Retirement of directors by rotation**

- (1) At the first annual general meeting, all the directors are required to retire from office.

- (2) At every subsequent annual general meeting, one-third of the directors for the time being are required to retire from office.
- (3) Subarticles (1) and (2) are subject to article 33(2).
- (4) For the purposes of subarticle (2), if the number of directors is not 3 or a multiple of 3, then the number nearest one-third are required to retire from office.
- (5) The directors to retire in every year are to be those who have been longest in office since their last appointment or reappointment.
- (6) For persons who became directors on the same day, those who are to retire are to be determined by lot, unless they otherwise agree among themselves.
- (7) At the annual general meeting at which a director retires, the company may appoint a person to fill the vacated office.
- (8) A retiring director is regarded as having been reappointed to the office if—
  - (a) the company does not appoint a person to the vacated office; and
  - (b) the retiring director has not given notice to the company of the intention to decline reappointment to the office.
- (9) However, a retiring director is not regarded as having been reappointed to the office if—
  - (a) at the meeting at which the director retires, it is expressly resolved not to fill the vacated office; or
  - (b) a resolution for the reappointment of the director has been put to the meeting and lost.

(10) A person is not eligible for appointment to the office of director at any general meeting unless—

- (a) the person is a director retiring at the meeting;
- (b) the person is recommended by the directors for appointment to the office; or
- (c) a member qualified to attend and vote at the meeting has sent the company a notice of the member's intention to propose the person for appointment to the office, and the person has also sent the company a notice of the person's willingness to be appointed.

(11) The member who intends to propose the person for appointment for appointment to the office shall authenticate the notice and the person shall endorse on the notice his or her willingness to be appointed. The member shall send the notice to the company in hard copy form or in electronic form and ensure that it is received by the company at least 7 days before the date of the general meeting.

(12) The company may—

- (a) by ordinary resolution increase or reduce the number of directors; and
- (b) determine in what rotation the increased or reduced number is to retire from office.

## **25. Retiring director eligible for reappointment**

A retiring director is eligible for reappointment to the office.

## **26. Composite resolution**

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.
- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

## **27. Termination of director's appointment**

- (1) A person ceases to be a director if the person—
  - (a) ceases to be a director under the Act or the Insolvency Act, 2015, or is prohibited from being a director by law;
  - (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
  - (c) becomes a mentally disordered person;
  - (d) resigns the office of director by notice of the resignation;
  - (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
  - (f) is removed from the office of director by an ordinary resolution passed in accordance with section 139 of the Act (Resolutions to remove directors from office).

- (2) If a notice of the resignation of a director of a company is required to be given in accordance with the articles of the company or in accordance with any agreement with the company, the resignation does not have effect unless the director gives notice of the resignation—
  - (a) in accordance with the requirement;
  - (b) by leaving it at the registered office of the company; or
  - (c) by sending it to the company in hard copy form or in electronic form.

## **28. Directors' remuneration**

- (1) Directors' remuneration may be determined only by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

## **29. Directors' expenses**

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or

- (iii) separate meetings of the holders of any class of shares or of debentures of the company; or
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

#### Division 4—Alternate directors

### **30. Appointment and removal of alternates**

- (1) A director may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor may be effected only—
  - (a) by notice to the company; or
  - (b) in any other means approved by the directors.
- (4) The appointor is required to authenticate the appointment or removal.
- (5) The notice is effective only if it—
  - (a) identifies the proposed alternate; and
  - (b) if it is a notice of appointment, contains a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.

- (6) If an alternate is removed by resolution of the directors, the company shall as soon as practicable give notice of the removal to the alternate's appointor.

### **31. Rights and responsibilities of alternate directors**

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.
- (2) Unless these articles specify otherwise, alternate directors—
  - (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are deemed to be agents of or for their appointors.
- (3) Subject to article 15(3), a person who is an alternate director but not a director—
  - (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) An alternate director may not be counted or regarded as more than one director for determining whether—
  - (a) a quorum is participating; or
  - (b) a directors' written resolution is adopted.
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.



- (6) But the alternate's appointor may, by notice made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

### **32. Termination of alternate directorship**

- (1) An alternate director's appointment as an alternate terminates—
  - (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) 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;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.
- (2) Subarticle (1)(d) does not apply if the appointor is reappointed after having retired by rotation at a general meeting or is regarded as having been reappointed as a director at the same general meeting, and in such a case, the alternate director's appointment as an alternate continues after the reappointment.
- (3) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
  - (a) the approval under article 30(1) is withdrawn or revoked; or

- (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

#### Division 5—Managing directors

### **33. Appointment of managing directors and termination of appointment**

- (1) The directors may—
  - (a) from time to time appoint one or more of themselves to the office of managing director for a period and on terms they consider appropriate; and
  - (b) subject to the terms of an agreement entered into in any particular case, revoke the appointment.
- (2) A director appointed to the office of managing director is not, while holding the office, subject to retirement by rotation under article 24.
- (3) The appointment as a managing director is automatically terminated if the managing director ceases to be a director for any reason.
- (4) The directors may determine a managing director's remuneration, whether in the form of salary, commission or participation in profits, or a combination of them.

### **34. Powers of managing directors**

- (1) The directors may entrust to and confer on a managing director any of the powers exercisable by them on terms

and conditions and with restrictions they consider appropriate, either collaterally with or to the exclusion of their own powers.

- (2) The directors may from time to time revoke, withdraw, alter or vary all or any of those powers.

#### Division 6—Directors’ indemnity and insurance

### **35. Indemnity of directors for certain liabilities**

- (1) A director or former director of the company may be indemnified out of the company’s assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company.
- (2) Subarticle (1) applies only if the indemnity does not cover—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;

- (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
  - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
  - (v) in connection with an application for relief made under section 763 (Court may grant company officer etc. relief for misconduct on officer's application) or section 1005 (Power of the Court to grant relief in certain cases) of the Act.
- (3) A reference in subarticle (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of subarticle (3), a conviction, judgment or refusal of relief—
- (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of subarticle (4)(b), an appeal is disposed of if—
- (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

### **36. Insurance of directors against certain risks**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company.

#### Division 7—Company secretary

### **37. Appointment and removal of company secretary**

- (1) The directors shall appoint a company secretary for such term, at such remuneration and on such other conditions they may determine.
- (2) The directors may, for misbehaviour, incompetence or lassitude, remove a company secretary appointed by them.

## PART 3—DECISION-TAKING BY MEMBERS

#### Division 1—Organisation of general meetings

### **38. General meetings**

- (1) Subject to Division 5 of Part XII of the Act, the company shall, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 310 of the Act (Public companies: annual general meeting).
- (2) The directors may, if they consider appropriate, convene a general meeting.
- (3) If the directors are required to convene a general meeting under section 277 of the Act (Right of members to require directors to convene general meeting), they shall convene it in accordance with section 278 of the Act (Directors duty to convene general meetings required by members).
- (4) If the directors do not convene a general meeting in accordance with section 278 of the Act, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a general meeting in accordance with section 279 of the Act (Power of members to convene general meeting at the expense of the company).

### **39. Notice of general meetings**

- (1) The directors may convene an annual general meeting only by giving members at least 21 days' notice of the meeting.
- (2) The directors may convene a general meeting other than an annual general meeting only by giving members at least 14 days' notice of the meeting.
- (3) The notice is to be exclusive of—
  - (a) the day on which it is given; and

- (b) the day for which it is given.
- (4) The directors shall ensure that the notice—
- (a) specifies the date and time of the meeting;
  - (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) states the general nature of the business to be dealt with at the meeting;
  - (d) for a notice convening an annual general meeting, states that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specifies the intention and include the text of the special resolution; and
  - (g) contains a statement specifying a member’s right to appoint a proxy under section 298 of the Act (Right to appoint proxy).
- (5) Subarticle (4)(e) does not apply in relation to a resolution of which—

- (a) notice has been included in the notice of the meeting under section 278(2) or section 279(2) of the Act; or
  - (b) notice has been given under section 289 of the Act (Members' power to request circulation of resolution for annual general meeting).
- (6) Despite the fact that a general meeting is convened by shorter notice than that specified in this article, it is regarded as having been duly convened if it is so agreed—
- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
  - (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95 per cent of the total voting rights at the meeting of all the members.

#### **40. Persons entitled to receive notice of general meetings**

- (1) Each member and each director are entitled to be given notice of a general meeting.
- (2) In subarticle (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company shall give a copy of it to its auditor (if more than one auditor, to each of them) at the same time as the notice or the other document is given to the member.



**41. Accidental omission to give notice of general meetings**

An accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

**42. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position, during the meeting, to communicate to all those attending the meeting any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is, during the meeting, able to vote on resolutions put to the vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**43. Quorum for general meetings**

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.
- (2) Business other than the appointment of the person presiding at the meeting may not be transacted at a general meeting if the persons attending it do not constitute a quorum.

**44. Who is to preside at general meetings**

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside at the meeting, the chairperson is required to preside over the meeting.
- (2) The directors present at a general meeting shall elect one of themselves to preside at the meeting if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time fixed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting shall elect one of themselves to preside at the meeting if—
  - (a) no director is willing to preside at the meeting; or
  - (b) no director is present within 15 minutes after the time fixed for holding the meeting.
- (4) A proxy may be elected to preside at a general meeting by a resolution of the company passed at the meeting.

#### **45. Attendance and speaking by non-members**

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The person presiding at a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
  - (a) members of the company; or
  - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### **46. Adjournment of general meetings**

- (1) If a quorum is not present within half an hour from the time fixed for holding a general meeting, the meeting—
  - (a) if convened at the request of members, is dissolved; or
  - (b) in any other case, is adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time fixed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The person presiding at a general meeting at which a quorum is present may adjourn the meeting if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to that person that an adjournment is necessary to protect the safety of any person

attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

- (4) The person presiding shall adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the person presiding shall specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, the company shall give notice of the adjourned meeting as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

#### Division 2—Voting at general meetings

### **47. General rules on voting**

- (1) A resolution put to the vote of a general meeting is to be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes (whether on a show of hands or on a poll), the person presiding at the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the person presiding that the resolution—
  - (a) has or has not been passed; or

- (b) has passed by a particular majority,  
is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

#### **48. Errors and disputes**

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection is to be referred to the person presiding at the meeting. That person's decision is final.

#### **49. When poll may be demanded**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the person presiding at the meeting;
  - (b) at least 2 members present in person or by proxy;  
or

- (c) any member or members present in person or by proxy and representing at least 5 per cent of the total voting rights of all the members having the right to vote at the meeting.
- (3) The document appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

**50. Number of votes to which a member is entitled**

- (1) On a vote on a resolution on a show of hands at a general meeting—
  - (a) each member present in person has one vote; and
  - (b) each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
  - (a) each member present in person has one vote for each share held by the member; and
  - (b) each proxy present who has been duly appointed by a member has one vote for each share in respect of which the proxy is appointed.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

**51. Votes of joint holders of shares**

- (1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorised by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

**52. Votes of mentally disordered members**

- (1) A member who is a mentally disordered person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

**53. Content of proxy notices**

- (1) A proxy may be validly be appointed only by a notice that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions

contained in the notice of the general meeting in relation to which the proxy is appointed.

- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, the notice is taken—
  - (a) to give the person appointed under it discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
  - (b) to appoint that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**54. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it has effect only if it is accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member who appointed the proxy.

**55. Delivery of proxy notice and notice revoking appointment of proxy**



- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

**56. Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.

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

**57. Effect of proxy votes in case of death, mental disorder, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental disorder of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Subarticle (1) does not apply if notice of the death, mental disorder, revocation or transfer is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

**58. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the person presiding at the meeting, materially alter the scope of the resolution.
- (2) The notice is required to be given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the person presiding at the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the person presiding at the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the person presiding at the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

#### Division 3—Restrictions on members' rights

### **59. Member not entitled to vote if money is owed to company in respect of shares**

A member is not entitled to vote at any general meeting unless all calls or other sums presently payable by the member in respect of shares in the company have been paid.

Division 4—Application of rules to class meetings

**60. Class meetings**

The provisions of these articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

PART 4—SHARES AND DISTRIBUTIONS

Division 1—Issue of shares

**61. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, the company may issue shares that have—
  - (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Part XX of the Act, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed, at the option of the company or the holders of the shares.
- (3) The directors may determine the terms, conditions and manner of redemption of the shares.

**62. Payment of commissions on subscription for shares**

- (1) If the conditions in subarticle (2) are satisfied, the company may pay a commission to a person under section 331 of the Act (Permitted commissions).
- (2) The conditions are that—
  - (a) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares in respect of which the commission is paid are issued;
  - (b) if those shares are offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in the prospectus for the public offer; and
  - (c) if those shares are not offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in any circular or notice issued by the company inviting subscriptions for those shares.
- (3) The commission may be paid—
  - (a) in cash;
  - (b) fully paid or partly paid shares; or
  - (c) partly in one way and partly in the other.
- (4) The company may also on any issue of shares pay a brokerage that is lawful.

Division 2—Interests in shares

**63. Company only bound by absolute interests**

- (1) Except as required by law, no person is to be recognised by the company as holding any share on any trust.
- (2) Except as otherwise required by law or these articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.
- (3) Subarticle (2) applies even though the company has notice of the interest.

### Division 3—Share certificates

#### **64. Certificates to be issued except in certain cases**

- (1) The company shall issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within—
  - (a) 2 months after allotment or lodgment of a proper document of transfer; or
  - (b) any other period that the conditions of issue provide.
- (2) A certificate may not be issued in respect of shares of more than one class.
- (3) If more than one person holds a share, only one certificate may be issued in respect of it.

#### **65. Contents and execution of share certificates**

- (1) A certificate is invalid unless it specifies—
  - (a) in respect of how many shares and of what class the certificate is issued;

- (b) the amount paid up on them; and
  - (c) any distinguishing numbers assigned to them.
- (2) A certificate is also invalid unless it—
  - (a) has affixed to it the company's common seal or the company's official seal in accordance with Part IV of the Act; or
  - (b) is otherwise executed in accordance with the Act.

**66. Consolidated share certificates**

- (1) A member may request the company to replace—
  - (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate may be issued only if any certificates that it is to replace have first been returned to the company for cancellation.
- (3) Separate certificates may be issued only if the consolidated certificate that they are to replace has first been returned to the company for cancellation.

**67. Replacement share certificates**

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, the member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
- (b) shall return the certificate that is to be replaced to the company if it is defaced or damaged; and
- (c) shall comply with the conditions as to evidence, indemnity and the payment of a reasonable fee that the directors decide.

#### Division 4—Partly paid shares

### **68. Company's lien over partly paid shares**

- (1) The company has a first and paramount lien on any share that is partly paid for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (2) The company also has a first and paramount lien on any share that is partly paid standing registered in the name of a single person for all money presently payable by the person or the person's estate to the company.
- (3) The company's lien on a share extends to any dividend payable in respect of that share.
- (4) The directors may at any time declare a share to be wholly or in part exempt from this article.

### **69. Enforcement of company's lien**

- (1) In this article, *lien enforcement notice* means a notice to enforce a lien in respect of a share of a company.
- (1) Subject to this article, the company may sell a share in a manner the directors consider appropriate if—



- (a) a lien enforcement notice has been issued in respect of the share; and
  - (b) the person to whom the notice was issued has failed to comply with it.
- (2) A lien enforcement notice is valid only if it—
- (a) is issued in respect of a share on which the company has a lien, in respect of which a sum is presently payable;
  - (b) specifies the share concerned;
  - (c) requires payment of the sum within 14 days after the issue of the notice;
  - (d) is issued to the holder of the share or to the person entitled to it because of the holder's death, bankruptcy or otherwise; and
  - (e) states the company's intention to sell the share if the notice is not complied with.
- (3) To give effect to the sale of shares under this article, the directors may authorise any person to transfer the shares to the purchaser, and the purchaser is to be registered as the holder of those shares.
- (4) The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the shares is not affected by any irregularity in or invalidity of the process leading to the sale.
- (5) The net proceeds of the sale (after payment of the costs of sale and any other costs of enforcing the lien) are to be applied—
- (a) firstly, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;

- (b) secondly, to the person entitled to the shares at the date of the sale.
- (6) Subarticle (5)(b) applies—
  - (a) only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates; and
  - (b) subject to a lien equivalent to the company’s lien on the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.
- (7) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company’s lien on a specified date—
  - (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.

## 70. Call notices

- (1) In this article—
  - (a) *call* means a specified sum of money that is payable by a member of a company in respect of shares held by the member at a time determined by the directors of the company; and
  - (b) *call notice* means a notice requiring a member of a company to pay the amount of a call.

- (2) Subject to these articles and the terms on which shares are allotted, the directors may send a call notice to a member requiring the member to pay the company a call.
- (3) A call notice is not effective if—
  - (a) it requires a member to pay a call that exceeds the total sum unpaid on that member's shares;
  - (b) it does not specify when and how any call to which it relates is to be paid; and
  - (c) does not permit or require the call to be paid by instalments.
- (4) A member shall comply with the requirements of a call notice, but is not obliged to pay any call before the elapse of 14 days from the date on which the notice was sent.
- (5) Before the company has received any call due under a call notice, the directors may, by a further notice to the member in respect of whose shares the call is made—
  - (a) revoke the call notice wholly or in part; or
  - (b) specify a later time for payment than is specified in the call notice.

#### **71. When call is taken to be made**

A call is taken to have been made at the time when the resolution of the directors authorising the call was passed.

#### **72. Liability to pay calls**

- (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

- (2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—
  - (a) to pay calls that are not the same; or
  - (b) to pay calls at different times.

**73. When call notice need not be issued**

- (1) A call notice need not be issued in respect of sums that are specified, in the terms on which a share is issued, as being payable to the company in respect of that share—
  - (a) on allotment;
  - (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.
- (2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is—
  - (a) treated in all respects as having failed to comply with a call notice in respect of that sum; and
  - (b) liable to the same consequences as regards the payment of interest and forfeiture.

**74. Failure to comply with call notice: automatic consequences**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment,

the member shall pay the company interest on the call or instalment from that date until the call or instalment is paid.

- (2) The interest rate is to be determined by the directors, but may not exceed 10 per cent per year.
- (3) The directors may waive the payment of the interest wholly or in part.

#### **75. Notice of intended forfeiture**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the part of the call or instalment that is unpaid, together with any interest that may have accrued.
- (2) The notice is invalid unless it—
  - (a) specifies a further date (not before the end of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made;
  - (b) states how that payment is to be made; and
  - (c) states that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited.

#### **76. Directors' power to forfeit shares**

If the requirements of the notice of intended forfeiture under article 75 are not complied with, the shares in respect of which the call was made may, before the payment required

by the notice has been made, be forfeited by a resolution of the directors to that effect.

**77. Effect of forfeiture**

- (1) Subject to these articles, the forfeiture of a share extinguishes—
  - (a) all interests in the share, and all claims and demands against the company in respect of it; and
  - (b) all other rights and liabilities incidental to the share between the person whose share it was prior to the forfeiture and the company.
- (2) When a person's shares have been forfeited, the following provisions have effect:
  - (a) the company shall send that person a notice that forfeiture has occurred and record it in the register of members;
  - (b) that person ceases to be a member in respect of those shares;
  - (c) that person is required to surrender the certificate for the shares forfeited to the company for cancellation;
  - (d) that person remains liable to the company for all sums payable by that person under these articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
  - (e) the directors may waive the payment of those sums wholly or in part or enforce the payment without any allowance for the value of the shares at the

time of forfeiture or for any consideration received on their disposal.

## **78. Procedure following forfeiture**

- (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorise any person to execute the document of transfer.
- (2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—
  - (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.
- (3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any).
- (4) The person's title to the share is not affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.
- (5) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of the sale, net of any commission, and excluding any amount that—
  - (a) was, or would have become, payable; and

- (b) had not, when the share was forfeited, been paid by that person in respect of the share.
- (6) Despite subarticle (5), interest is not payable to such a person in respect of the proceeds and the company is not required to account for any money earned on them.

## **79. Surrender of shares**

- (1) A member may surrender any share—
  - (a) in respect of which the directors may serve a notice of intended forfeiture under article 75;
  - (b) that the directors may forfeit; or
  - (c) that has been forfeited.
- (2) The directors may accept the surrender of such a share.
- (3) The effect of surrender on a share is the same as the effect of forfeiture on that share.
- (4) A share that has been surrendered may be dealt with in the same way as a share that has been forfeited.

### Division 5—Transfer and transmission of shares

## **80. Transfer of shares**

- (1) Shares may be transferred by means of a document of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) A fee may not be charged by the company for registering any document of transfer or other document relating to or affecting the title to any share.



- (3) The company may retain any document of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

### **81. Power of directors to refuse transfer of shares**

- (1) The directors may refuse to register the transfer of a share if—
  - (a) the share is not fully paid;
  - (b) the document of transfer is not lodged at the company's registered office or another place that the directors have appointed;
  - (c) the document of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
  - (d) the transfer is in respect of more than one class of shares.
- (2) If the directors refuse to register the transfer of a share—
  - (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the document of transfer is required to be returned to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.

- (3) The document of transfer is required to be returned in accordance with subarticle (2)(b) together with a notice of refusal within 2 months after the date on which the document of transfer was lodged with the company.
- (4) If a request is made under subarticle (2)(a), the directors shall, within 28 days after receiving the request—
  - (a) send the transferor or transferee who made the request a statement of the reasons for the refusal;  
or
  - (b) register the transfer.

## **82. Power of directors to suspend registration of transfer of shares**

The directors may suspend the registration of a transfer of a share for any period or periods not exceeding 30 days in each financial year of the company.

## **83. Transmission of shares**

- (1) If a member dies, the company may only recognise the following person or persons as having any title to a share of the deceased member—
  - (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
  - (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.
- (2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by the deceased member with other persons.

#### **84. Transmittees' rights**

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.
- (2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days after the notice is given, the directors may withhold payment of all dividends, bonuses or other money payable in respect of the share until the requirements of the notice have been complied with.

#### **85. Exercise of transmittees' rights**

- (1) If a transmittee chooses to become the holder of a share, the transmittee shall notify the company in writing of the choice.
- (2) Within 2 months after receiving the notice, the directors shall—

- (a) register the transmittee as the holder of the share;  
or
  - (b) send the transmittee a notice of refusal of registration.
- (3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.
- (4) If a request is made under subarticle (3), the directors shall, within 28 days after receiving the request—
- (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the holder of the share.
- (5) If the transmittee chooses to have the share transferred to another person, the transmittee shall execute a document of transfer in respect of it.
- (6) All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of shares apply to the notice under subarticle (1) or the transfer under subarticle (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

#### **86. Transmittees bound by prior notices**

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

Division 6—Alteration and reduction of share capital, acquisition of own shares and allotment of shares

**87. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in Division 1 of Part XV of the Act (Alteration and consolidation of share capital).

**88. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Division 2 of Part XV of the Act (Reduction of share capital).

**89. Acquisition by company of its own shares**

The company may acquire its own shares in accordance with Part XVI of the Act (Acquisition by limited company of its own shares).

**90. Allotment of shares**

The directors may not exercise any power conferred on them to allot shares in the company without the prior authorisation of the company by resolution if the authorisation is required by section 329 of the Act (Power of directors to allot shares: authorisation by company).

Division 7—Dividends and other distributions

**91. Procedure for declaring dividends**

- (1) The company may, at a general meeting, declare dividends, but a dividend may not exceed the amount recommended by the directors.
- (2) The directors may from time to time pay the members interim dividends that appear to the directors to be justified by the profits of the company.
- (3) A dividend may be paid only out of the profits in accordance with Part XVII of the Act (How company's assets are to be distributed).
- (4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it is payable by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) Before recommending any dividend, the directors may set aside out of the profits of the company any sums they consider appropriate as reserves.
- (6) The directors may—
  - (a) apply the reserves for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application, employ the reserves in the business of the company or invest them in any investments (other than shares of the company) that they consider appropriate.
- (7) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

## **92. Calculation of dividends**

- (1) Dividends are valid only if they are—
  - (a) declared and paid according to the amounts paid on the shares in respect of which the dividend is paid; and
  - (b) apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid.
- (2) Subarticle (1) is subject to any rights of persons who are entitled to shares with special rights regarding dividend.
- (3) If a share is issued on terms providing that it ranks for dividend as from a particular date, the share ranks for dividend accordingly.
- (4) For the purposes of this article, an amount paid on a share in advance of calls is not to be treated as paid on the share.

### **93. Payment of dividends and other distributions**

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, it is payable only by one or more of the following means:
  - (a) a transfer to a bank account specified by the distribution recipient either in writing or as the directors decide;
  - (b) sending a cheque made payable to the distribution recipient by post—
    - (i) if the distribution recipient is a holder of the relevant share—to the distribution recipient at that recipient's registered address; or

- (ii) in any other case—to an address specified by the distribution recipient either in writing or as the directors decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors decide;
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or as the directors decide.
- (2) In this article—
- specified person* means a person specified by the distribution recipient either in writing or as the directors decide.

**94. Deductions from distributions in respect of sums owed to company**

- (1) This article applies if—
- (a) a share is subject to the company’s lien under article 68; and
  - (b) the directors are entitled to issue a lien enforcement notice under article 69 in respect of it.
- (2) Instead of issuing the lien enforcement notice, the directors may deduct from any dividend or other sum payable in respect of the share any sum of money that is payable to the company in respect of that share to the extent that they are entitled to require payment under the lien enforcement notice.
- (3) The money deducted is required to be used to pay any of the sums payable in respect of the share.



- (4) The company shall notify the distribution recipient in writing of—
  - (a) the fact and amount of the deduction;
  - (b) any non-payment of a dividend or other sum payable in respect of a share resulting from the deduction; and
  - (c) how the money deducted has been applied.

**95. Interest not payable on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of the share and the company.

**96. Unclaimed distributions**

- (1) If dividends or other sums are payable in respect of shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the directors for the benefit of the company until claimed.
- (2) The payment of the dividends or other sums into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—

- (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
- (b) the distribution recipient has not claimed it.

**97. Non-cash distributions**

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For paying a non-cash distribution, the directors may make whatever arrangements they consider appropriate, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

**98. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if the share has more than one holder or more than one person is entitled to the share (whether because of the death or bankruptcy of one or more joint holders, or otherwise), the deed is not effective unless it is

expressed to be executed by all the holders or other persons entitled to the share.

#### Division 8—Capitalisation of profits

### **99. Capitalisation of profits**

- (1) The company may by ordinary resolution on the recommendation of the directors capitalise profits.
- (2) If the capitalisation is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalised in the proportions in which the members would be entitled if the sum was distributed by way of dividend.
- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they consider appropriate, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

#### PART 5—SUPPLEMENTARY PROVISIONS

#### Division 1—Communications to and by company

### **100. Means of communication to be used**

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part XL of the Act provides for documents or information to be sent or supplied by or to the company for the purposes of the Act.

- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be taken to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **101. Failure to notify contact details**

- (1) A member ceases to be entitled to receive notices from the company if—
  - (a) the company sends 2 consecutive documents to the member over a period of at least 12 months; and
  - (b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered.
- (2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive those notices again by sending the company—
  - (a) an address to be recorded in the register of members; or
  - (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

## Division 2—Administrative arrangements

### 102. Company seals

- (1) A common seal may be used only by the authority of the directors.
- (2) The company shall ensure that its common seal is made from a durable metal that has the company's name engraved on it in legible form.
- (3) Subject to subarticle (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Kenya or for sealing securities) is to be used.
- (4) If the company has a common seal and it is affixed to a document, the document is, unless otherwise decided by the directors, valid only if it is also signed by at least one director of the company and one authorised person.
- (5) For the purposes of this article, an authorised person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorised by the directors for signing documents to which the common seal is applied.
- (6) If the company has an official seal for use outside Kenya, it may be affixed to a document only if its use on the document, or documents of a class to which it belongs, has been authorised by a decision of the directors.
- (7) If the company has an official seal for sealing securities, it may be affixed to securities only by the company

secretary or a person authorised to apply it to securities by the company secretary.

**103. Restrictions on right to inspect accounts and other records of the company**

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorised to do so by—

- (a) a written law;
- (b) an order of the Court under section 320 of the Act or under regulations made under section 1008 of the Act;
- (c) the directors; or
- (d) an ordinary resolution of the company.

**104. Auditor's insurance**

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud)

occurring in the course of performance of the duties of auditor in relation to the company or associated company.

- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 748 (Statement by auditor on ceasing to hold office to be lodged with company) and section 751 (Duty of auditor to notify appropriate audit authority) of the Act.

### **105. Distribution of surplus on liquidation of company**

- (1) If the company is liquidated and a surplus remains after the payment of debts proved in the winding up, the liquidator—
  - (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out between the members or different classes of members.
- (2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member may not be compelled to accept any shares or other securities that are subject to any liability.
- (3) In this article—

*required sanction* means the sanction of a special resolution of the company and any other sanction required by the Act.

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## **FOURTH SCHEDULE—MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED BY SHARES**

[Reg. 7(2)]

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### PART 1—INTERPRETATION

#### 1. **Definition of expressions used in these articles**

- (1) In these articles—

*the Act* means the Companies Act, 2015;

***alternate*** and ***alternate director*** mean a person appointed by a director as an alternate under article 28(1);

***appointor***—see article 28(1);

***articles*** means the articles of association of the company;

***associated company*** means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

***distribution recipient*** means, in relation to a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;
- (b) if the share has 2 or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share because of death or bankruptcy or otherwise by operation of law, the transmittee;

***fully paid***, in relation to a share, means the price at which the share was issued has been fully paid to the company;

***holder***, in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

***mentally disordered person*** means a person who is found under the Mental Health Act (Cap 243) to be incapable, because of mental disorder, of managing the person's affairs;

*notice* means notice in writing;

*paid* means paid or credited as paid;

*proxy notice*—see article 49(1);

*register of members* means the register of members of the company;

*request* means request in writing;

*transmittee* means a person entitled to a share because of the death or bankruptcy of a member or otherwise by operation of law.

- (2) Other words or expressions used in these articles have the same meaning as in the Act as in force on the date these articles become binding on the company.
- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which Part XL of the Act provides for documents or information to be authenticated for the purposes of the Act.

## PART 2—COMPANY IS PRIVATE COMPANY

### 2. **Company is a private company**

- (1) The company is a private company and accordingly—
  - (a) a member's right to transfer shares is restricted in the manner specified in this article;
  - (b) the number of members is limited to 50; and
  - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.
- (2) The directors may in their discretion refuse to register the transfer of a share.

- (3) In subarticle (1)(b)—  
*member* does not include—
- (a) a member who is an employee of the company;  
and
  - (b) person who was a member while being an  
employee of the company and who continues to be  
a member after ceasing to be such an employee.
- (4) For the purposes of this article, 2 or more persons who  
hold shares in the company jointly are to be regarded as  
one member.

## PART 3—DIRECTORS AND COMPANY SECRETARY

### Division 1—Directors' powers and responsibilities

#### **3. Directors' general authority**

- (1) Subject to the Act and these articles, the directors are  
responsible for managing the business and affairs of the  
company and may exercise all the powers of the  
company.
- (2) An alteration of these articles does not invalidate any  
prior act of the directors that would have been valid if  
the alteration had not been made.
- (3) The powers given by this article are not limited by any  
other power given to the directors by these articles.
- (4) A directors' meeting at which a quorum is present may  
exercise all powers exercisable by the directors.

#### **4. Members' reserve power**



- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

## **5. Directors may delegate their powers**

- (1) Subject to these articles, the directors may, if they consider appropriate, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
  - (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

## **6. Committees of directors**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees shall comply with the rules.

## Division 2—Decision-taking by directors

### **7. Directors to take decision collectively**

- (1) A decision of the directors can be taken only—
  - (a) by a majority of the directors at a meeting; or
  - (b) in accordance with article 8.
- (2) Subarticle (1) does not apply if—
  - (a) the company only has one director; and
  - (b) no provision of these articles requires it to have more than one director.
- (3) If subarticle (1) does not apply, the director may take decisions without regard to any of the provisions of these articles relating to directors' decision-taking.

### **8. Unanimous decisions of directors**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.

- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

## **9. Convening directors' meetings**

- (1) Any director may convene a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.
- (2) A notice of a directors' meeting is not effective unless it indicates—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (3) The company shall give notice of a directors' meeting to each director, but the notice need not be in writing.

## **10. Participation in directors' meetings**

- (1) Subject to these articles, a director participates in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been convened and takes place in accordance with these articles; and
  - (b) the director can communicate to the other directors any information or opinions the director has on any particular item of the business of the meeting.
- (2) In determining whether a director is participating in a directors' meeting, it is irrelevant where the director and the other directors are located and how they communicate with each other.
- (3) If not all the directors participating in a directors' meeting are located in the same place, the meeting may

be regarded as taking place in whatever place any one of them is located.

**11. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to convene another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors and unless otherwise fixed it is 2.

**12. Meetings if total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required for directors' meetings, the directors may not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to convene a general meeting so as to enable the members to appoint further directors.

**13. Who is to preside at directors' meetings**

- (1) The directors may appoint a director to preside at their meetings.
- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to preside at the meeting, the

participating directors may appoint one of themselves to preside at the meeting.

**14. Casting vote of person presiding at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the person presiding at the directors' meeting has a casting vote.
- (2) Subarticle (1) does not apply if, in accordance with these articles, the person presiding is not to be counted as participating in the decision-making process for quorum or voting purposes.

**15. Alternates voting at directors' meetings**

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

**16. Conflicts of interest**

- (1) This article applies if—
  - (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
  - (b) the director's interest is material.
- (2) The director shall declare the nature and extent of the director's interest to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).

- (3) Neither the director nor the director's alternate can—
  - (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; or
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Subarticle (3) does not preclude the alternate from—
  - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
  - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes subarticle (3)(a), the vote may not be counted.
- (6) Subarticle (3) does not apply to—
  - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
  - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or

- (d) an arrangement to subscribe for or underwrite shares.
- (7) A reference in this article (except in subarticles (6)(d) and (8)) to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.
- (8) In this article—  
*arrangement to subscribe for or underwrite shares* means—
  - (a) a subscription or proposed subscription for shares or other securities of the company;
  - (b) an agreement or proposed agreement to subscribe for shares or other securities of the company; or
  - (c) an agreement or proposed agreement to underwrite any of those shares or securities.

## **17. Supplementary provisions as to conflicts of interest**

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor and if the company has only one director, the office of company secretary) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—
  - (a) with regard to the tenure of the other office or position of profit mentioned in subarticle (1); or
  - (b) as vendor, purchaser or otherwise.

- (3) The contract mentioned in subarticle (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in subarticle (2) or is interested in a transaction, arrangement or contract mentioned in subarticle (3) is not liable to account to the company for any profit realised by the transaction, arrangement or contract because of—
  - (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (5) Subarticle (1), (2), (3) or (4) applies only if the director has declared the nature and extent of the director's interest under the subarticle to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).
- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
  - (a) any company promoted by the company; or
  - (b) any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Act, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

## **18. Validity of acts of meeting of directors**



The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

**19. Record of decisions to be kept**

The directors shall ensure that the company keeps a written record of every decision taken by the directors under article 7(1) for at least 10 years from the date of the decision.

**20. Written record of decision of sole director**

- (1) This article applies if the company has only one director and the director takes any decision that—
  - (a) may be taken in a directors' meeting; and
  - (b) has effect as if agreed in a directors' meeting.
- (2) The director shall provide the company with a written record of the decision within 7 days after the decision is made.
- (3) The director is not required to comply with subarticle (2) if the decision is taken by way of a resolution in writing.

- (4) If the decision is taken by way of a resolution in writing, the company shall keep the resolution for at least 10 years from the date of the decision.
- (5) The company shall also keep a written record provided to it in accordance with subarticle (2) for at least 10 years from the date of the decision.

## **21. Directors' discretion to make further rules**

Subject to these articles, the directors may make any rule that they consider appropriate about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

Division 3—Appointment and retirement of directors

## **22. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) Unless otherwise specified in the appointment, a director appointed under subarticle (1)(a) holds office for an unlimited period of time.
- (3) An appointment under subarticle (1)(b) may only be made to—
  - (a) fill a casual vacancy; or

- (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under subarticle (1)(b)—
- (a) retires from office at the next annual general meeting following the appointment; or
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings—retires from office before the end of 9 months after the end of the company’s accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

**23. Retiring director eligible for reappointment**

A retiring director is eligible for reappointment to the office.

**24. Composite resolution**

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.
- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director’s own appointment.

## **25. Termination of director's appointment**

A person ceases to be a director if the person—

- (a) ceases to be a director under the Act or under section 411 of the Insolvency Act, 2015 or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally disordered person;
- (d) resigns the office of director by notice given to the other directors (if any);
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

## **26. Directors' remuneration**

- (1) Directors' remuneration may be determined by the company only at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

## **27. Directors' expenses**

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or
  - (iii) separate meetings of the holders of any class of shares or of debentures of the company;
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

#### Division 4—Alternate directors

### **28. Appointment and removal of alternates**

- (1) A director may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor may be made only—
  - (a) by notice to the company; or
  - (b) by some other means approved by the directors.
- (4) The appointor shall authenticate the notice.
- (5) The notice has no effect unless—

- (a) it identifies the proposed alternate; and
  - (b) if it is a notice of appointment, it contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.
- (6) If an alternate is removed by resolution of the directors, the company shall as soon as practicable give notice of the removal to the alternate's appointor.

**29. Rights and responsibilities of alternate directors**

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 7(1).
- (2) Unless these articles specify otherwise, alternate directors—
  - (a) are taken for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are taken to be agents of or for their appointors.
- (3) Subject to article 16(3), a person who is an alternate director but not a director—
  - (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) An alternate director may not be counted or regarded as more than one director for determining whether—

- (a) a quorum is participating; or
  - (b) a directors' written resolution is adopted.
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.
- (6) But the alternate's appointor may, by notice made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

### **30. Termination of alternate directorship**

- (1) An alternate director's appointment as an alternate terminates—
- (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) 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;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.
- (2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
- (a) the approval under article 28(1) is withdrawn or revoked; or

- (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

#### Division 5—Directors' indemnity and insurance

### **31. Indemnity of directors for certain liabilities**

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company.
- (2) Subarticle (1) applies only if the indemnity does not cover—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
    - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the



company, in which judgment is given against the director;

- (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
- (v) in connection with an application for relief under section 763 or 1005 of the Act (Power of Court to grant relief in certain cases) in which the Court refuses to grant the director relief.

- (3) A reference in subarticle (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of subarticle (3), a conviction, judgment or refusal of relief—
  - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of subarticle (4)(b), an appeal is disposed of if—
  - (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

## **32. Insurance of directors against certain risks**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company; or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company.

#### Division 6—Company secretary

### **33. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for such term, at such remuneration and on such other conditions they may determine.
- (2) The directors may remove a company secretary appointed by them.

## PART 4—DECISION-TAKING BY MEMBERS

### Division 1—Organisation of general meetings

### **34. General meetings**

- (1) The company shall, in respect of each financial year of the company, hold a general meeting as its annual general meeting. (This subarticle does not have effect if

the company has only one member or has passed a resolution dispensing with the holding of an annual general meeting).

- (2) The directors may, if they consider appropriate, convene a general meeting.
- (3) If the directors are required to convene a general meeting under section 277 of the Act (Right of members to require directors to convene general meeting), they shall convene it in accordance with section 278 of the Act (Directors duty to convene general meetings required by members).
- (4) If the directors do not convene a general meeting in accordance with section 278 of the Act, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a general meeting in accordance with section 279 of the Act (Power of members to convene general meeting at the expense of the company).

### **35. Notice of general meetings**

- (1) The directors may convene an annual general meeting only by giving members at least 21 days' notice of the meeting.
- (2) The directors may convene a general meeting other than an annual general meeting only by giving members at least 14 days' notice.
- (3) The notice is to be exclusive of—
  - (a) the day on which it is served or taken to be served; and
  - (b) the day on which the meeting is to be held.

- (4) The directors shall ensure that the notice—
  - (a) specifies the date and time of the meeting; and
  - (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) states the general nature of the business to be dealt with at the meeting;
  - (d) for a notice convening an annual general meeting—states that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) includes notice of the resolution; and
    - (ii) includes or is accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specifies the intention and include the text of the special resolution; and
  - (g) contains a statement specifying a member’s right to appoint a proxy under section 298 of the Act.
- (5) Subarticle (4)(e) does not apply in relation to a resolution of which—
  - (a) notice has been included in the notice of the meeting under section 278(2) or section 279(2) of the Act; or

- (b) notice has been given under section 289 of the Act (Members' power to request circulation of resolution for annual general meeting).
- (6) Despite the fact that a general meeting is convened by shorter notice than that specified in this article, it is regarded as having been duly convened if it is so agreed—
  - (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
  - (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95 per cent of the total voting rights at the meeting of all the members.

### **36. Persons entitled to receive notice of general meetings**

- (1) Each member and each director are entitled to be given notice of a general meeting.
- (2) In subarticle (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If a member is entitled to be given notice of a general meeting or any other document relating to the meeting, the company must give a copy of it to its auditor (if more than one auditor, to each of them) at the same time as the notice or the other document is given to the member.

### **37. Accidental omission to give notice of general meetings**

An accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any

person entitled to receive notice does not invalidate the proceedings at the meeting.

### **38. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

### **39. Quorum for general meetings**

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.

- (2) Business other than the appointment of the person presiding at the meeting may not be transacted at a general meeting if the persons attending it do not constitute a quorum.

**40. Who is to preside at general meetings**

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside at the meeting, the chairperson is required to preside over the meeting.
- (2) The directors present at a general meeting are required to elect one of themselves to preside at the meeting if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time fixed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company that he or she will not attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to preside at the meeting if—
  - (a) none of the directors is willing to preside at the meeting; or
  - (b) none of the directors is present within 15 minutes after the time fixed for holding the meeting.
- (4) A proxy may be elected to preside at a general meeting by a resolution of the company passed at the meeting.

**41. Attendance and speaking by non-members**

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The person presiding at a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
  - (a) members of the company; or
  - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### **42. Adjournment of general meetings**

- (1) If a quorum is not present within half an hour from the time fixed for holding a general meeting, the meeting must—
  - (a) if convened at the request of members, be dissolved; or
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time fixed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The person presiding at a general meeting at which a quorum is present may adjourn the meeting if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the person presiding that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the



business of the meeting is conducted in an orderly manner.

- (4) The person presiding must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the person presiding must specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

#### Division 2—Voting at general meetings

### **43. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the person presiding at the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the person presiding that the resolution—
  - (a) has or has not been passed; or

- (b) has passed by a particular majority,  
is conclusive evidence of that fact without proof  
of the number or proportion of the votes recorded  
in favour of or against the resolution.
- (4) An entry in respect of the declaration in the  
minutes of the meeting is also conclusive  
evidence of that fact without the proof.

#### **44. Errors and disputes**

- (1) Any objection to the qualification of any person  
voting at a general meeting may only be raised at  
the meeting or adjourned meeting at which the  
vote objected to is tendered, and a vote not  
disallowed at the meeting is valid.
- (2) Any objection must be referred to the person  
presiding at the meeting whose decision is final.

#### **45. How poll may be demanded**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is  
to be put to the vote; or
  - (b) at a general meeting, either before or on the  
declaration of the result of a show of hands  
on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the person presiding at the meeting;

- (b) at least 2 members present in person or by proxy; or
  - (c) any member or members present in person or by proxy and representing at least 5 per cent of the total voting rights of all the members having the right to vote at the meeting.
- (3) The document appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
  - (4) A demand for a poll on a resolution may be withdrawn.

**46. Number of votes to which member is entitled**

- (1) On a vote on a resolution on a show of hands at a general meeting—
  - (a) each member present in person has one vote; and
  - (b) each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
  - (a) each member present in person has one vote for each share held by him or her; and

- (b) each proxy present who has been duly appointed by a member has 1 vote for each share in respect of which the proxy is appointed.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

**47. Votes of joint holders of shares**

- (1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorised by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

**48. Votes of mentally disordered members**

- (1) A member who is a mentally disordered person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

**49. Content of proxy notices**

- (1) In this article—

*proxy notice* means a notice given by a member in accordance with subarticle (2).

- (2) A proxy may only validly be appointed by a notice that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
- (3) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (4) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (5) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (6) Unless a proxy notice indicates otherwise, it—
  - (a) allows the person appointed under it as a proxy discretion as to how
  - (b) appoints that person as a proxy to vote on any ancillary or procedural resolutions put to the general meeting; and in relation to any

adjournment of the general meeting to which it relates as well as the meeting itself.

**50. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it has effect only if it is accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**51. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and

- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

**52. Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

**53. Effect of proxy votes in case of death, mental disorder, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental disorder of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or

- (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Subarticle (1) does not apply if notice of the death, mental disorder, revocation or transfer is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

#### **54. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the person presiding at the meeting, materially alter the scope of the resolution.
- (2) The notice may be given only by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the person presiding at the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—



- (a) the person presiding at the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the person presiding at the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

#### Division 3—Application of rules to class meetings

### **55. Class meetings**

The provisions of these articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

## PART 5—SHARES AND DISTRIBUTIONS

### Division 1—Issue of shares

### **56. All shares to be fully paid up**

The company may not issue shares unless they are fully paid.

### **57. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, a company may issue shares with—

- (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Part XX of the Act, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed, at the option of the company or the holders of the shares.
  - (3) The directors may determine the terms, conditions and manner of redemption of the shares.

#### Division 2—Interests in shares

### **58. Company only bound by absolute interests**

- (1) Except as required by law, no person is to be recognised by the company as holding any share on any trust.
- (2) Except as otherwise required by law or these articles, the company is not bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.
- (3) Subarticle (2) applies even though the company has notice of the interest.

#### Division 3—Share certificates

### **59. Certificates to be issued except in certain cases**

- (1) The company shall issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within—

- (a) 2 months after allotment or lodgment of a proper document of transfer; or
  - (b) any other period that the conditions of issue provide.
- (2) The company may not issue a certificate in respect of shares of more than one class.
- (3) If more than one person holds a share, the company may issue only one certificate in respect of it.

#### **60. Contents and execution of share certificates**

When issuing a share certificate, the company shall ensure—

- (a) that the certificate specifies—
  - (i) the number and class of shares for which the certificate is issued;
  - (ii) the fact that the shares are fully paid; and
  - (iii) any distinguishing numbers assigned to the shares; and
- (b) that the certificate has affixed to it the company's common seal or the company's official seal or is otherwise executed in accordance with the Act.

#### **61. Consolidated share certificates**

- (1) A member may request the company to replace—
- (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.

- (2) A consolidated certificate may be issued only if any certificates that it is to replace have first been returned to the company for cancellation.
- (3) The company may not issue separate certificates unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

## **62. Replacement share certificates**

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, the member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—
  - (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
  - (b) shall return the certificate that is to be replaced to the company if it is defaced or damaged; and
  - (c) shall comply with the conditions as to evidence, indemnity and the payment of a reasonable fee that the directors decide.

### Division 4—Transfer and transmission of shares

## **63. Transfer of shares**

- (1) Shares may be transferred by means of a document of transfer in any usual form or any other form approved

by the directors, which is executed by or on behalf of both the transferor and the transferee.

- (2) A fee may not be charged by the company for registering any document of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any document of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

#### **64. Power of directors to refuse transfer of shares**

- (1) Without limiting article 2(2), the directors may refuse to register the transfer of a share if—
  - (a) the document of transfer is not lodged at the company's registered office or another place that the directors have appointed;
  - (b) the document of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
  - (c) the transfer is in respect of more than one class of shares.
- (2) If the directors refuse to register the transfer of a share under subarticle (1) or article 2(2)—

- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the directors shall return the document of transfer to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The document of transfer is required to be returned in accordance with subarticle (2)(b) together with a notice of refusal within 2 months after the date on which the document of transfer was lodged with the company.
- (4) If a request is made under subarticle (2)(a), the directors shall, within 28 days after receiving the request—
- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.

## **65. Transmission of shares**

If a member dies, the company may recognise only the following person or persons as having any title to a share of the deceased member:

- (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
- (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.

## **66. Transmittees' rights**

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.
- (2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other money payable in respect of the share until the requirements of the notice have been complied with.

**67. Exercise of transmittees' rights**

- (1) If a transmittee chooses to become the holder of a share, the transmittee shall notify the company in writing of the choice.
- (2) Within 2 months after receiving the notice, the directors shall—

- (a) register the transmittee as the holder of the share;  
or
  - (b) send the transmittee a notice of refusal of registration.
- (3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.
- (4) If a request is made under subarticle (3), the directors shall, within 28 days after receiving the request—
- (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the holder of the share.
- (5) If the transmittee chooses to have the share transferred to another person, the transmittee shall execute a document of transfer in respect of it.
- (6) All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of shares apply to the notice under subarticle (1) or the transfer under subarticle (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

## **68. Transmittees bound by prior notices**

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

Division 5—Alteration and reduction of share capital, acquisition of own shares and allotment of shares



**69. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in Division 1 of Part XV of the Act.

**70. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Divisions 2 and 3 of Part XV of the Act.

**71. Acquisition by the company of its own shares**

The company may acquire its own shares in accordance with Part XVI of the Act (Acquisition by limited company of its own shares).

**72. Allotment of shares**

The directors shall not exercise any power conferred on them to allot shares in the company without the prior approval of the company by resolution if the approval is required by section 329 of the Act (Power of directors to allot shares etc: authorisation by company).

Division 6—Dividends and other distributions

**73. Procedure for declaring dividends**

- (1) The company may at a general meeting declare dividends, but a dividend may not exceed the amount recommended by the directors.

- (2) The directors may from time to time pay the members interim dividends that appear to the directors to be justified by the profits of the company.
- (3) A dividend may only be paid out of the profits in accordance with Part XVII of the Act (How companies' assets are to be distributed).
- (4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) Before recommending any dividend, the directors may set aside out of the profits of the company any sums they consider appropriate as reserves.
- (6) The directors may—
  - (a) apply the reserves for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application, use the reserves in the business of the company or invest them in any investments (other than shares of the company) that they consider appropriate.
- (7) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

#### **74. Payment of dividends and other distributions**

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, the company must pay it by one or more of the following means:

- (a) transfer to a bank account specified by the distribution recipient either in writing or as the directors decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors decide;
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or as the directors decide.
- (2) In this article—

*specified person* means a person specified by the distribution recipient either in writing or as the directors decide.

## **75. Interest not payable on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of the share and the company.

## **76. Unclaimed distributions**

- (1) If dividends or other sums are payable in respect of shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the directors for the benefit of the company until claimed.
- (2) The payment of the dividends or other sums into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—
  - (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
  - (b) the distribution recipient has not claimed it.

## **77. Non-cash distributions**

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For paying a non-cash distribution, the directors may make whatever arrangements they consider appropriate, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;

- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

## **78. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if the share has more than one holder or more than one person is entitled to the share (whether because of the death or bankruptcy of one or more joint holders, or otherwise), the deed is not effective unless it is expressed to be executed by all the holders or other persons entitled to the share.

### Division 7—Capitalisation of profits

## **79. Capitalisation of profits**

- (1) The company may capitalise profits by ordinary resolution on the recommendation of the directors.
- (2) If the capitalisation is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalised in the proportions in which the members would be entitled if the sum was distributed by way of dividend.
- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they consider appropriate, including

the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

## PART 6—SUPPLEMENTARY PROVISIONS

### Division 1—Communications to and by company

#### **80. Means of communication to be used**

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part XL of the Act provides for documents or information to be sent or supplied by or to the company for the purposes of the Act.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### Division 2—Administrative arrangements

#### **81. Company seals**

- (1) A common seal may be used only by the authority of the directors.

- (2) The company shall ensure that its common seal is made of durable metal that has its name engraved on it in legible form.
- (3) Subject to subarticle (2), the directors may decide by what means and in what form a common seal is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one director of the company and one authorised person.
- (5) For the purposes of this article, an authorised person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorised by the directors for signing documents to which the common seal is applied.
- (6) If the company has an official seal for use outside Kenya, it may only be affixed to a document if its use on the document, or documents of a class to which it belongs, has been authorised by a decision of the directors.
- (7) If the company has an official seal for sealing securities, it may only be affixed to securities by the company secretary or a person authorised to apply it to securities by the company secretary.

**82. Restrictions on right to inspect accounts and other records of the company**

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of

being a member, unless the person is authorised to do so by—

- (a) a written law;
- (b) an order of the Court under section 320 of the Act or under regulations in force under section 1008 of the Act;
- (c) the directors; or
- (d) an ordinary resolution of the company.

### **83. Auditor's insurance**

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company.
- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 748 (Statement by auditor on ceasing to hold office to be lodged with company) and



section 751 (Duty of auditor to notify appropriate audit authority) of the Act.

**84. Distribution of surplus on liquidation of company**

- (1) If the company is liquidated and a surplus remains after the payment of debts proved in the winding up, the liquidator—
  - (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out between the members or different classes of members.
- (2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.
- (3) In this article—

*required sanction* means the sanction of a special resolution of the company and any other sanction required by the Act.

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**FIFTH SCHEDULE—MODEL ARTICLES FOR  
COMPANIES LIMITED BY GUARANTEE**

[Reg 7(3)]

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## PART 1—INTERPRETATION

### **1. Definition of expressions used in these articles**

(1) In these articles—

***the Act*** means the Companies Act, 2015;

***alternate*** and ***alternate director*** mean a person appointed by a director as an alternate under article 26(1);

***appointor***—see article 26(1);

***articles*** means the articles of association of the company;

***associated company*** means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

***mentally disordered person*** means a person who is found under the Mental Health Act (Cap 243) to be incapable, because of mental disorder, of managing his or her affairs;

***notice*** means notice in writing;

***proxy notice***—see article 48(1).

- (2) Other words or expressions used in these articles have the same meaning as in the Act as in force on the date these articles become binding on the company.
- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which Part XL of the Act provides for documents or information to be authenticated for the purposes of the Act.

## PART 2—DIRECTORS AND COMPANY SECRETARY

## Division 1—Directors’ powers and responsibilities

### **2. Directors’ general authority**

- (1) Subject to the Act and these articles, the directors are responsible for managing business and affairs of the company and may exercise all the powers of the company.
- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.
- (4) A directors’ meeting at which a quorum is present may exercise all powers exercisable by the directors.

### **3. Members’ reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

### **4. Directors may delegate their powers**

- (1) Subject to these articles, the directors may, if they consider appropriate, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);

- (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
- (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

## **5. Committees of directors**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees shall comply with the rules.

### Division 2—Decision-taking by directors

## **6. Directors to take decision collectively**

A decision of the directors can be taken only—

- (a) by a majority of the directors at a meeting; or
- (b) in accordance with article 7.

## **7. Unanimous decisions of directors**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.



- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

## **8. Convening directors' meetings**

- (1) Any director may convene a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary to give such notice.
- (2) A notice of a directors' meeting is not effective unless it indicates—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (3) The company shall give notice of a directors' meeting to each director, but the notice need not be in writing.

## **9. Participation in directors' meetings**

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been convened and takes place in accordance with these articles; and

- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

#### **10. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to convene another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed it is 2.

#### **11. Meetings if total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required for directors' meetings, the directors may not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to convene a general meeting so as to enable the members to appoint further directors.

#### **12. Who is to preside at directors' meetings**

- (1) The directors may appoint a director to preside at their meetings.

- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to chair the meeting, the participating directors may appoint one of themselves to preside over it.

**13. Casting vote of person presiding at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the person presiding at the directors' meeting has a casting vote.
- (2) Subarticle (1) does not apply if, in accordance with these articles, the person presiding at the directors' meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

**14. Alternates voting at directors' meetings**

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

**15. Conflicts of interest**

- (1) This article applies if—

- (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
  - (b) the director's interest is material.
- (2) The director must declare the nature and extent of the director's interest to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).
- (3) The director and the director's alternate may neither—
  - (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; nor
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Subarticle (3) does not preclude the alternate from—
  - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
  - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes subarticle (3)(a), the vote must not be counted.
- (6) Subarticle (3) does not apply to—
  - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or

obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security; or

- (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors.
- (7) A reference in this article to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.

## **16. Supplementary provisions as to conflicts of interest**

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—
  - (a) with regard to the tenure of the other office or position of profit mentioned in subarticle (1); or
  - (b) as vendor, purchaser or otherwise.
- (3) The contract mentioned in subarticle (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in subarticle (2) or is interested in a transaction,

arrangement or contract mentioned in subarticle (3) is not liable to account to the company for any profit realised by the transaction, arrangement or contract because of—

- (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (5) Subarticle (1), (2), (3) or (4) applies only if the director has declared the nature and extent of the director's interest under the subarticle to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).
- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
- (a) any company promoted by the company; or
  - (b) any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Act, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

## **17. Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

**18. Record of decisions to be kept**

The directors must ensure that the company keeps a written record of each decision taken by the directors under article 6 for at least 10 years from the date of the decision.

**19. Directors' discretion to make further rules**

Subject to these articles, the directors may make any rule that they consider appropriate about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

Division 3—Appointment and retirement of directors

**20. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.

- (2) Unless otherwise specified in the appointment, a director appointed under subarticle (1)(a) holds office for an unlimited period of time.
- (3) An appointment under subarticle (1)(b) may only be made to—
  - (a) fill a casual vacancy; or
  - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under subarticle (1)(b) is required to—
  - (a) retire from office at the next annual general meeting following the appointment;
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire from office before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

## **21. Retiring director eligible for reappointment**

A retiring director is eligible for reappointment to the office.

## **22. Composite resolution**

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.



- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

### **23. Termination of director's appointment**

A person ceases to be a director if the person—

- (a) ceases to be a director under the Act or the Part VI of the Insolvency Act, 2015, or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally disordered person;
- (d) resigns the office of director by notice of the resignation given to the other directors;
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

### **24. Directors' remuneration**

- (1) Directors' remuneration is required to be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and

- (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

## **25. Directors' expenses**

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or
  - (iii) separate meetings of the holders of debentures of the company; or
- (b) the performance of their responsibilities and the exercise of their powers in relation to the company.

Division 4—Alternate directors

## **26. Appointment and removal of alternates**

- (1) A director may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

- (3) An appointment or removal of an alternate by the alternate's appointor may be effected only—
  - (a) by notice to the company; or
  - (b) in any other manner approved by the directors.
- (4) The appointor is required to authenticate the notice.
- (5) The appointor is required to ensure that the notice—
  - (a) identifies the proposed alternate; and
  - (b) if it is a notice of appointment, contains a statement authenticated by the proposed alternate indicating that proposed alternate is willing to act as the alternate of the appointor.
- (6) If an alternate is removed by resolution of the directors, the company is required as soon as to give notice of the removal to the alternate's appointor.

## **27. Rights and responsibilities of alternate directors**

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.
- (2) Unless these articles specify otherwise, alternate directors—
  - (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are agents of or for their appointors.
- (3) Subject to article 15(3), a person who is an alternate director but not a director—

- (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) An alternate director must not be counted or regarded as more than one director for determining whether—
  - (a) a quorum is participating; or
  - (b) a directors' written resolution is adopted.
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director
- (6) But the alternate's appointor may, by notice made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

## **28. Termination of alternate directorship**

- (1) An alternate director's appointment as an alternate terminates—
  - (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) 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;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.

- (2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
  - (a) the approval under article 26(1) is withdrawn or revoked; or
  - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

#### Division 5—Directors' indemnity and insurance

### **29. Indemnity for directors against certain liabilities**

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company.
- (2) Subarticle (1) applies only if the indemnity does not cover—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the

company, in which judgment is given against the director;

(iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;

(iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or

(v) in connection with an application for relief under section 763 or 1005 of the Act in which the Court refuses to grant the director relief.

- (3) A reference in subarticle (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of subarticle (3), a conviction, judgment or refusal of relief—
- (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of subarticle (4)(b), an appeal is disposed of if—
- (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

### **30. Insurance of directors against certain risks**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company.

#### Division 6—Company secretary

### **31. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they consider appropriate.
- (2) The directors may remove a company secretary appointed by them.

#### PART 3—MEMBERSHIP OF THE COMPANY

#### Division 1—Becoming and ceasing to be member

### **32. Application for membership**

A person may become a member of the company only if—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

### **33. Termination of membership**

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.
- (2) Membership is not transferable.
- (3) A person's membership terminates when that person dies or otherwise ceases to exist.

Division 2—Organisation of general meetings

### **34. General meetings of the company**

- (1) The company shall, in respect of each financial year of the company, hold a general meeting as its annual general meeting.
- (2) The directors may at any time for any reason convene a general meeting.
- (3) If the directors are required to convene a general meeting under section 277 of the Act, they shall convene it in accordance with section 278 of the Act.
- (4) If the directors do not convene a general meeting in accordance with section 278 of the Act, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of



them, may themselves convene a general meeting in accordance with section 279 of the Act.

### **35. Notice of general meetings**

- (1) An annual general meeting may be convened only by giving members at least 21 days' notice.
- (2) A general meeting other than an annual general meeting must be convened by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
  - (a) the day on which it is given; and
  - (b) the day for holding the meeting given.
- (4) Such notice is invalid unless it—
  - (a) specifies the date and time of the meeting; and
  - (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) states the general nature of the business to be dealt with at the meeting;
  - (d) for a notice convening an annual general meeting—states that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) includes notice of the resolution; and
    - (ii) includes or is accompanied by a statement containing any information or explanation that

is reasonably necessary to indicate the purpose of the resolution;

- (f) if a special resolution is intended to be moved at the meeting, specifies the intention and include the text of the special resolution; and
  - (g) contain a statement specifying a member's right to appoint a proxy under section 298 of the Act.
- (5) Subarticle (4)(e) does not apply in relation to a resolution of which—
- (a) notice has been included in the notice of the meeting under section 278(2) or section 279(2) of the Act; or
  - (b) notice has been given under section 289 of the Act (Members' power to request circulation of resolution for annual general meeting).
- (6) Despite the fact that a general meeting is convened by shorter notice than that specified in this article, it is regarded as having been duly convened if it is so agreed—
- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
  - (b) any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95 per cent of the total voting rights at the meeting of all the members.

### **36. Persons entitled to receive notice of general meetings**

- (1) Each member and each director are entitled to be given notice of a general meeting.

- (2) If a member is entitled to be given notice of a general meeting or any other document relating to the meeting, the company must give a copy of it to its auditor (if more than one auditor, to each of them) at the same time as the notice or the other document is given to the member.

**37. Accidental omission to give notice of general meetings**

An accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

**38. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**39. Quorum for general meetings**

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.
- (2) Business other than the appointment of a person to preside at the meeting may not be transacted at a general meeting if the persons attending it do not constitute a quorum.

**40. Who is to preside at general meetings**

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting shall elect one of themselves to preside at the meeting if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time fixed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company of the intention not to attend the meeting.

- (3) The members present at a general meeting shall elect one of themselves to preside at the meeting if—
  - (a) no director is willing to preside; or
  - (b) no director is present within 15 minutes after the time fixed for holding the meeting.
- (4) A proxy may be elected to preside at a general meeting by a resolution of the company passed at the meeting.

#### **41. Attendance and speaking by non-members**

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The person presiding at a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
  - (a) members of the company; or
  - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### **42. Adjournment of general meetings**

- (1) If a quorum is not present within half an hour from the time fixed for holding a general meeting, the meeting—
  - (a) if convened at the request of members—is dissolved; or
  - (b) in any other case—is adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If, at the adjourned meeting, a quorum is not present within half an hour after the time fixed for holding the

meeting, the member or members present in person or by proxy constitute a quorum.

- (3) The person presiding may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the person presiding that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The person presiding shall adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the person presiding at the meeting shall specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, the company shall give notice of the adjourned meeting as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

### Division 3—Voting at general meetings

#### **43. General rules on voting**

- (1) A resolution put to the vote of a general meeting is decided on a show of hands unless a poll is duly demanded in accordance with these articles.

- (2) If there is an equality of votes, whether on a show of hands or on a poll, the person presiding at the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the person presiding that the resolution—
  - (a) has or has not been passed; or
  - (b) has passed by a particular majority,is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

#### **44. Errors and disputes**

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered and a vote not disallowed at the meeting is valid.
- (2) Any such objection is to be referred to the person presiding at the meeting. That person's decision is final.

#### **45. How poll may be demanded**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or

- (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the person presiding at the meeting;
  - (b) at least 2 members present in person or by proxy;  
or
  - (c) any member or members present in person or by proxy and representing at least 5 per cent of the total voting rights of all the members having the right to vote at the meeting.
- (3) The document appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

**46. Number of votes to which member is entitled**

On a vote on a resolution, whether on a show of hands at a general meeting or on a poll taken at a general meeting—

- (a) each member present in person has one vote; and
- (b) each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

**47. Votes of mentally disordered members**

- (1) A member who is a mentally disordered person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.



- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

**48. Content of proxy notices**

- (1) A proxy may only validly be appointed by a notice that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, the notice—

- (a) allows the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
- (b) appoints that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**49. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it has effect only if it is accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**50. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

**51. Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right that the member is entitled to exercise.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

**52. Effect of proxy votes in case of death, mental disorder, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental disorder of the member appointing the proxy; or
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed.

- (2) Subarticle (1) does not apply if notice of the death, mental disorder or revocation is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

### **53. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the person presiding at the meeting, materially alter the scope of the resolution.
- (2) The notice is invalid unless it is given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the person presiding at the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the person presiding at the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and

- (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the person presiding at the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

## PART 4—SUPPLEMENTARY PROVISIONS

### Division 1—Communications to and by company

#### **54. Means of communication to be used**

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part XL of the Act provides for documents or information to be sent or supplied by or to the company for the purposes of the Act.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### Division 2—Administrative arrangements

## **55. Company seals**

- (1) The common seal may be used only by the authority of the directors.
- (2) The company shall ensure that its common seal is made of durable metal that has its name engraved on it in legible form.
- (3) Subject to subarticle (2), the directors may decide by what means and in what form a common seal is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one director of the company and one authorised person.
- (5) For the purposes of this article, an authorised person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorised by the directors for signing documents to which the common seal is applied.

## **56. Restrictions on right to inspect accounts and other records of the company**

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorised to do so by—

- (a) a written law;
- (b) an order under section 320 of the Act or under regulations made under section 1008 of the Act;

- (c) the directors; or
- (d) an ordinary resolution of the company.

**57. Auditor's insurance**

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
    - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company; or
    - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company.
  - (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 748 (Statement by auditor on ceasing to hold office to be lodged with company) and section 751 (Duty of auditor to notify appropriate audit authority) of the Act.
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**SIXTH SCHEDULE—PERMITTED CHARACTERS,  
SIGNS, SYMBOLS AND PUNCTUATION**

[Reg. 9]

**PART 1**

The following are the kinds of characters that can be used in company names:

*Characters*

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A	À	Á	Â	Ã
Ä	Å	Ā	Ă	Ą
Ǻ	Æ	Ǽ	B	C
Ç	Ć	Ĉ	Č	Ď
D	Ð	Ǿ	Đ	E
È	É	Ê	Ë	Ē
Ě	Ĕ	Ė	Ë	F
G	Ĝ	Ğ	Ġ	Ģ
H	Ĥ	Ħ	I	İ
Í	Î	Ī	Ĭ	Ī
Ĵ	Į	İ	J	Ĵ
K	Ķ	L	Ĺ	Ł
Ľ	Ļ	Ļ	M	N
Ñ	Ń	Ņ	Ň	Đ
O	Ò	Ó	Ô	Õ
Ö	Ø	Ō	Ö	Ő
Œ	O	E	P	Q
Ŕ	Ŗ	Ř	S	Š
Ŝ	Ş	Š	T	Ť
Ţ	Ŧ	U	Ù	Ú
Û	Ü	Ū	Û	Ů



Û	Ũ	Ū	Ŵ	Ŷ
Ŷ	Ÿ	Ź	Ẑ	Ẓ
Ẓ	Ẕ	ẖ	ẘ	ẚ
@	£	\$	€	¥

## PART 2—PUNCTUATION

The following are the kinds of punctuation that can be used in a company name:

Apostrophe	‘ , , ,
Bracket (parenthesis)	( ) [ ] { } < >
Exclamation mark	!
Guillemet	« »
Inverted comma	“ “ “
Question mark	?
Solidus	\/ /

## PART 3—SIGNS AND SYMBOLS

The following are the kinds of signs and symbols that can be used in a company name:

\*; =; #; %

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## **SEVENTH SCHEDULE—DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A COMPANY**

[Reg. 62]

### **PART 1—INTRODUCTION**

#### **Application of this Schedule**

This Schedule applies to documents or information sent or supplied to a company, but does not apply to documents or information sent or supplied by another company.

### **PART 2—COMMUNICATIONS IN HARD COPY FORM**

#### **2. Introduction**

A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Part.

#### **3. Method of communication in hard copy form**

- (1) A document or information in hard copy form may be sent or supplied by hand or by post to an address (in accordance with paragraph 4).
- (2) For the purposes of this Schedule, a document or information is sent by post if it is posted in a prepaid envelope containing the document or information.

**4. Address for communications in hard copy form**

A document or information in hard copy form may be sent or supplied—

- (a) to an address specified by the company for the purpose;
- (b) to the company's registered office; or
- (c) to an address to which any provision of the Act requires or permits the document or information to be sent or supplied.

**PART 3—COMMUNICATIONS IN ELECTRONIC FORM**

**5. Sending or supplying documents or information in electronic form**

A document or information is validly sent or supplied to a company if it is sent or supplied in electronic form in accordance with this Part.

**6. Conditions for using in form**

A document or information may be sent or supplied to a company in electronic form only if—

- (a) the company has agreed (generally or specifically) that the document or information may be sent or

supplied in that form (and has not revoked the agreement); or

- (b) the company is taken to have so agreed by a provision of the Act.

**7. Address for communications in electronic form.**

- (1) If the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address—
  - (a) specified for the purpose by the company (generally or specifically), or
  - (b) taken by a provision of the Act to have been so specified.
- (2) If the document or information is sent or supplied in electronic form by hand or by post, it is required to be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

**PART 4—OTHER AGREED FORMS OF COMMUNICATION**

**8. Document or information validly sent or supplied if sent or supplied in a form or manner agreed by the company.**

A document or information that is sent or supplied to a company otherwise than in hard copy form or electronic form is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the company.

# EIGHTH SCHEDULE—COMMUNICATIONS BY A COMPANY

[Reg. 63 & 64]

## PART 1—INTRODUCTION

### 1. **Application of this Schedule**

This Schedule applies to documents or information sent or supplied by a company.

## PART 2—COMMUNICATIONS IN HARD COPY FORM

### 2. **Introduction**

A document or information is validly sent or supplied by a company if it is sent or supplied in hard copy form in accordance with this Part.

### 3. **Method of communication in hard copy form**

- (1) In sending a document or information in hard copy form, the company shall either—
  - (a) hand it to the intended recipient or to the intended recipient's authorised agent; or
  - (b) deliver it by hand, or post it, to an address in accordance with paragraph 4.
- (2) For the purpose of subparagraph (1)(b), a document or information is sent by post if it is sent in a prepaid envelope.

### 4. **Address for communications in hard copy form**

- (1) A document or information in hard copy form may be sent or supplied by the company to one of the following addresses:
  - (a) an address specified for the purpose by the intended recipient;
  - (b) if the intended recipient is a company—the company at its registered office;
  - (c) if the intended recipient is a member of the company—the member’s address as shown in the company’s register of members;
  - (d) if the intended recipient is a director of the company—the director at the director’s address as shown in the company’s register of directors; or
  - (e) an address to which a provision of the Act authorises the document or information to be sent or supplied.
- (2) If the company is unable to obtain an address referred to in subparagraph (1), the company may send or supply the document or information to the address of the intended recipient last known to the company.

## PART 3—COMMUNICATIONS IN ELECTRONIC FORM

### **5. Introduction**

A document or information is validly sent or supplied by a company if it is sent in electronic form in accordance with this Part.

### **6. Agreement to communication in electronic form.**

A document or information can be sent or supplied by a company in electronic form only—

- (a) to a person who has agreed (generally or specifically) to the document or information being sent or supplied in that form (and has not revoked the agreement); or
- (b) to a company that is, because of a provision of the Act, taken to have agreed to the document or information being sent or supplied to it in that form.

**7. Address for communication in electronic form**

- (1) A document or information that is sent or supplied by electronic means can be sent or supplied—
  - (a) to an address specified for the purpose by the intended recipient (generally or specifically); or
  - (b) if the intended recipient is a company, to an address that is, in accordance with a provision of the Act, taken to have been so specified.
- (2) A document or information that is sent or supplied in electronic form by hand or by post is required to be—
  - (a) handed to the intended recipient; or
  - (b) sent or supplied to an address to which it could be validly sent if it were in hard copy form.

**PART 4—COMMUNICATIONS BY MEANS OF A WEBSITE**

**8. Use of website**

A document or information is validly sent or supplied by a company if it is made available on a website in accordance with this Part.

**9. Agreement to use website**

A document or information can be sent or supplied by a company to a person by being made available on a website only if the person—

- (a) has agreed (generally or specifically) that the document or information may be sent or supplied to the person in that manner; or
- (b) is taken to have so agreed—
  - (i) under paragraph 10 (members of the company and others); or
  - (ii) under paragraph 11 (debenture holders),and has not revoked that agreement.

**10. Circumstances in which members of company and others are taken to have agreed to company's use of website**

- (1) This paragraph applies to a document or information to be sent or supplied to a person—
  - (a) as a member of the company;
  - (b) as a person nominated by a member in accordance with a company's articles to enjoy or exercise all or any specified rights of the member in relation to the company; or
  - (c) as a person nominated by a member under section 115 of the Act (Traded companies: nomination of persons to enjoy information rights) to enjoy information rights.



- (2) To the extent that—
- (a) the members of a company have resolved that the company may send or supply documents or information to members by making them available on a website; or
  - (b) a company's articles contain provision to that effect,
- a person in relation to whom the relevant conditions are satisfied is taken to have agreed that the company may send or supply documents or information to the person in that manner.
- (3) The relevant conditions are—
- (a) that the person has been asked individually by the company to agree that the company may send or supply documents or information generally, or the relevant documents or information, to the person by means of a website; and
  - (b) that the company has not received a response within twenty-eight days from and including the date on which the company's request was sent.
- (4) A person is not taken to have so agreed if the company's request—
- (a) did not state clearly what the effect of a failure to respond would be; or
  - (b) was sent less than twelve months after a previous request made to the person for the purposes of this paragraph in respect of the same or a similar class of documents or information.

- (5) Those provisions of Part III of the Act relating to resolutions affecting a company's constitution apply to a resolution passed in accordance with this paragraph.

**11. Circumstances in which debenture holders are taken to have agreed to use of company's website**

- (1) This paragraph applies to a document or information to be sent or supplied to a person as a holder of a company's debentures.
- (2) To the extent that—
  - (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website; or
  - (b) the document creating the debentures so provide, a debenture holder in relation to whom the relevant conditions are satisfied is taken to have agreed that the company may send or supply documents or information to the debenture holder in that manner.
- (3) The relevant conditions are—
  - (a) that the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the relevant documents or information, to the debenture holder via a website; and
  - (b) that the company has not received a response within twenty-eight days from and including the date on which the company's request was sent.

- (4) A person is not taken to have so agreed if the company's request—
  - (a) did not state clearly what the effect of a failure to respond would be; or
  - (b) was sent less than twelve months after a previous request made to the person for the purposes of this paragraph in respect of the same or a similar class of documents or information.
- (5) For the purposes of this paragraph—
  - (a) the relevant debenture holders are the holders of debentures of the company ranking equally among themselves for all purposes with the intended recipient; and
  - (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the documents creating the debentures.

## **12. How document or information is to be made available**

- (1) A document or information required or permitted to be sent or supplied via a website is not effective for the purposes of the Act unless it is made available in a form that will enable the recipient—
  - (a) to read it; and
  - (b) to retain a copy of it.
- (2) For this purpose a document or information can be read only if—
  - (a) it can be read with the naked eye by a person with normal vision; or

- (b) to the extent that it consists of images (such as photographs, pictures, maps, plans or drawings), it can be viewed with the naked eye by such a person.

**13. When company is to notify availability of document or information on its website.**

- (1) A company that sends or supplies a document or information via a website shall notify the intended recipient of—
  - (a) the presence of the document or information on the website;
  - (b) the address of the website;
  - (c) the place on the website where it may be accessed; and
  - (d) how to access the document or information.
- (2) The document or information is taken to be sent—
  - (a) on the date on which the notification required by this paragraph is sent; or
  - (b) if later—on the date on which the document or information first appears on the website after that notification is sent.

**14. Period for which document or information is to be available on company's website.**

- (1) A company that sends or supplies a document or information via a website shall make the document or information available on the website throughout—
  - (a) the period specified by any applicable provision of the Act; or

- (b) if no such period is specified—the twenty-eight days from and including the date on which the notification required under paragraph 13 is sent to the person concerned.
- (2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period referred to in subparagraph (1) is to be disregarded if—
  - (a) the document or information is made available on the website for part of that period; and
  - (b) the failure to make the document or information available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

## PART 5—OTHER AGREED FORMS OF COMMUNICATION

### **15. Document or information validly sent or supplied if sent or supplied in other agreed form or by other agreed means.**

A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.

## PART 6—SUPPLEMENTARY PROVISIONS

### **16. Joint holders of shares or debentures**

- (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.
- (2) Anything to be agreed or specified by a joint holder of any such shares or debentures is effective only if it is agreed or specified by all the joint holders.
- (3) Anything required or permitted to be sent or supplied to the holder may be sent or supplied either—
  - (a) to each of the joint holders; or
  - (b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.
- (4) This paragraph has effect subject to anything to the contrary in the company's articles.

## **17. Death or bankruptcy of holder of shares**

- (1) This paragraph has effect in the case of the death or bankruptcy of a holder of a company's shares.
- (2) Documents or information required or permitted to be sent or supplied to a holder of the company's shares can be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy—
  - (a) by name; or
  - (b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any similar description,at the address in Kenya supplied for the purpose by those persons.

- (3) Until such an address has been so supplied, a document or information can be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.
- (4) This paragraph has effect subject to anything to the contrary in the company's articles.
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**NINTH SCHEDULE—FEES PAYABLE UNDER THE ACT**

[Reg. 68, 69, 70, 71 & 72]

**PART 1**

**FEES PAYABLE IN RELATION TO LIMITED OR UNLIMITED COMPANY HAVING SHARE CAPITAL**

<i>Column 1 Item no.</i>	<i>Column 2 Matter</i>	<i>Column 3 Fee (KSh)</i>
1.	For registration of a company under sections 17 and 18 of the Act	
	If the nominal share capital does not exceed KSh200,000	4,000

	If the nominal share capital exceeds KSh200,000 but does not exceed KSh500,000	6,000
	If the nominal share capital exceeds KSh500,000 but does not exceed KSh1,000,000	9,000
	If the nominal share capital exceeds KSh1,000,000 but does not exceed KSh1,500,000	11,000
	If the nominal share capital exceeds KSh1,500,000 but does not exceed KSh2,000,000	15,000
	If the nominal share capital exceeds KSh2,000,000 but does not exceed KSh2,500,000	18,000
	If the nominal share capital exceeds KSh2,500,000 but does not exceed KSh3,000,000	21,000
	If the nominal share capital exceeds KSh3,500,000 but does not exceed KSh4,00,000	27,000
	If the nominal share capital exceeds KSh4,000,000 but does not exceed KSh4,500,000	30,000
	If the nominal share capital exceeds KSh4,500,000 but does not exceed KSh5,000,000	33,000



	If the nominal share capital exceeds KSh5,000,000 but does not exceed KSh5,500,000	36,000
	If the nominal share capital exceeds KSh5,500,000 but does not exceed KSh6,000,000	39,000
	If the nominal share capital exceeds KSh6,500,000 but does not exceed KSh7,000,000	45,000
	If the nominal share capital exceeds KSh7,000,000 but does not exceed KSh7,500,000	48,000
	If the nominal share capital exceeds KSh7,500,000 but does not exceed KSh8,000,000	51,000
	If the nominal share capital exceeds KSh9,000,000 but does not exceed KSh9,500,000	60,000
	If the nominal share capital exceeds KSh9,500,000 but does not exceed KSh10,000,000	61,400
	If the nominal share capital exceeds KSh10,000,000	62,200
2.	For the registration of a conversion of a company under section 70, 77, 82, 85 or 89 of the Act	5,000

## PART 2

### FEES PAYABLE IN RELATION TO COMPANY LIMITED BY GUARANTEE

<i>Column 1</i> <i>Item no.</i>	<i>Column 2</i> <i>Matter</i>	<i>Fee</i> <i>(KSh)</i>
1.	For registration of a company whose membership as stated in the application form for registration does not exceed 25	3,000
2.	For registration of a company whose membership as stated in the application form for registration does not exceed exceeds 25, but does not exceed 100	7,500
3.	For registration of a company whose membership as stated in the application form for registration does not exceed exceeds 100	15,000
4.	For every additional 50 members or fewer after the first 100	2,000

## PART 3

### FEES PAYABLE IN RELATION TO UNLIMITED HAVING NO SHARE CAPITAL

<i>Column 1</i>	<i>Column 2</i>	<i>Fee</i> <i>(KSh)</i>
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<i>Item no.</i>	<i>Matter</i>	
1.	For registration of an unlimited company having no share capital	20,000

#### PART 4

### **FEES CHARGEABLE BY REGISTRAR FOR INSPECTING DOCUMENTS OR OBTAINING COPIES OF DOCUMENTS OR INFORMATION**

<i>Column 1 Item no.</i>	<i>Column 2 Matter</i>	<i>Fee (KSh)</i>
1.	Disclosure by the Registrar under section 203 of the Act of protected information to a credit reference agency	500
2.	Right under section 227 of the Act to inspect the register of disqualification orders and disqualification undertakings relating to company directors	500
3.	Right to inspect the register of foreign restrictions under section 236 of the Act	500
4.	Under section 834 of the Act, for the provision of documents, or parts of documents, forming the Register	500 per page

5.	The right of a person under section 836 of the Act to a copy of a certificate of incorporation of any specified company	500
6.	The right of a person under section 884 of the Act to inspect a company's register of charges	500

## PART 5

### MISCELLEANEOUS FEES

<i>Column 1</i> <i>Item no.</i>	<i>Column 2</i> <i>Matter</i>	<i>Fee</i> <i>(KSh)</i>
1.	For making an application for a licence under section 55 of the Act	3,000
2.	For lodging of a notice of change of name lodged under sections 63 and 64 of the Act:  (a) if lodged within 14 days after the date of the change (b) if lodged after the expiry of that period	2,000  3,000
3.	For the registration under section 878 of the Act of a charge created by a company, or for the registration under section 879 of the Act of a charge existing over property when acquired by a company	

	If the amount secured by the charge does not exceed KSh10,000,000	2,000
	If the amount secured by the charge exceeds KSh10,000,000 but does not exceed KSh50,000,000	4,000
	If the amount secured by the charge exceeds KSh50,000,000 but does not exceed KSh100,000,000	6,000
	If the amount secured by the charge exceeds KSh100,000,000 but does not exceed KSh150,000,000	8,000
	If the amount secured by the charge exceeds KSh100,000,000 but does not exceed KSh150,000,000	10,000
	If the amount secured by the charge exceeds KSh150,000,000 but does not exceed KSh200,000,000	12,000
	If the amount secured by the charge exceeds KSh250,000,000	14,000
4.	For the registration under section 883 of the Act of a verified copy of a document creating or evidencing a charge over property located outside Kenya	2,000
5.	For the registration under section 887 of the Act of a memorandum of satisfaction lodged in respect of a registered charge	2,000

6.	For an application by a company to strike its name off the register under section 897 of the Act	2,000
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## PART 6

### FEES PAYABLE TO HIGH COURT AND ATTORNEY GENERAL

<i>Column 1 Item no.</i>	<i>Column 2 Matter</i>	<i>Fee (KSh)</i>
1.	Right of certain persons under section 797(4) of the Act to obtain a copy of a report submitted to the Court by an inspector appointed by the Court	500 per page
2.	Right of certain persons under section 809(4) of the Act to obtain a copy of a report submitted to the Attorney General by an inspector appointed by the Attorney General	500 per page

## PART 7

### FEES CHARGEABLE BY COMPANIES FOR SERVICES PROVIDED UNDER THE ACT

<i>Column 1 Item no.</i>	<i>Column 2 Matter</i>	<i>Fee (KSh)</i>
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1.	Right of a person under section 96 of the Act to inspect a company's register of members	500
2	Right of a person under section 96 of the Act to obtain a copy of a company's register of members under section 96 of the Act	500
3.	Right of member under section 192 of the Act to obtain copy of a director's service contract, or a memorandum setting out the terms of the contract,	500
4.	Right of a member under section 199 of the Act to obtain copy of qualifying indemnity provision relating to a director of the company.	500
5.	Right of person other than a member to inspect under section 248 of the Act a company's register of secretaries	500
6.	Right of member on request made under section 320 of the Act to obtain a specified company record	500
7.	Right of a person under section 550 of the Act to obtain a copy of report made under section 548 of the Act	500
8.	Right under section 553 of the Act to inspect and require copies of entries in register of interests	500

9.	Right under section 574 of the Act of a person other than a member to inspect a company's register of debenture holders	500
10.	Right under section 574 of the Act of a person to obtain a copy of a company's register of debenture holders	500
11.	Right of a debenture holder under section 578 of the Act to obtain from the company a copy of the trust deed securing debentures	500
12.	Right of creditors, members and others under section 892 of the Act to inspect documents that create company's charges and to inspect company's register of charges.	500

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Made on the.....2015

**GITHU MUIGAI**  
**Attorney General**