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*A company incorporated in Bermuda  
Under the Companies Act 1981*

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**MEMORANDUM OF ASSOCIATION  
AND  
BYE-LAWS  
OF  
BESTWAY INTERNATIONAL HOLDINGS LIMITED  
(Stock Code: 718)**

(Name changed from “LUEN FAT HONG INTERNATIONAL HOLDINGS LIMITED” to  
“Bestway International Holdings Limited” on 22nd December 1999)

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Incorporated on 18th August 1995

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**(This constitutional document is a consolidated version not  
formally adopted by shareholders at a general meeting)**

This constitutional document has been translated into Chinese. In case of discrepancies between the English version and Chinese versions, the English version shall prevail.

\* For identification purpose only



**BERMUDA**  
**THE COMPANIES ACT 1981**  
**MEMORANDUM OF ASSOCIATION OF**  
**COMPANY LIMITED BY SHARES**  
 (Section 7(1) and (2))

**MEMORANDUM OF ASSOCIATION**

**LUEN FAT HONG INTERNATIONAL HOLDINGS LIMITED**

(hereinafter referred as “the Company”)

1. The liability the members of the Company is limited to the amount for the time being unpaid the shares respectively held by them.
2. We, the undersigned, namely,

NAME OF	ADDRESS	BERMUDIAN STATUS (Yes/No)	NATIONALITY	NUMBER OF SHARES SUBSCRIBED
Anthony D. Whaley	Clarendon House 2 Church Street Hamilton HM 11 Bermuda	Yes	British	One
Graham B. R. Collis	"	Yes	British	One
John C. R. Collis	"	Yes	British	One

do hereby respectively agree to take such number of shares of the Company as may be allotted to us respectively by the provisional directors of the Company, not exceeding the number of shares for which we have respectively subscribed, and to satisfy such calls as may be made by the directors, provisional directors or promoters of the Company in respect of the shares allotted to us respectively.

3. The Company is to be an exempted Company as defined by the Companies Act 1981.
4. The Company has power to hold land situated in Bermuda not exceeding in all, including the following parcels-  
  
nil
5. The authorised share capital of the Company is HK\$100,000.00 divided into shares of HK\$0.1 each. (Note <sup>a</sup>) The minimum subscribed share capital of the Company is HK\$100,000.00.
6. The objects for which the Company is formed and incorporated are –  
  
As per attached Schedule

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Note <sup>a</sup> As approved by special resolutions passed upto and including 8 December 2011, the current authorized share capital of the Company is HK\$2,000,000,000.00 divided into 172,833,333,340 ordinary shares of HK\$0.01 each and 27,166,666,660 preference shares of HK\$0.01.

**THE COMPANIES ACT 1981**  
**MEMORANDUM OF ASSOCIATION OF COMPANY LIMITED BY SHARES**  
**(Section 7(1) and (2))**

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**LUEN FAT HONG INTERNATIONAL HOLDINGS LIMITED**

Schedule to Form 2

Objects/Powers of the Company

6. Objects of the Company:

- 1) to act and to perform all the functions of a holding company in all its branches and to co-ordinate the policy and administration of any subsidiary company or companies wherever incorporated or carrying on business or of any group of companies of which the Company or any subsidiary company is a member or which are in any manner controlled directly or indirectly by the Company;
- 2) to act as an investment company and for that purpose to acquire and hold upon any terms and, either in the name of the Company or that of any nominee, shares, stock, debentures, debenture stock, annuities, notes, mortgages, bonds, obligations and securities, foreign exchange, foreign currency deposits and commodities, issued or carrying on business, or by any government, sovereign, ruler, commissioners, public body or authority, supreme, municipal, local or otherwise, by original subscription, tender, purchase, exchange, underwriting, participation in syndicates or in any other manner and whether or not fully paid up, and to make payments thereon as called up or in advance of calls or otherwise and to subscribe for the same, whether conditionally or absolutely, and to hold the same with a view to investment, but with the power to vary any investments, and to exercise and enforce all rights and powers conferred by or incident to the ownership thereof, and to invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may be from time to time determined;
- 3) as set out in paragraphs (b) to (n) and (p) to (u) inclusive of the Second Schedule to The Companies Act 1981.

## **LUEN FAT HONG INTERNATIONAL HOLDINGS LIMITED**

Page 2

Schedule to Form 2

Objects/Powers of the company

7. Powers of the company

- 1) the company shall, pursuant to Section 42 of Act 1981, have the power to issue preference shares which are, at the option of the holder, liable to be redeemed;
- 2) the company shall, pursuant to Section 42A of Act 1981, have the power to purchase its own shares;
- 3) the Company shall have the power to grant pensions, annuities, or other allowances, including allowances on death, to or for the benefit of any directors, officers or employees or former directors, officers or employees of the Company or any company which at any time is or was a subsidiary or a holding company or another subsidiary of a holding company of the Company otherwise associated with the Company or of any predecessor in business of any of them, and to the relations, connections or dependants of any such persons, and to other persons whose service or services have directly or indirectly been of benefit to the Company or whom the Company considers have any moral claim on the Company or to their relations, connections or dependants, and to establish or support or aid in the establishment or support of any associations, institutions, clubs, schools, building and housing schemes, funds and trusts, and to make payments toward insurance or other arrangements likely to benefit any such persons or otherwise advance the interests of the Company or of its Members, and to subscribe, guarantee or pay money for any purpose likely, directly or indirectly, to further the interests of the Company or of its Members or for any national, charitable, benevolent, educational, religious, social, public, general or useful object.
- 4) the Company shall not have the power set out in paragraph 8 of the First Schedule to The Companies Act 1981.

Signed by each subscriber in the presence of at least one witness attesting the signature thereof-

\_\_\_\_\_  
(Sd.)

\_\_\_\_\_  
(Sd.)

\_\_\_\_\_  
(Sd.)

\_\_\_\_\_  
(Sd.)

\_\_\_\_\_  
(Sd.)

\_\_\_\_\_  
(Sd.)

(Subscribers)

(Witness)

SUBSCRIBED this Second day of August, 1995

**THE COMPANIES ACT 1981****FIRST SCHEDULE**

A company limited by shares may exercise all or any of the following powers subject to any provision of the law or its memorandum:

1. [Deleted]
2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the company is authorised to carry on;
3. to apply for register, purchase, lease, acquire, hold, use, control, licence, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;
4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint venture, reciprocal concession or otherwise with any person carrying on or engaged in or about to carry on or engage in any business or transaction that the company is authorised to carry on or engage in or any business or transaction capable of being conducted so as to benefit the company;
5. to take or otherwise acquire and hold securities in any other body corporate having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as to benefit the company;
6. subject to section 96 to lend money to any employee or to any person having dealings with the company or with whom the company proposes to have dealings or to any other body corporate any of those shares are held by the company;
7. to apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any body corporate or other public body may be empowered to grant, and to pay for, aid in and contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the company or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and subscribe or guarantee money for charitable, benevolent, educational and religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any company for the purpose of acquiring or taking over any of the property and liabilities of the company or for any other purpose that may benefit the company;

10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the company considers necessary or convenient for the purposes of business;
11. to construct, maintain, alter, renovate and demolish any buildings or works necessary or convenient of its objects;
12. to take land in Bermuda by way of lease or letting agreement for a term not exceeding twenty-one years, being land "bona fide" required for the purposes of the business of the company and with the consent of the Minister granted in his discretion to take land in Bermuda by way of lease or letting agreement for a similar period in order to provide accommodation or recreational facilities for its officers and employees and when no longer necessary for any of the above purposes to terminate or transfer the lease or letting agreement;
13. except to the extent, if any, as may be otherwise expressly provided in its incorporating Act or memorandum and subject to the provisions of this Act every company shall have power to invest the moneys of the Company by way of mortgage of real or personal property of every description in Bermuda or elsewhere and to sell, exchange, vary or dispose of such mortgage as the company shall from time to time determine;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, factories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the company and contribute to, subsidise or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person and guarantee the performance or fulfilment of any contracts or obligations of any person, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person;
16. to borrow or raise or secure the payment of money in such manner as the company may think fit;
17. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
18. when properly authorised to do so, to sell, lease, exchange or otherwise dispose of the undertaking of the company or any part thereof as an entirety or substantially as an entirety for such consideration as the company thinks fit;
19. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the company in the ordinary course of its business;



20. to adopt such means of making known the products of the company as may seem expedient, and in particular by advertising, by purchase and exhibition of works of or interest publication of books and periodicals and by granting prizes and rewards and making donations;
21. to cause the company to be registered and recognised in any foreign jurisdiction, and designate persons therein according to the laws of that foreign jurisdiction or to represent the company and to accept service for and on behalf the company of any process or suit;
22. to allot and issue fully-paid shares of the company payment or part payment of any property purchase or otherwise acquired by the company or for any past services performed for the company;
23. to distribute among the members of the company in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner considered advisable, any property of the company, but not so to decrease the capital of the company unless the distribution is made for the purpose of enabling the company to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
24. to establish agencies and branches;
25. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the company of whatsoever kind sold by the company, or for any money due to the company from purchasers and others and sell or otherwise dispose of any such mortgage, hypothec, lien or charge;
26. to pay all costs and expenses of or incidental to the incorporation and organisation of the company;
27. to invest and deal with the moneys of the company not immediately required for the objects of the company in such manner as may be determined;
28. to do any of the things authorised by this subsection and all things authorised by its principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
29. to do such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

Every company may exercise its powers beyond the boundaries of Bermuda to the extent to which the laws in force where the powers are sought to be exercised permit.

## THE COMPANIES ACT 1981

### SECOND SCHEDULE

A company may by reference include in its memorandum any of the following objects that is to say the business of:

- (a) [deleted]
- (b) packaging of goods of all kinds;
- (c) buying, selling and dealing in goods of kinds;
- (d) designing and manufacturing of goods of all kinds;
- (e) mining and quarrying and exploration for metals, minerals, fossil fuels and precious stones of all kinds and their preparation for sale or use;
- (f) exploring for, the drilling for, the moving, transporting and re-finishing petroleum and hydro carbon products including oil and oil products;
- (g) scientific research including the improvement, discovery and development of processes, inventions, patents and designs and the construction, maintenance and operation of laboratories and research centres;
- (h) land, sea and air undertakings including the land, ship and air carriage of passengers, mails and goods of all kinds;
- (i) ships and aircraft owners, managers, operators, agents, builders and repairers;
- (j) acquiring, owning, selling, chartering, repairing or dealing in ships and aircraft;
- (k) travel agents, freight contractors and forwarding agents;
- (l) dock owners, wharfingers, warehousemen;
- (m) ship chandlers and dealing in rope, canvas oil and ship stores of all kinds;
- (n) all forms of engineering;
- (o) [deleted]
- (p) farmers, livestock breeders and keepers, graziers, butchers, tanners and processors of and dealers in all kinds of live and dead stock, wool, hides, tallow, grain, vegetables and other produce;

- (q) acquiring by purchase or otherwise and holding as an investment inventions, patents, trade marks, trade names, trade secrets, designs and the like;
- (r) buying, selling, hiring, letting and dealing in conveyances of any sort; and
- (s) employing, providing, hiring out and acting as agent for artists, actors, entertainers of all sorts, authors, composers, producers, engineers and experts or specialists of any kind.
- (t) to acquire by purchase or otherwise hold, dispose of and deal in real property situated outside Bermuda and in personal property of all kinds wheresoever situated,
- (u) to enter into any guarantee, contract of indemnity or suretyship and to assure, support or secure with or without consideration or benefit the performance of any obligations of any person or persons and to guarantee the fidelity of individuals filling or about to fill situations of trust confidence.



## CERTIFICATE

I, **C.F.A. COOPER** Notary Public of the City of Hamilton in the Islands of Bermuda DO HEREBY CERTIFY that the attached document marked "A" is a true and correct copy of the following documents of **LUEN FAT HONG INTERNATIONAL HOLDINGS LIMITED:-**

(A) Bye-Laws

Given under my hand this 7th day of September, 1995.

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C.F.A. Cooper  
Notary Public  
City of Hamilton, Islands of Bermuda



“A”

**BYE-LAWS**

**of**

**Bestway International Holdings Limited**

(The Bye-laws were amended by a resolution passed on 17 September 1996, 26 August 2004, 12 September 2005, 14 December 2006, 2 December 2009 and 8 December 2011.)

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**SUBJECT**

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## INTERPRETATION

1 In these Bye-laws, unless the context otherwise requires, the words standing in the first column of the following table shall bear the meaning set opposite them respectively in the second column.

<u>WORD</u>	<u>MEANING</u>
“Act”	the Companies Act 1981 of Bermuda, as amended from time to time.
“appointed newspaper”	shall have the meaning as defined in the Act.
“associate”	shall have the meaning attributed to it in the rules of the designated Stock Exchange;
"Auditor”	the auditor of the Company for the time being and any auditors as may be appointed from time to time and may include any individual or partnership.
“Bye-laws”	these Bye-laws in their present form or as supplemented or amended or substituted from time to time.
"Board” or "Directors”	the Board of Directors of the Company or (as the amended context may require) the Directors present and entitled to vote at a meeting of Directors at which a quorum is present.
“capital”	the share capital from time to time of the Company.
"clear days”	in relation to the period of a notice that period excluding the day on which the notice is given or deemed to be given and the day on which it is to take effect or is deemed to take effect.
"clearing house”	a clearing house recognised by the laws of the jurisdiction in which the shares of the Company are listed or quoted on a stock exchange in such jurisdiction.
"Company”	Bestway International Holdings Limited
"competent regulatory authority”	a competent regulatory authority in the territory where the shares of the Company are listed or quoted on a stock exchange in such territory.
"debenture” and "debenture holder”	include debenture stock and debenture stockholder respectively.
"Designated Stock Exchange”	a stock exchange which is an appointed stock exchange for the purposes of the Act in respect of which the shares of the Company are listed or quoted and where such appointed stock exchange deems such listing or quotation to be the primary listing or quotation of the shares of the Company.



“dollars” and “\$”	dollars. the legal currency of Hong Kong.
"head office"	such office of the Company as the Directors may from time to time determine to be the principal office of the Company.
"Member"	a duly registered holder from time to time of the shares in the capital of the Company.
“month”	a calendar month.
“Newspaper”	in relation to any newspaper circulating in the territory where the shares of the Company are listed or quoted on stock exchange in such territory, shall mean a newspaper published daily and circulating generally in such territory and specified for this purpose by the stock exchange in such territory.
“Notice”	written notice unless otherwise specifically stated and as further defined in these Bye-laws,
“Office"	the registered office of the Company for the time being.
“paid up”	paid up or credited as paid up.
“Register"	the principal register and where applicable, any branch register of Members the Company to be kept pursuant to the provisions of the Act.
“Registration Office"	in respect of any class of share capital such place as the Board may from time to time determine to keep a branch register of Members in respect of that class of share capital and where (except in cases where the Board otherwise directs) the transfers or other documents of title for such class of share capital are to be lodged for registration and are to be registered.
“Seal”	common seal or any one or more duplicate seals of the Company (including a securities seal) for use in Bermuda or in any place outside Bermuda.
“Secretary”	any person firm or corporation appointed by the Board to perform any of the duties of secretary of the Company and includes any assistant, deputy, temporary or acting secretary.
“Statutes"	the Act and every other act of the Legislature of Bermuda for the time being in force applying to or affecting the Company, its memorandum of association and/or these Bye-laws.
“year”	a calendar year.

2 In these Bye-laws, unless there be something within the subject or context inconsistent with such construction:

- a. words importing the singular include the plural and vice versa;
- b. words importing a gender include every gender and the neuter;
- c. words importing persons and the neuter include companies, associations and bodies of persons whether corporate or not;
- d. the words:
  - (i) "may" shall be construed as permissive;
  - (ii) "shall" or "will" shall be construed as imperative;
- e. expressions referring to writing shall, unless the contrary intention appears, be construed as including printing, lithography, photography and every other mode of representing words in a visible form;
- f. references to any act, ordinance, statute or statutory provision shall be interpreted as relating to any statutory modification or re-enactment thereof for the time being in force;
- g. save as aforesaid words and expressions defined in the Statutes shall bear the same meanings in these Bye-laws if not inconsistent with the subject in the context save that "company" shall where the context permits include any company incorporated in Bermuda or elsewhere;
- h. a resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of votes cast by such Members as, being entitled so to do, vote in person or, in the case of such Members as are corporations, by their respective duly authorised representative or, where proxies are allowed, by proxy at a general meeting of which not less than twenty-one (21) clear days' notice, specifying (without prejudice to the power contained in these Bye-laws to amend the same) the intention to propose the resolution as a special resolution, has been duly given. Provided that, except in the case of an annual general meeting, if it is so agreed by a majority in number of the Members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five (95) per cent. in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one (21) clear days' Notice has been given;
- i. a resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such Members as, being entitled so to do, vote in person or, in the case of any Member being a corporation, by its duly authorised representative or, where proxies are allowed, by proxy at a general

meeting of which not less than fourteen (14) clear days' Notice has been duly given;

- j. a special resolution shall be effective for any purpose for which an ordinary resolution is expressed to be required under any provision of these Bye-laws or the Statutes.

### **SHARE CAPITAL**

3 (1) Subject to any resolution of Members to the contrary, the share capital of the Company is divided into ordinary shares of \$0.1 each and preference shares of \$0.1 each (the "Preference Shares"). (Note<sup>b</sup>) The Preference Shares shall confer on the holders thereof the respective rights and privileges and be subject to the respective restrictions as set out in Bye-law 9A."

(2) Subject to the Act, the Company's memorandum of association and, where applicable, the rules of any Designated Stock Exchange and/or any competent regulatory authority, any power of the Company to purchase or otherwise acquire its own shares (including its redeemable shares) and warrants or other securities shall be exercisable by the Board upon such terms and subject to such conditions as it thinks fit.

(3) Neither the Company nor any of its subsidiaries shall directly or indirectly give financial assistance to a person who is acquiring or proposing to acquire shares in the Company for the purpose of that acquisition whether before or at the same time as the acquisition takes place or afterwards PROVIDED that nothing in this Bye-law shall prohibit transactions permitted by the Act.

### **ALTERATION OF CAPITAL**

4 The Company in general meeting may from time to time by ordinary resolution in accordance with Section 45 of the Act:

- (a) increase its capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;
- (b) consolidate and divide all or any or its capital into shares of larger amount than its existing shares;
- (c) divide its shares into several classes and without prejudice to any special rights previously conferred on the holders of existing shares attach thereto respectively any preferential, deferred, qualified or special rights, privileges conditions or such restrictions which in the absence of any such determination by the Company in General Meeting, as the Directors may determine provided always that where the

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Note <sup>b</sup> As approved by a special resolution passed on 8 December 2011, the authorized share capital and issued share capital of ordinary shares and preference shares were subdivided into ordinary shares of HK\$0.01 each and preference shares of HK\$0.01 each.

Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares and where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting";

- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association (subject, nevertheless, to the Act), and may by such resolution determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred rights or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares;
- (e) change the currency denomination of its share capital;
- (f) make provision for the issue and allotment of shares which do not carry any voting rights; and
- (g) cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled.

5 The Board may settle as it considers expedient any difficulty which arises in relation to any consolidation and division under the last preceding Bye-law and in particular but without prejudice to the generality of the foregoing may issue certificates in respect of fractions of shares or arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale (after deduction of the expenses of such sale) in due proportion amongst the Members who would have been entitled to the fractions, and for this purpose the Board may authorise some person to transfer the shares representing fractions to their purchaser or resolve that such net proceeds be paid to the Company for the Company's benefit. Such purchaser will not be bound to see to the application of the purchase money nor will his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

6 The Company may from time to time by special resolution, subject to any confirmation or consent required by law, reduce its authorised or issued share capital or any share premium account or other undistributable reserve in any manner permitted by law.

7 Except so far as otherwise provided by the conditions of issue, or by these Bye-laws, any capital raised by the creation of new shares shall be treated as if it formed part of the original capital of the Company, and such shares shall be subject to the provisions contained in these Bye-laws with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, cancellation, surrender, voting and otherwise.

### **SHARE RIGHTS**

8 Subject to any special rights conferred on the holders of any shares or class of shares, any share in the Company (whether forming part of the present capital or not) may be issued with or have attached thereto such rights or restrictions whether in regard to dividend, voting, return of capital, distribution of assets or otherwise as the Company may by ordinary resolution determine

or, if there has not been any such determination or so far as the same shall not make specific provision, as the Board may determine.

9 Subject to Sections 42 and 43 of the Act, any preference shares may be issued or converted into shares that, at a determinable date or at the option of the Company or the holder if so authorised by its memorandum of association, are liable to be redeemed on such terms and in such manner as the Company before the issue or conversion may by ordinary resolution of the Members determine.

### **“NON-REDEEMABLE CONVERTIBLE PREFERENCE SHARES”**

9A The rights attaching to the Preference Shares are as follows:—

#### **1. INTERPRETATION**

In this Bye-law, unless the context otherwise requires, the following expressions which apply exclusively to this Bye-law shall have the following meanings:

(A) “Auditors” means the auditors of the Company for the time being;

“Business Day” means a day (excluding a Saturday) on which banks in Hong Kong are open for business in Hong Kong throughout their normal business hours;

“Bye-laws” means the bye-laws for the time being adopted by the Company and as amended from time to time;

“Certificate” means a certificate issued by the Company in the name of the Convertible Preference Shareholder in respect of his holding of one or more Convertible Preference Shares;

“Closing Price” means the closing price per Ordinary Share on the Relevant Stock Exchange, as published by the Relevant Stock Exchange for one or more board lots of Ordinary Shares or, in the absence of any such published closing price, the last published closing price;

“Company” means Bestway International Holdings Limited;

“Conversion Date” means, subject to paragraph 5(G), 12 noon on the Business Day immediately following the date of the surrender of the relevant Certificate and delivery of the Conversion Notice therefor accompanied by the documents referred to in paragraph 5(B);

“Conversion Notice” means a notice, in such form as the Directors may from time to time specify, stating that a Convertible Preference Shareholder wishes to exercise the Conversion Right in respect of one or more Convertible Preference Shares;

“Conversion Number” means, in relation to any Convertible Preference Share, such number of Ordinary Shares as may, upon exercise of the Conversion Right, be subscribed at the Conversion Price in force on the relevant Conversion Date;

“Conversion Period” means, in respect of any Convertible Preference Share, any time commencing from 3:00 p.m. (Hong Kong time) on the Business Day immediately after the date of issue of such Conversion Preference Share and up to 4:00 p.m. (Hong Kong time) on the date of all Convertible Preference Shares being converted or purchased in full (or such earlier date as may be required under the Statutes);

“Conversion Price” means an amount in Hong Kong dollars per Ordinary Share of HK\$0.30 or such adjusted price as may for the time being be applicable in accordance with the terms of this Bye-law;

“Conversion Right” means the right, subject to the provisions of the Byelaws, the Statutes and to any other applicable fiscal or other laws or regulations to convert at any time during the Conversion Period/commencing from 3:00 p.m. (Hong Kong time) on the Business Day immediately after the date of issue of the relevant Conversion Preference Share any Convertible Preference Share, which shall be deemed to have a value equal to the Notional Value, into the Conversion Number of Ordinary Shares;

“Conversion Share(s)” means Ordinary Share(s) to be issued upon an exercise of the Conversion Rights;

“Convertible Preference Shares” means the dividend-bearing, limited-voting, non-redeemable convertible preference shares of HK\$0.10 each in the capital of the Company, the rights of which are set out in this Bye-law;

“Convertible Preference Shareholder” means a person or persons who is or are registered in the Register as a holder or jointholders of Convertible Preference Shares;

“Converting Shareholder” means a Convertible Preference Shareholder all or some of whose Convertible Preference Shares are being or have been converted;

“Dealing Day” means a day on which the Relevant Stock Exchange is open for business and on which trading in the Ordinary Shares or other relevant securities is not suspended;

“Directors” means the board of directors of the Company or the directors present at a meeting of directors at which a quorum is present;

“Dividend” means any dividend payable or distribution made pursuant to paragraph 2;

“Equity Share Capital” means issued share capital excluding any part thereof which neither as respect dividends nor as respects capital carries any right to participate beyond a specified amount in a distribution;

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Hong Kong Stock Exchange” means The Stock Exchange of Hong Kong Limited;

“Issue Date” means, in respect of any Convertible Preference Share, the date on which the Convertible Preference Share was allotted and issued;

“Listing Rules” means the Rules Governing the Listing of Securities on the Hong Kong Stock Exchange;

“Notional Value” means the value of HK\$0.30 attributed to each Convertible Preference Share;

“Ordinary Shares” means fully paid ordinary shares of HK\$0.10 each (or of such other nominal value in which such ordinary shares are for the time being denominated following any consolidation or sub-division which gives rise to an adjustment to the Conversion Price in accordance with paragraph 8) in the Company of the class listed on the Hong Kong Stock Exchange or, where the context so requires, shares resulting from the re-designation or re-classification of all the Ordinary Shares outstanding, provided that if all of the Ordinary Shares are replaced by other securities (all of which are identical), the expression “Ordinary Shares” shall thereafter refer to those other securities;

“outstanding” means in relation to the Convertible Preference Shares, all the Convertible Preference Shares issued other than:

- (i) those in respect of which Conversion Rights have been exercised and which have been cancelled in accordance with this Bye-law;
- (ii) those mutilated or defaced Convertible Preference Shares which have been surrendered in exchange for replacement Convertible Preference Shares pursuant to paragraph 16;
- (iii) (for the purpose only of determining how many Convertible Preference Shares are outstanding and without prejudice to their status for any other purpose) those Convertible Preference Shares alleged to have been lost, stolen or destroyed and in respect of which replacement Convertible Preference Shares have been issued pursuant to paragraph 16;
- (iv) those which have been purchased and cancelled as provided in paragraph 10;

“Record Date” means the date and time by which a subscriber or transferee of securities of the class in question would have to be registered in order to participate in the relevant distribution or rights;

“Register” means the register of Convertible Preference Shareholders required to be maintained by the Company pursuant to paragraph 18(B);

“Registrar’s Office” means the office of Tricor Tengis Limited at 26/F, Tesbury Centre, 28 Queen’s Road East, Wanchai, Hong Kong, the Hong Kong branch share registrars of the Company, or such office of such person or such other person as the Company may from time to time designate;

“Relevant Convertible Preference Shares” means a Convertible Preference Share which is to be converted pursuant to a Conversion Notice;



“Relevant Jurisdiction” means a jurisdiction in which the Company or any of its subsidiaries is incorporated, carries on business or holds any assets;

“Relevant Stock Exchange” means (i) the stock exchange on which the Ordinary Shares are at the relevant time principally traded, as determined by the Company, or (ii) if, for the purposes of paragraph 8, the consideration at which any shares or securities are or are to be issued or transferred, or the relevant exercise, exchange or subscription price, if any, for such shares or securities, is to be fixed by reference to the price of such shares or securities on a particular stock exchange, that stock exchange;

“Statutes” means the Companies Act 1981 of Bermuda, as amended from time to time, and every other act of the legislature of Hong Kong or Bermuda for the time being in force applying to or affecting the Company, its memorandum of association and/or the Bye-laws;

“Hong Kong dollars” or “HK\$” means the lawful currency of Hong Kong.

(B) In this Bye-law, references to:

“companies” include references to any bodies corporate however and wherever incorporated;

“distribution” include references to any dividend or other distribution (including a distribution in specie) or capitalisation issue;

“paragraphs” are references to the paragraphs of this Bye-law;

“property” include references to shares, securities, cash and other assets or rights of any nature;

“dates” and “times” are to dates and times in Hong Kong; and

a “gender” include any other gender.

## **2. INCOME, DIVIDEND AND OTHER DISTRIBUTIONS**

Each outstanding Convertible Preference Share shall confer, in case of any dividend or distribution being declared and paid by the Company to holders of the Ordinary Shares, on the holder thereof the same entitlement to dividend or distribution as holder of the number of Ordinary Shares into which such Convertible Preference Share may be converted upon exercise of Conversion Rights attached thereto.

### **3. CAPITAL**

On a return of capital on liquidation or otherwise (but not on conversion or purchase) the Convertible Preference Shares shall confer on the Convertible Preference Shareholders the right to be paid, in priority to any return of assets in respect of any other class of shares in the capital of the Company, pari passu as between themselves an amount equal to the aggregate Notional Value of the Convertible Preference Shares. The Convertible Preference Shares shall not confer on the holders thereof any further or other right to participate in the assets of the Company.

### **4. RANKING**

The Company shall not (unless such sanction has been given by the Convertible Preference Shareholders as would be required for a variation of the special rights attaching thereto or unless otherwise provided in the Bye-laws) create or issue any shares ranking as regards order in the participation in the profits of the Company or in the assets of the Company on a winding up or otherwise in priority to the Convertible Preference Shares, but the Company may create or issue, without obtaining the consent of the Convertible Preference Shareholders, shares ranking pari passu in all respects (including as to class) with the Convertible Preference Shares and the existing and further Ordinary Shares.

### **5. CONVERSION**

- (A) Each Convertible Preference Share shall confer on the holder thereof the Conversion Right.
- (B) Subject to paragraph 5(I), any Convertible Preference Shareholder may exercise the Conversion Right in respect of one or more Convertible Preference Shares held by him at any time during the Conversion Period/ any time commencing from 3:00 p.m. (Hong Kong time) on the Business Day immediately after the date of issue of such Conversion Preference Shares subject to the provisions of the Statutes and any other applicable fiscal and other laws and regulations by delivering a duly signed and completed Conversion Notice to the Registrar's Office accompanied by:
  - (i) the Certificates in respect of the Relevant Convertible Preference Shares and such other evidence (if any) as the Directors may reasonably require to prove the title of the person exercising such right (or, if such Certificates have been lost or destroyed, such evidence of title and such indemnity as the Directors may reasonably require); and

- (ii) banker's cashier orders or similar instruments payable to the Company in respect of all taxes and stamp, issue and registration duties (if any) arising on conversion.

A Conversion Notice shall not be effective if:

- (aa) it is not accompanied by the Certificates in respect of the Relevant Convertible Preference Shares and such other evidence (if any) as the Directors may reasonably require to prove the title of the person exercising such right (or, if such Certificates have been lost or destroyed, such evidence of title and such indemnity as the Directors may reasonably require);
  - (bb) it is not accompanied by banker's cashier orders or similar instruments payable to the Company in respect of all taxes and stamp, issue and registration duties (if any) arising on conversion; and
  - (cc) it does not include a declaration and confirmation that the beneficial owner of the Relevant Convertible Preference Shares, and of the Conversion Shares, is not a resident or national of any foreign jurisdiction where the exercise of the Conversion Rights attached to the Relevant Convertible Preference Shares is prohibited by any law or regulation of that jurisdiction or where compliance with such laws or regulations would require filing or other action by the Company; or that delivery of the Relevant Convertible Preference Shares or Conversion Shares will not result in a breach of any exchange control, fiscal or other laws or regulations for the time being applicable.
- (C) The number of Conversion Shares to be issued on each conversion shall be determined by dividing the aggregate Notional Value of the Relevant Convertible Preference Shares by the Conversion Price applicable on the Conversion Date provided that no fraction of an Ordinary Share arising on conversion shall be allotted and all fractional entitlements shall be dealt with in accordance with paragraph 13.
- (D) Conversion of the Convertible Preference Shares shall be effected in such manner as the Directors shall subject to the Bye-laws, the Statutes and to any other applicable law and regulations, from time to time determine provided that no Conversion shall take place if to do so would result in the Conversion Shares being issued at a price below their nominal value as at the applicable Conversion Date. Without prejudice to the generality of the foregoing, any Convertible Preference Share may be converted by redemption or repurchase on the relevant Conversion Date out of:

- (a) the capital paid up on the Relevant Convertible Preference Shares; or
- (b) the funds available for dividend or distribution of the Company; or
- (c) the proceeds of a fresh issue of shares made for the purpose; or
- (d) any combination of (a), (b) and (c),

and in the case of any premium payable on such a redemption or repurchase, out of the Company's funds available for dividend or distribution or the Company's share premium account or a combination of the foregoing. Each Conversion Notice shall be deemed to authorise and instruct the Directors to retain any redemption moneys otherwise payable to the Converting Shareholder and, in respect of the Relevant Convertible Preference Share, to apply the same in the subscription on such Converting Shareholder's behalf of the Conversion Shares (subject to the treatment of fractions described in paragraph 13) and, to the extent that conversion shall be effected out of the proceeds of a fresh issue of shares, where appropriate, each Conversion Notice shall be deemed:

- (i) to appoint any person selected by the Directors as such Converting Shareholder's agent with authority to apply an amount equal to the redemption/repurchase moneys in respect of the Relevant Convertible Preference Shares in subscribing on such Converting Shareholder's behalf for the Conversion Shares (subject to the treatment of fractions described in paragraph 13); and
- (ii) to authorise and instruct the Directors following the allotment of such Conversion Shares to pay the said redemption/repurchase moneys to such agent who shall be entitled to retain the same for his own benefit without being accountable therefor to such Converting Shareholder;

provided that if the Converting Shareholder has a registered address in any territory where in the absence of a registration statement or any other special formalities the allotment or delivery of any Conversion Shares would or might in the opinion of the Directors be unlawful or impracticable under the laws of such territory or any Relevant Jurisdiction, the Company shall as soon as reasonably practicable after the receipt of the relevant Conversion Notice allot the Conversion Number of the Ordinary Shares to the Converting Shareholder or to one or more third parties selected by the Company and on behalf of the Converting Shareholder sell the same to one or more third parties selected by the Company for the best consideration then reasonably obtainable by the Company. As soon as reasonably practicable following any such allotment and sale, the Company shall pay the Converting Shareholder an amount equal to the consideration received by it.

- (E) Each Convertible Preference Shareholder irrevocably authorises the Company to effect the transactions required by paragraph 5(D) and for this purpose the Company may appoint any person to execute transfers, renunciations or other documents on behalf of the Convertible Preference Shareholder and generally may make all arrangements which appear to it to be necessary or appropriate in connection therewith.
- (F) The Company shall allot and issue the Conversion Shares or, as the case may be, send the amount to which he is entitled pursuant to paragraph (D) above to the Converting Shareholder and shall procure that certificates in respect of the Conversion Shares, together with a new Certificate for any unconverted Convertible Preference Shares comprised in the Certificate(s) surrendered by the Converting Shareholder, are issued as soon as practicable and in any event not later than 14 days after the relevant Conversion Date.
- (G) If and whenever any conversion takes place after the occurrence of any event falling within any sub-provision of paragraph 8(A) but before the amount of the relevant adjustment to the Conversion Price (if any) shall have been calculated in accordance with the provisions of paragraph 8(A), the Conversion Date shall be deemed to fall on the Business Day after the date the adjustment made to the Conversion Price in respect of the relevant event has become effective.
- (H) In the event a notice is given by the Company to its members to convene a general meeting for the purposes of considering, and if thought fit, approving a resolution to voluntarily wind-up the Company, the Company at the same time it despatches such notice to each member of the Company shall give notice thereof to all Convertible Preference Shareholders (together with a notice of the existence of the provisions of this paragraph 5(H)) and thereupon, each Convertible Preference Shareholder shall be entitled to exercise all or any of his Conversion Rights at any time not later than two Business Days prior to the date of the general meeting of the Company by providing the Company a Conversion Notice duly completed and executed together with the Certificates, cashier orders and, where appropriate, other items listed in paragraph 5(B)(i) and (ii) whereupon the Company shall, subject to the Statutes, as soon as possible and, in any event, no later than the Business Day immediately prior to the date of the general meeting, allot the Conversion Shares to the Relevant Convertible Preference Shareholders credited as fully paid.
- (I) No Conversion Right may be exercised, to the extent that following such exercise, the relevant Convertible Preference Shareholder and parties acting in concert with it, taken together, will directly or indirectly, control or be interested in 30 per cent. or more of the entire issued Ordinary Shares (or in such lower percentage as may from time to time be specified in the Hong Kong Code on Takeovers and Mergers as being the level for triggering a mandatory general offer).

No Convertible Preference Shareholder shall exercise the Conversion Right attached to any Convertible Preference Shares held by such Convertible Preference Shareholder if immediately after such conversion, the public float of the Shares falls below the minimum public float requirements stipulated under the Listing Rules or as required by the Stock Exchange.

## **6. REDEMPTION**

Without prejudice to the general power of the Company to purchase its own shares and to paragraph 10 of this Bye-law but subject always to the Statutes, neither the Company nor any of the Convertible Preference Shareholders shall have the right to redeem or require any redemption of any outstanding Convertible Preference Shares or any part thereof.

## **7. CONVERSION SHARES**

The Conversion Shares shall, save as provided for in these provisions, rank *pari passu* in all respects with the Ordinary Shares in issue at the time the Conversion Shares are issued, and shall, subject to the proviso of this paragraph 7, entitle the holders thereof to all distributions paid or made on the Ordinary Shares by reference to a Record Date falling after the Conversion Date, provided that if a Record Date after the Conversion Date is in respect of any distribution in respect of any financial period of the Company ended prior to such Conversion Date, the holders of the Conversion Shares will not be entitled to such distribution.

## **8. ADJUSTMENTS TO THE CONVERSION PRICE**

- (A) Subject as hereinafter provided, the Conversion Price shall from time to time be adjusted in accordance with the following relevant provisions and so that if the event giving rise to any such adjustment shall be such as would be capable of falling within more than one of sub-paragraphs (i) to (vii) inclusive of this paragraph 8, it shall fall within the first of the applicable paragraphs to the exclusion of the remaining paragraphs:
  - (i) If and whenever there shall be an alteration in the nominal value of the Ordinary Shares by reason of any consolidation or sub-division, the Conversion Price in force immediately prior thereto shall be adjusted by multiplying it by a fraction of which the numerator shall be the nominal value of one Ordinary Share immediately after such alteration and of which the denominator shall be the nominal value of one Ordinary Share immediately before such alteration and such adjustment shall become effective on the date on which such alteration takes effect.

- (ii) If and whenever the Company shall capitalise any amount of profits or reserves (including any share premium account or contributed surplus account) and apply the same in paying up in full the nominal value of any Ordinary Shares (other than any Ordinary Shares credited as fully paid out of distributable profits or reserves (including any share premium account or contributed surplus account) and issued in lieu of the whole or any part of a cash dividend or specie distribution which the holders of the Ordinary Shares concerned would or could otherwise have received and which would not have constituted a Capital Distribution (as defined in paragraph 8(B))), the Conversion Price in force immediately prior to the Record Date therefor shall be adjusted by a fraction of which the numerator shall be the aggregate nominal amount of the issued Ordinary Shares immediately before such issue and of which the denominator shall be the aggregate nominal amount of the issued Ordinary Shares immediately after such issue. Such adjustment shall be effective immediately after the Record Date for such issue.
- (iii) If and whenever the Company shall make any Capital Distribution, the Conversion Price in force immediately prior to such distribution shall be adjusted by multiplying it by the following fraction:

$$(K - L) \div K$$

where:

- K is the Closing Price of one Ordinary Share on the Dealing Day immediately preceding the date on which the Capital Distribution is announced or (failing any such announcement), the Dealing Day immediately preceding the Record Date for the Distribution;
- L is the fair market value on the date of such announcement or (as the case may require) the Dealing Day immediately preceding the Record Date for the Capital Distribution, as determined in good faith by an approved merchant bank (selected at the option of the Company) or the Auditors of the portion of the Capital Distribution which is attributable to one Ordinary Share.

Provided that:

- (a) if in the opinion of the relevant approved merchant bank or the Auditors (as the case may be), the use of the fair market value as aforesaid produces a result which is significantly inequitable, it may instead determine (and in such event the above formula shall be construed accordingly) the amount of the said Closing Price which should properly be attributed to the value of the Capital Distribution; and

- (b) the provisions of this sub-paragraph (iii) shall not apply in relation to the issue of Ordinary Shares paid out of profits or reserves and issued in lieu of a cash dividend nor to a purchase by the Company of its own Ordinary Shares in accordance with the provisions of the Companies Act.

Each such adjustment shall be effective (if appropriate retroactively) from the commencement of the day next following the Record Date for the Capital Distribution.

- (iv) If and whenever the Company shall offer to holders of Shares new Shares for subscription by way of rights, or shall grant to holders of Shares any options or warrants to subscribe for new Ordinary Shares, at a price which is less than 90 per cent. of the market price (as defined in paragraph 8(B)) at the date of the announcement of the terms of the offer or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of the announcement of such offer or grant by the following fraction:

$$(K + L) \div M$$

where:

- K is the number of Ordinary Shares in issue immediately before the date of such announcement;
- L is the number of Ordinary Shares which the aggregate of the amount (if any) payable for the rights, options or warrants and of the amount payable for the total number of new Ordinary Shares comprised therein would purchase at such market price; and
- M is the number of Ordinary Shares in issue immediately before the date of such announcement plus the aggregate number of Ordinary Shares offered for subscription or comprised in the options or warrants.

Such adjustment shall become effective (if appropriate retroactively) from the commencement of the day next following the Record Date for the offer or grant.



- (v) (a) If and whenever the Company or any other company shall issue wholly for cash any securities which by their terms are convertible into or exchangeable for or carry rights of subscription for new Ordinary Shares and the total Effective Consideration (as defined below) per Ordinary Share initially receivable for such securities is less than 90 per cent. of the price which is the market price at the date of the announcement of the terms of issue of such securities, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to the issue by the following fraction:

$$(K + L) \div (K + M)$$

where:

- K is the number of Ordinary Shares in issue immediately before the date of the issue;
- L is the number of Ordinary Shares which the total Effective Consideration receivable for the securities issued would purchase at such market price; and
- M is the maximum number of new Ordinary Shares to be issued upon full conversion or exchange of, or the exercise in full of the subscription rights conferred by, such securities at the initial conversion or exchange rate or subscription price.

Such adjustment shall become effective (if appropriate retroactively) from the close of business in Hong Kong on the Business Day immediately preceding whichever is the earlier of the date on which the issue is announced and the date on which the issuer determinesthe conversion or exchange rate or subscription price.

- (b) If and whenever the rights of conversion or exchange or subscription attached to any such securities as are mentioned in section (a) of this sub-paragraph (v) are modified so that the total Effective Consideration per Ordinary Share initially receivable for such securities shall be less than 90 per cent. of the price which is the market price at the date of announcement of the proposal to modify such rights of conversion or exchange or subscription, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:

$$(K + L) \div (K + M)$$

where:

- K is the number of Ordinary Shares in issue immediately before the date of such modification;
- L is the number of Ordinary Shares which the total Effective Consideration receivable for the securities issued at the modified conversion or exchange price would purchase at the market price at the date of the announcement of such proposal; and
- M is the maximum number of new Ordinary Shares to be issued upon full conversion or exchange of, or the exercise in full of the subscription rights conferred by, such securities at the modified conversion or exchange rate or subscription price.

Such adjustment shall become effective as at the date upon which such modification shall take effect. A right of conversion or exchange or subscription shall not be treated as modified for the foregoing purposes where it is adjusted to take account of rights or capitalisation issues and other events normally giving rise to adjustment of conversion or exchange terms.

For the purposes of this sub paragraph (v), the “total Effective Consideration” receivable for the securities issued shall be deemed to be the consideration receivable by the issuer for the issue of any such securities plus the additional minimum consideration (if any) to be received by the issuer and/or the Company (if not the issuer) upon (and assuming) the full conversion or exchange thereof or the exercise in full of such subscription rights and the Effective Consideration per Ordinary Share initially receivable for such securities shall be such aggregate consideration divided by the number of Ordinary Shares to be issued upon (and assuming) such conversion or exchange at the initial conversion or exchange rate or the exercise of such subscription rights at the initial subscription price, in each case without any deduction for any commissions, discounts or expenses paid, allowed or incurred in connection with the issue.

- (vi) If and whenever the Company shall issue wholly for cash any Shares (other than Shares issued to employees, including directors of the Company or any of its Subsidiaries, or their personal representatives, pursuant to an employee share scheme) at a price per Ordinary Share which is less than 90 per cent. of the market price current at the date of the announcement of the terms of such issue, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the date of such announcement by a fraction of which the numerator is the number of Ordinary Shares in issue immediately before the date of such announcement plus the number of Ordinary Shares which the aggregate amount payable for the issue would purchase at such market price and the denominator is the number of Ordinary Shares in issue immediately before the date of such announcement plus the number of Ordinary Shares so issued. Such adjustment shall become effective on the date of the issue.
- (vii) If and whenever the Company shall purchase any Shares or securities issued by the Company or any of its subsidiaries which are convertible into or exchangeable for Ordinary Shares or any rights to acquire Ordinary Shares (other than on the Relevant Stock Exchange) and the Directors of the Company cancel such Ordinary Shares, securities convertible into or exchangeable for Shares or rights to acquire Ordinary Shares, the Directors of the Company may if they consider it appropriate make an adjustment to the Conversion Price, provided that the Directors of the Company shall have appointed an approved merchant bank to consider whether, for any reason whatever as a result of such purchases, an adjustment should be made to the Conversion Price fairly and appropriately to reflect the relative interests of the persons affected by such purchases by the Company and, if such approved merchant bank shall consider in its opinion that it is appropriate to make an adjustment to the Conversion Price, the Directors of the Company shall make an adjustment to the Conversion Price in such manner as such approved merchant bank shall certify to be, in its opinion, appropriate. Such adjustment shall become effective (if appropriate retroactively) from the close of business in Hong Kong on the Business Day immediately preceding the date on which such purchases by the Company are made.

(B) For the purposes of paragraph 8(A):

“announcement” shall include the releases of an announcement to the press or the delivery or transmission by telephone, telex or otherwise of an announcement to the Relevant Stock Exchange and “date of announcement” shall mean the date on which the announcement is first so released, delivered or transmitted;

“Capital Distribution” means any distribution paid or made by the Company on Ordinary Shares to the extent that the amount of such distribution exceeds the amount calculated by reference to P - D where:

P is the aggregate of the net consolidated profits less the aggregate of the net consolidated losses of the Company and its subsidiaries after taxation and minority interests but before extraordinary items in respect of the financial period ending on 31 March 2010 and each subsequent financial period in respect of which an audited consolidated profit and loss account of the Company and its subsidiaries (or, if it has at the relevant time no subsidiaries, an audited profit and

loss account of the Company) has been published, as shown by such profit and loss account(s);

- D is the aggregate amount of all distributions then already paid or made by the Company on Ordinary Shares in respect of any and all financial periods ending on or after 31 March 2010; provided that if such amount is greater than “P”, then “D” shall be deemed to be equal to “P”;

“market price” means the average of the closing prices of one Ordinary Share on the Relevant Stock Exchange in respect of dealings in board lots for the five consecutive Dealing Days ending on the last Dealing Day preceding the day on or as of which the market price is to be ascertained.

- (C) The provisions of sub-paragraphs (ii), (iii), (iv), (v) and (vi) of paragraph 8(A) shall not apply to:
- (i) an issue of fully paid Ordinary Shares upon the exercise of any conversion rights attached to securities convertible into Ordinary Shares or upon exercise of any rights (including the Conversion Rights attaching to the Convertible Preference Shares) to acquire Ordinary Shares;
  - (ii) an issue of Ordinary Shares or other securities of the Company or any subsidiary of the Company wholly or partly convertible into, or rights to acquire, Ordinary Shares to directors or employees of the Company or any of its subsidiaries or their personal representatives pursuant to an employee share scheme;
  - (iii) an issue by the Company of Ordinary Shares or by the Company or any other subsidiary of the Company of securities wholly or partly convertible into or rights to acquire Ordinary Shares, in any such case in consideration or part consideration for the acquisition of any other securities, assets or business;

- (iv) an issue of Ordinary Shares pursuant to a scrip dividend scheme where an amount not less than the nominal amount of the Ordinary Shares so issued is capitalised and the market value of such Ordinary Shares is not more than 110 per cent. of the amount of the dividend which holders of the Ordinary Shares could elect to or would otherwise receive in cash, for which purpose the “market value” of an Ordinary Share shall mean the average of the closing prices on the Relevant Stock Exchange for five (or more) consecutive Dealing Days falling within the period of one month ending on the last day on which holders of Ordinary Shares may elect to receive or (as the case may be) not to receive the relevant dividend in cash; or
  - (v) the issue of the Convertible Preference Shares.
- (D) Any adjustment to the Conversion Price shall be made to the nearest one cent (Hong Kong currency) so that any amount under half a cent (Hong Kong currency) shall be rounded down and any amount of half a cent (Hong Kong currency) or more shall be rounded up and in no event shall any adjustment (otherwise than upon the consolidation of Ordinary Shares into Ordinary Shares of a larger nominal amount) involve an increase in the Conversion Price. In addition to any determination which may be made by the Directors of the Company every adjustment to the Conversion Price shall be certified either (at the option of the Company) by the Auditors or by an approved merchant bank.
- (E) Notwithstanding anything contained in this Bye-law, no adjustment shall be made to the Conversion Price in any case in which the amount by which the same would be reduced in accordance with the foregoing provisions of paragraph 8 would be less than one cent and any adjustment that would otherwise then be required to be made shall not be carried forward.
- (F) If the Company or any of its subsidiaries shall in any way modify the rights attached to any share or loan capital so as wholly or partly to convert or make convertible such share or loan capital into, or attach thereto any rights to acquire, Ordinary Shares, the Company shall appoint an approved merchant bank to consider whether any adjustment to the Conversion Price is appropriate (and if such approved merchant bank shall certify that any such adjustment is appropriate the Conversion Price shall be adjusted accordingly).

- (G) Notwithstanding the provisions of paragraph 8(A), in any circumstances where the Directors of the Company shall consider that an adjustment to the Conversion Price provided for under the said provisions should not be made or should be calculated on a different basis or that an adjustment to the Conversion Price should be made notwithstanding that no such adjustment is required under the said provisions, the Directors of the Company may appoint an approved merchant bank to consider whether for any reason whatever the adjustment to be made (or the absence of adjustment) would or might not fairly and appropriately reflect the relative interests of the persons affected thereby and, if such approved merchant bank shall consider this to be the case, the adjustment shall be modified or nullified or an adjustment made instead of no adjustment in such manner (including without limitation making an adjustment calculated on a different basis) as shall be certified by such approved merchant bank to be in its opinion appropriate.
- (H) Whenever the Conversion Price is adjusted as herein provided, the Company shall give notice to the Convertible Preference Shareholders that the Conversion Price has been adjusted (setting forth the event giving rise to the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof) and shall at all times thereafter so long as any of the Conversion Rights remains exercisable make available for inspection at the principal place of business for the time being of the Company and the Registrar's Office prior to all the Convertible Preference Shares being converted or purchased in full a signed copy of the said certificate of the Auditors or (as the case may be) of the relevant approved merchant bank and a certificate signed by a Director of the Company setting out the brief particulars of the event giving rise to the adjustment, the Conversion Price in effect prior to such adjustment, the adjusted Conversion Price and the effective date thereof.

## **9. UNDERTAKINGS**

So long as any Convertible Preference Share remains capable of being converted into Ordinary Shares:

- (i) the Company will use its best endeavours (i) to maintain a listing for all the issued Ordinary Shares on the Hong Kong Stock Exchange, (ii) if and when the issued Convertible Preference Shares are listed on the Hong Kong Stock Exchange to maintain such listing for all the issued Convertible Preference Shares on the Hong Kong Stock Exchange and (iii) to obtain and maintain a listing on the Hong Kong Stock Exchange for all Conversion Shares issued on the exercise of the Conversion Rights;

- (ii) the Company will send to each Convertible Preference Shareholder, by way of information, one copy of every circular, notice or other document sent to any other shareholders in the Company in their capacity as shareholders, at the same time as it is sent to such other shareholders;
- (iii) the Company shall procure that there shall be sufficient authorised but unissued share capital available for the purposes of satisfying the requirements of any Conversion Notice as may be given and the terms of any other securities for the time being in issue which are convertible into or have the right to subscribe for shares in the Company;
- (iv) the Company shall not, without the consent of the Convertible Preference Shareholders as a class (obtained in the manner provided in the Bye-laws) or unless otherwise permitted pursuant to these provisions:
  - (a) modify, vary, alter or abrogate the rights attaching to the Ordinary Shares as a class, which (for the avoidance of doubt) shall not be deemed to be so modified, varied, altered or abrogated by the creation or issue of any shares or securities contemplated by these provisions; or
  - (b) change the date to which its annual accounts are made up from 31 March; or
  - (c) effect any repayment of the Convertible Preference Shares otherwise than as provided for in these provisions; or
  - (d) issue any shares (other than Ordinary Shares or shares ranking paripassu in all respects (including as to class) with the Convertible Preference Shares) constituting Equity Share Capital of the Company;
- (v) except in such manner as may be permitted by the Bye-laws or the Statutes, the Company shall not reduce its share capital or any uncalled liability in respect thereof or any share premium account;
- (vi) if during such time when there are any Convertible Preference Shares outstanding an offer is made to the holders of Ordinary Shares (or all such shareholders other than the offeror and/or any company controlled by the offeror and/or any persons acting in concert with the offeror) to acquire the whole or any part of the Ordinary Shares and the Company becomes aware that the rights to cast more than 50% of the votes which may ordinarily be cast on a poll at a general meeting of the Company has or will become vested in the offeror and/or such companies or persons aforesaid, the Company shall (subject to any restrictions under any applicable laws, regulations, codes and/or rules) give notice to all Convertible Preference Shareholders of such vesting or future vesting within 7 days of its becoming so aware;

## **10. PURCHASE**

Subject to the Statutes, the Company or any of its subsidiaries may at any time purchase any of the Convertible Preference Shares (by means available to all Convertible Preference Shareholders alike) at any price. Any Convertible Preference Shares so purchased or otherwise acquired by the Company or any of its subsidiaries may not be resold and in case such Convertible Preference Shares are purchased or otherwise acquired by the Company, such Convertible Preference Shares are to be cancelled, provided that nothing in this paragraph shall prohibit transfers of Convertible Preference Shares from any subsidiary of the Company to any other subsidiary of the Company.

## **11. MEETINGS**

- (A) Unless otherwise provided in this Bye-law, the Convertible Preference Shares shall not confer on the holders thereof the right to receive notice of, or to attend and vote at, a general meeting of the Company, unless a resolution is to be proposed at a general meeting of the Company for winding up the Company or a resolution is to be proposed which if passed would (subject to any consents required for such purpose being obtained) vary or abrogate the rights or privileges of the Convertible Preference Shareholders, in which event the Convertible Preference Shares shall confer on the holder thereof the right to receive notice of, and to attend and vote at, that general meeting, save that such holders may not vote upon any business dealt with at such general meeting except the election of a chairman, any motion for adjournment or relating to the proceedings of the general meeting and the resolution for winding up or the resolution which if passed would (subject to any consents required for such purpose being obtained) so vary or abrogate the rights and privileges of the Convertible Preference Shareholders.
- (B) If the Convertible Preference Shareholders are entitled to vote on any resolution, then at the relevant general meeting or separate general meeting of the Convertible Preference Shareholders, all resolutions put to the vote at the general meeting must be decided by way of poll and every Convertible Preference Shareholder who is present in person or by proxy or attorney or (being a corporation) by a duly authorised representative shall have one vote for each Conversion Share which would have been issued to him/it had he/it exercised the Conversion Right 48 hours preceding the date of such general meeting or separate general meeting of the Convertible Preference Shareholders.



## 12. PAYMENTS

- (A) Unless any other manner of payment is agreed between the Company and any Convertible Preference Shareholder, payment of Dividends, other cash distributions and moneys due on conversion or any redemption/repurchase permitted by this Bye-law to such Convertible Preference Shareholder shall be made by the Company posting a cheque in Hong Kong dollars (or in the case of payments which are to be made in another currency, such other currency) addressed to that Convertible Preference Shareholder at his registered address appearing on the Register as at the relevant Record Date and at his own risk.
- (B) Subject to paragraph 12(A), where any property (including Conversion Shares and Certificates in respect of them) is to be allotted, transferred or delivered to any Convertible Preference Shareholder the Company may make such arrangements with regard to such allotment, transfer or delivery as it may deem appropriate and in particular, without limitation, may appoint any person on behalf of that Convertible Preference Shareholder to execute any transfers, renunciations or other document and may make arrangements for the delivery of any document or property to that Convertible Preference Shareholder at his/its risk. All share certificates and other documents of title to which any person is entitled shall be posted to him/it by the Company addressed to him/it at his/its registered address appearing on the Register as at the relevant Record Date or, if none, the date of posting and at his/its risk.
- (C) All payments or distributions with respect to Convertible Preference Shares held jointly by two or more persons shall be paid or made to whichever of such persons is named first in the Register and the making of any payment or distribution in accordance with this sub-provision shall discharge the liability of the Company in respect thereof.

### **13. FRACTIONS**

No fraction of an Ordinary Share arising on conversion shall be allotted to the holder of the Relevant Convertible Preference Share(s) otherwise entitled thereto but such fractions will, when practicable, be aggregated and sold and the net proceeds of sale will then be distributed pro rata among such holders unless in respect of any holding of Relevant Convertible Preference Shares the amount to be so distributed would be less than HK\$100, in which case such amount will not be so distributed but will be retained for the benefit of the Company. Unless otherwise agreed between the Company and a Converting Shareholder, if more than one Convertible Preference Share shall fall to be converted pursuant to any one Conversion Notice, the number of Ordinary Shares to be issued upon conversion shall be calculated on the basis of the aggregate Notional Values of the Relevant Convertible Preference Shares. For the purpose of implementing the provisions of this paragraph 13, the Company may appoint some person to execute transfers, renunciations or other documents on behalf of persons entitled to any such fraction and generally may make all arrangements which appear to it to be necessary or appropriate for the settlement and disposal of fractional entitlements.

### **14. TAXATION**

- (A) All payments of amounts equal to the Notional Value, nominal amounts, premium (if any) and Dividends in respect of Convertible Preference Shares shall be made without withholding or deduction for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of Bermuda or Hong Kong or any authority therein or thereof (other than any withholding or deduction on account of any income tax, capital gains tax or other tax or duties of a similar nature) unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, subject to the Company having sufficient profits available for distribution, the Company shall pay such additional amounts as may be necessary in order that the net amounts received by the Convertible Preference Shareholders after such withholding or deduction shall equal the respective amounts of the Notional Value, premium (if any) and Dividend which would have been receivable in respect of the Convertible Preference Shares in the absence of such withholding or deduction, except that no such additional amounts shall be payable with respect to any Convertible Preference Shareholder:
- (a) who is liable to such taxes, duties, assessments or governmental charges in respect of any Convertible Preference Share by reason of such holder having some connection with Bermuda or Hong Kong, as the case may be, other than by virtue of being a Convertible Preference Shareholder; or

- (b) receiving such payment in Bermuda or Hong Kong, as the case may be, and who would be able to avoid such withholding or deduction by satisfying any statutory requirements or by making a declaration or non-residence or other similar claim for exemption to the Bermuda or Hong Kong tax authority, as the case may be, but fails to do so.
- (B) To the extent that the Company shall have insufficient profits available for distribution in order to permit it to pay all or any of such additional amounts as aforesaid the amount of any shortfall shall be treated for all purposes as arrears of Dividend only in circumstances when the Company has sufficient profits or distributable reserves available for distribution.

## **15. RESTRICTED HOLDERS**

No Conversion Rights may be exercised by any Convertible Preference Shareholder who is a Restricted Holder (as hereinafter defined), and the exercise of any Conversion Rights by a Convertible Preference Shareholder shall constitute a confirmation, representation and warranty by the Converting Shareholder to the Company that such Converting Shareholder is not a Restricted Holder and that all necessary governmental, regulatory or other consents or approvals and all formalities have been obtained and observed by such Converting Shareholder to enable him to exercise legally and validly the relevant Conversion Rights, to hold the Conversion Shares allotted and issued upon exercise of the Conversion Rights and the Company to legally and validly allot the Conversion Shares. For the purposes of this paragraph 15, a "Restricted Holder" means a Convertible Preference Shareholder who is a resident or national of any jurisdiction other than Hong Kong under the laws and regulations of which an exercise of Conversion Rights by such Convertible Preference Shareholder or the performance by the Company of the obligations expressed to be assumed by it under this Bye-law or the allotment and issue and holding of the Conversion Shares cannot be carried out lawfully or cannot be carried out lawfully without the Company first having to take certain actions in such jurisdiction.

## **16. REPLACEMENT OF CERTIFICATES**

If any Certificate is mutilated, defaced, destroyed, stolen or lost, it may be replaced at the Registrar's Office upon payment by the claimant of such costs as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Company may reasonably require and on payment of such fee not exceeding HK\$50 as the Company may determine. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

## **17. NOTICES**

Subject to the Statutes, except in the case of a Conversion Notice, a notice given pursuant to these provisions may be revoked with the consent in writing of the Company. Notices to Convertible Preference Shareholders shall be given in accordance with the Bye-laws.

## **18. TRANSFERS AND CERTIFICATES**

- (A) The provisions of the Bye-laws relating to the transfer of shares and share certificates shall apply in relation to the Convertible Preference Shares, subject to these provisions.
- (B) The Company shall maintain and keep a full and complete register at such location in Bermuda (but not in Hong Kong) as it shall from time to time determine of the Convertible Preference Shares and the Convertible Preference Shareholders from time to time, such register shall contain details of conversion and/or cancellation and the destruction of any Convertible Preference Shares and the issue of any replacement Certificates issued in substitution for any mutilated, defaced, lost, stolen or destroyed Certificates and of sufficient identification details of all Convertible Preference Shareholders from time to time (or, to the extent reasonably requested by the principal registrar of the Company in Bermuda and agreed by the Company, such lesser details and/or information in relation to the Convertible Preference Shares as maintained by the principal registrar of the Company in Bermuda).
- (C) Where any Convertible Preference Share is intended to be transferable to a connected person (as defined in the Listing Rules) of the Company (other than the associates (as defined in the Listing Rules) of the transferring Convertible Preference Shareholder), such transfer shall comply with the requirements under the Listing Rules and/or requirements imposed by the Hong Kong Stock Exchange (if any).

## **19. PRESCRIPTION**

Any Convertible Preference Shareholder who has failed to claim distributions or other property or rights within six years of their having been made available to him will not thereafter be able to claim such distributions or other property or rights which shall be forfeited and reverted to the Company. The Company shall retain such distributions or other property or rights but shall not at any time be a trustee in respect of any such distributions or other property or rights nor accountable for any income or other benefits derived therefrom.

## **20. SEVERABILITY**

If at any time one or more provisions hereof is or becomes invalid, illegal, unenforceable or incapable of performance in any respect under the laws of any Relevant Jurisdiction, the validity, legality, enforceability or performance in that jurisdiction of the remaining provisions hereof or the validity, legality, enforceability or performance under the laws of any other Relevant Jurisdiction of these or any other provisions hereof shall not thereby in any way be affected or impaired.”

## **VARIATION OF RIGHTS**

10 Subject to the Act and without prejudice to Bye-law 8, all or any of the special rights for the time being attached to the shares or any class of shares may, unless otherwise provided by the terms of issue of the shares of that class, from time to time (whether or not the Company is being wound up) be varied, modified or abrogated either with the consent in writing of the holders of not less than three-fourths in the nominal value of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. To every such separate general meeting all the provisions of these Bye-laws relating to general meetings of the Company shall, mutatis mutandis, apply, but so that:

- (a) the necessary quorum (other than at an adjourned meeting) shall be two persons holding or representing by proxy not less than one-third in nominal value of the issued shares of that class and at any adjourned meeting of such holders, two holders present in person or by proxy (whatever the number of shares held by them) shall be a quorum;
- (b) every holder of shares of the class shall be entitled on a poll to one vote for every such share held by him; and
- (c) any holder of shares of the class present in person or by proxy may demand a poll.

11 The special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be varied, modified or abrogated by the creation or issue of further shares ranking pari passu therewith.

## **SHARES**

12 (1) Subject to the Statutes and these Bye-laws and without prejudice to any special rights or restrictions for the time being attached to any shares or any class of shares, the unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may in its absolute discretion determine but so that no shares shall be issued at a discount. The Directors shall, as regards any offer or allotment of shares, comply with the provisions of the Act, if and so far as such provisions may be applicable thereto. Neither the Company nor the Board shall be obliged, when making or

granting any allotment of, offer of, option over or disposal of shares, to make, or make available, any such offer, option or shares to Members or others with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the Board, be unlawful or impracticable. Members affected as a result of the foregoing sentence shall not be, or be deemed to be, a separate class of Members for any purpose whatsoever.

(2) The Board may issue warrants conferring the right upon the holders thereof to subscribe for any class of shares or securities in the capital of the Company on such terms as it may from time to time determine.

(3) The Company may by ordinary resolution, before the issue of any new shares, determine that the same, or any of them, shall be offered in the first instance, and either at par or at a premium, to all the existing holders of any class of shares in proportion as nearly as may be to the number of shares of such class held by them respectively, or make any other provisions as to the issue and allotment of such shares, but in default of any such determination or so far as the same shall not extend, such shares may be dealt with as if they formed part of the capital of the Company existing prior to the issue of the same.

13 The Company may in connection with the issue of any shares exercise all powers of paying commission and brokerage conferred or permitted by the Act. Subject to the Act, the commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

14 Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any fractional part of a share or (except only as otherwise provided by these Bye-laws or by law) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

15 Subject to the Act and these Bye-laws, the Board may at any time after the allotment of shares but before any person has been entered in the Register as the holder, recognise a renunciation thereof by the allottee in favour of some other person and may accord to any allottee of a share a right to effect such renunciation upon and subject to such terms and conditions as the Board considers fit to impose.

### **SHARE CERTIFICATES**

16 Every share certificate shall be issued under the Seal or a facsimile thereof and shall specify the number and class and distinguishing numbers (if any) of the shares to which it relates, and the amount paid up thereon and may otherwise be in such form as the Directors may from time to time determine. No certificate shall be issued representing shares of more than one class. The Board may by resolution determine, either generally or in any particular case or cases, that any signatures on any such certificates (or certificates in respect of other securities) need not be autographic but may be affixed to such certificate by some mechanical means or may be printed thereon or that such certificates need not be signed by any person.

17 (1) In the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor and delivery of a certificate to one of several joint holders shall be sufficient delivery to all such holders.

(2) Where a share stands in the names of two or more persons the person first named in the Register shall as regards service of notices and subject to the provisions of these Bye-laws all or any other matters connected with the Company, except the transfer of the share, be deemed the sole holder thereof.

18 Every person whose name is entered, upon an allotment of shares, as a Member in the Register shall be entitled, without payment, to receive one certificate for all such shares of any one class or several certificates each for one or more of such shares of such class upon payment for every certificate after the first of such reasonable out-of-pocket expenses as the Board from time to time determines.

19 Share certificates shall be issued in the case of an issue of shares within twenty-one (21) days (or such longer period as the terms of the issue provide) after allotment or in the case of a transfer of fully or partly paid shares within twenty-one (21) days after lodgment of a transfer with the Company, not being a transfer which the Company is for the time being entitled to refuse to register and does not register.

20 (1) Upon every transfer of shares the certificate held by the transferor shall be given up to be cancelled, and shall forthwith be cancelled accordingly, and a new certificate shall be issued to the transferee in respect of the shares transferred to him at such fee as is provided in paragraph (2) of this Bye-law. If any of the shares included in the certificate so given up shall be retained by the transferor a new certificate for the balance shall be issued to him at the aforesaid fee payable by the transferor to the Company in respect thereof.

(2) The fee referred to in paragraph (1) above shall be an amount not exceeding \$2 or such other maximum amount as the Designated Stock Exchange may from time to time determine provided that the Board may at any time determine a lower amount for such fee.

21 If a share certificate shall be damaged or defaced or alleged to have been lost, stolen or destroyed a new certificate representing the same shares may be issued to the relevant Member upon request and on payment of such fee as the Designated Stock Exchange may determine to be the maximum payable or such lesser sum as the Board may determine and, subject to compliance with such terms (if any) as to evidence and indemnity and to payment of the costs and reasonable out-of-pocket expenses of the Company in investigating such evidence and preparing such indemnity as the Board may think fit and, in case of damage or defacement, on delivery of the old certificate to the Company provided always that where share warrants have been issued, no new share warrant shall be issued to replace one that has been lost unless the Directors of the Company are satisfied beyond reasonable doubt that the original has been destroyed.



## LIEN

22 The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share. The Company shall also have a first and paramount lien on every share (not being a fully paid share) registered in the name of a Member (whether or not jointly with other Members) for all amounts of money presently payable by such Member or his estate to the Company whether the same shall have been incurred before or after notice to the Company of any equitable or other interest of any person other than such member, and whether the period for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such member or his estate and any other person, whether a member of the Company or not. The Company's lien on a share shall extend to all dividends or other moneys payable thereon or in respect thereof. The Board may at any time, generally or in any particular case, waive any lien that has arisen or declare any share exempt in whole or in part, from the provisions of this Bye-law.

23 Subject to these Bye-laws, the Company may sell in such manner as the Board determines any share on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged nor until the expiration of fourteen (14) clear days after a notice in writing, stating and demanding payment of the sum presently payable, or specifying the liability or engagement and demanding fulfilment or discharge thereof and giving notice of the intention to sell in default, has been served on the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy or winding up.

24 The net proceeds of the sale shall be received by the Company and applied in or towards payment or discharge of the debt or liability in respect of which the lien exists, so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the share prior to the sale) be paid to the person entitled to the share at the time of the sale. To give effect to any such sale the Board shall be registered as the holder of the shares so transferred and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

## CALLS ON SHARES

25 (1) Subject to these Bye-laws and to the terms of allotment, the Board may from time to time make calls upon the Members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium), and each Member shall (subject to being given at least fourteen (14) clear days' Notice specifying the time and place of payment) pay to the Company as required by such notice the amount called on his shares. A call may be extended, postponed or revoked in whole or in part as the Board determines but no member shall be entitled to any such extension, postponement or revocation except as a matter of grace and favour.

(2) In addition to the giving of notice in accordance with Bye-law 25(1), notice of the person appointed to receive payment of every call and of the times and places appointed for payment may be given to the Members by notice to be inserted in the Newspapers.

26 A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be made payable either in one lump sum or by instalments. The Directors may make arrangements on the issue of shares for a difference between the shareholders in the amount or calls to be paid and in the times of payment.

27 A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made. The Joint holders of a share shall be jointly and severally liable to pay all calls and instalments due in respect thereof or other moneys due in respect thereof.

28 If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the amount unpaid from the day appointed for payment thereof to the time of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board may agree to accept, but the Board may in its absolute discretion waive payment of such interest wholly or in part.

29 No Member shall be entitled to receive any dividend or bonus or be present and vote (save as proxy for another Member) at any general meeting either personally or by proxy, or be reckoned in a quorum, or exercise any other privilege as a Member until all calls or instalments due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.

30 On the trial or hearing or any action or other proceedings for the recovery of any money due for any call, it shall be sufficient to prove that the name of the Member sued is entered in the Register as the holder, or one of the holders, of the shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book, and that notice or such call was duly given to the Member sued, in pursuance of these Bye-laws; and it shall not be necessary to prove the appointment of the Directors who made such call, nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.

31 Any amount payable in respect of a share upon allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and payable on the date fixed for payment and if it is not paid the provisions of these Bye-laws shall apply as if that amount had become due and payable by virtue of a call duly made and notified.

32 On the issue of shares the Board may differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.

33 The Board may receive from any Member willing to advance the same, and either in money or money's worth, all or any part of the moneys uncalled and unpaid or instalments payable upon any shares held by him and upon all or any of the moneys so advanced (until

the same would, but for such advance, become presently payable) pay interest at such rate (if any) not exceeding twenty per cent per annum as the Board may decide. The Board may at any time repay the amount so advanced upon giving to such Member not less than one month's notice in writing of its intention in that behalf, unless before the expiration of such notice the amount so advanced shall have been called up on the shares in respect of which it was advanced. Such payment in advance shall not entitle the holder of such share or shares to participate in respect thereof in a dividend subsequently declared or to exercise any other rights or privileges as a Member in respect of the share or the due portion of the shares upon which payment has been advanced by such Member before it is called up.

### **FORFEITURE OF SHARES**

34 (1) If a call remains unpaid after it has become due and payable the Board may give to the person from whom it is due not less than fourteen (14) clear days' Notice:

- (a) requiring payment of the amount unpaid together with any interest which may have accrued and which may still accrue up to the date of actual payment; and
- (b) stating that if the Notice is not complied with the shares on which the call was made will be liable to be forfeited.

(2) If the requirements of any such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls and interest due in respect thereof has been made, be forfeited by a resolution of the Board to that effect, and such forfeiture shall include all dividends and bonuses declared in respect of the forfeited share but not actually paid before the forfeiture.

35 When any share has been forfeited, Notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share. No forfeiture shall be invalidated by any omission or neglect to give such notice.

36 The Board may accept the surrender of any share liable to be forfeited hereunder and, in such case, references in these Bye-Laws to forfeiture will include surrender.

37 Until cancelled in accordance with the requirements of the Act, a forfeited share shall be the property of the Company and may be sold, re-allotted or otherwise disposed of to such person, upon such terms and in such manner as the Board determines, and at any time before a sale, re-allotment or disposition the forfeiture may be annulled by the Board on such terms as the Board determines.

38 A person whose share has been forfeited shall cease to be a Member in respect of the forfeited share but nevertheless shall remain liable to pay the Company all moneys which at the date of forfeiture were presently payable by him to the Company in respect of the share, with (if the Directors shall in their discretion so require) interest thereon from the date of forfeiture until payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board determines. The Board may enforce payment thereof if it thinks fit, and without any deduction or allowance for the value of the forfeited share, at the date of forfeiture, but his

liability shall cease if and when the Company shall have received payment in full of all such moneys in respect of such share. For the purposes of this Bye-law any sum which, by the terms of issue of a share, is payable thereon at a fixed time which is subsequent to the date of forfeiture, whether on account of the nominal value of the share or by way of premium, shall notwithstanding that time has not yet arrived be deemed to be payable at the date of forfeiture, and the same shall become due and payable immediately upon the forfeiture, but interest thereon shall only be payable in respect of any period between the said fixed time and the date of actual payment.

39 A declaration by a Director or the Secretary that a share has been forfeited or surrendered on a specified date shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration shall (subject to the execution of an instrument of transfer by the Company if necessary) constitute a good title to the share, and the person to whom the share is disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the consideration (if any), nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture, re-allotment sale or disposal of the share. When any share shall have been forfeited, notice of the declaration shall be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register, but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or make any such entry.

40 Notwithstanding any such forfeiture as aforesaid the Board may at any time, before any shares so forfeited shall have been sold, re-allotted or otherwise disposed of, permit the shares forfeited to be bought back upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as it thinks fit.

41 The forfeiture of a share shall not prejudice the right of the Company to any call already made or instalment payable thereon.

42 The provisions of these Bye-laws as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

### **REGISTER OF MEMBERS**

43 (1) The Company shall keep in one or more books a Register of its Members and shall enter therein the following particulars, that is to say:

- (a) the name and address of each Member, the number and class of shares held by him and the amount paid or agreed to be considered as paid on such shares;
- (b) the date on which each person was entered in the Register; and
- (c) the date on which any person ceased to be a Member.

(2) Subject to the Act, the Company may keep an overseas or local or other branch register of Members resident in any place. and the Board may make and vary such regulations as it determines in respect of the keeping of any such register and maintaining a Registration Office in connection therewith.

44 The Register and branch register of Members. as the case may be, shall be open to inspection between 10 a.m. and 12 noon on every business day by Members without charge or by any other person, upon a maximum payment of five Bermuda dollars, at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or, if appropriate, upon a maximum payment of ten dollars at the Registration Office. The Register including any overseas or local or other branch register of Members may. after notice has been given by advertisement in an appointed newspaper and where applicable, any other newspapers in accordance with the requirements of any Designated Stock Exchange to that effect, be closed at such times or for such periods not exceeding in the whole thirty (30) days in each year as the Board may determine and either generally or in respect of any class of shares.

### **RECORD DATES**

45 Notwithstanding any other provision of these Bye-laws the Company or the Directors may fix any date as the record date for:

- (a) determining the Members entitled to receive any dividend, distribution, allotment or issue and such record date may be on, or at any time not more than thirty (30) days before or after, any date on which such dividend, distribution, allotment or issue is declared, paid or made;
- (b) determining the Members entitled to receive notice of and to vote at any general meeting of the Company.

### **TRANSFER OF SHARES**

46 Subject to these Bye-laws, any Member may transfer all or any of his shares by an instrument of transfer in the usual or common form or in any other form approved by the Board and which may be under hand "or by means of mechanically imprinted signatures".

47 The instrument of transfer shall be executed by or on behalf of the transferor and the transferee provided that the Board may dispense with the execution of the instrument of transfer by the transferee in any case which it thinks fit in its discretion to do so. The Board may also resolve, either generally or in any particular case, to accept mechanically executed transfers. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. Nothing in these Bye-laws shall preclude the Board from recognising a renunciation of the allotment or provisional allotment of any share by the allottee in favour of some other person.

48 (1) The Board may, in its absolute discretion, and without giving any reason therefor, refuse to register a transfer of any share (not being a fully paid up share) to a person of whom it does not approve, or any share issued under any share incentive scheme for employees upon which a restriction on transfer imposed thereby still subsists. and it may also, without prejudice to the foregoing generality, refuse to register a transfer of any share (whether fully paid or not) to more than four (4) joint holders or a transfer of any share (not being a fully paid up share) on which the Company has a lien.

- (2) No transfer shall be made to an infant or to a person of unsound mind or under other legal disability.
- (3) Board in so far as permitted by any applicable law may, in its absolute discretion, at any time and from time to time transfer any share upon the Register to any branch register or any share on any branch register to the Register or any other branch register. In the event of any such transfer, the shareholder requesting such transfer shall bear the cost of effecting the transfer unless the Board otherwise determines.
- (4) Unless the Board otherwise agrees (which agreement may be on such terms and subject to such conditions as the Board in its absolute discretion may from time to time determine, and which agreement it shall, without giving any reason therefor, be entitled in its absolute discretion to give or withhold), no shares upon the Register shall be transferred to any branch register nor shall shares on any branch register be transferred to the Register or any other branch register and all transfers and other documents of title shall be lodged for registration, and registered, in the case of any shares on a branch register, at the relevant Registration Office, and, in the case of any shares on the Register, at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act.

49 Without limiting the generality of the last preceding Bye-law, the Board may decline to recognise any instrument of transfer unless:-

- (a) a fee of such sum as the Designated Stock Exchange may determine to be payable or such lesser sum as the Board may from time to time require is paid to the Company in respect thereof;
- (b) the instrument of transfer is in respect of only one class of share;
- (c) the instrument of transfer is lodged at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or the Registration Office (as the case may be) accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do);
- (d) if applicable, the instrument of transfer is duly and properly stamped; and
- (e) the shares concerned are free of any lien in favour of the Company.

50 If the Board refuses to register a transfer of any share, it shall, within two (2) months after the date on which the transfer was lodged with the Company, send to each of the transferor and transferee notice of the refusal.

51 The registration of transfers of shares or of any class of shares may, after notice has been given by advertisement in an appointed newspaper and in the Newspapers that effect be suspended at such times and for such periods (not exceeding thirty (30) days in any year) as the Board may determine.

### **TRANSMISSION OF SHARES**

52 If a Member dies, the survivor or survivors where the deceased was a joint holder, and his legal personal representatives where he was a sole or only surviving holder, will be the only persons recognised by the Company as having any title to his interest in the shares; but nothing in this Bye-law will release the estate of a deceased Member (whether sole or joint) from any liability in respect of any share which had been solely or jointly held by him.

53 Subject to Section 52 of the Act, any person becoming entitled to a share in consequence of the death or bankruptcy or winding-up of a Member may, upon such evidence as to his title being produced as may be required by the Board, elect either to become the registered holder of the share or to have some person nominated by him registered as the transferee thereof: If he elects to become the registered holder he shall notify the Company in writing either at the Registration Office or Office, as the case may be, to that effect. If he elects to have another person registered he shall execute a transfer of the share in favour of that person. The provisions of these Bye-laws relating to the transfer and registration or transfers of shares shall apply to such notice or transfer as aforesaid as if the death or bankruptcy or winding-up of the Member had not occurred and the notice or transfer were a transfer signed by such Member.

54 A person becoming entitled to a share by reason of the death or bankruptcy or winding-up of a Member shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share. However, the Board may, if it thinks fit, withhold the payment of any dividend payable or other advantages in respect of such share until such person shall become the registered holder of the share or shall have effectually transferred such share, but, subject to the requirements of Bye-law 75(2) being met, such a person may vote at meetings.

### **UNTRACEABLE MEMBERS**

55 (1) Without prejudice to the rights of the Company under paragraph (2) of this Bye-law, the Company may cease sending cheques for dividend entitlements or dividend warrants by post if such cheques or warrants have been left uncashed on two consecutive occasions. However, the Company may exercise the power to cease sending cheques for dividend entitlements or dividend warrants after the first occasion on which such a cheque or warrant is returned undelivered.

- (2) The Company shall have the power to sell, in such manner as the Board thinks fit, any shares of a Member who is untraceable, but no such sale shall be made unless:
- (a) all cheques or warrants in respect of dividends of the shares in question. being not less than three in total number, for any sum payable in cash to the holder of such shares in respect of them sent during the relevant period in the manner authorised by the Bye-laws of the Company have remained uncashed;
  - (b) so far as it is aware at the end of the relevant period, the Company has not at any time during the relevant period received any indication of the existence of the Member who is the holder of such shares or of a person entitled to such shares by death. bankruptcy or operation of law; and
  - (c) the Company, if so required by the rules governing the listing of shares on the Designated Stock Exchange, has given notice to and caused advertisement in Newspapers in accordance with the requirements of the Designated Stock Exchange to be made of its intention to sell such shares in the manner required by the Designated Stock Exchange, and a period of three (3) months or such shorter period as may be allowed by the Designated Stock Exchange has elapsed since the date of such advertisement.

For the purpose of the foregoing, the "relevant period" means the period commencing twelve years before the date of publication of the advertisement referred to in paragraph (c) of this Bye-law and ending at the expiry of the period referred to in that paragraph.

- (3) To give effect to any such sale the Board may authorise some person to transfer the said shares and an instrument of transfer signed or otherwise executed by or on behalf of such person shall be as effective as if it had been executed by the registered holder or the person entitled by transmission to such shares, and the purchaser shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The net proceeds of the sale will belong to the Company and upon receipt by the Company of such net proceeds it shall become indebted to the former Member for an amount equal to such net proceeds. No trust shall be created in respect of such debt and no interest shall be payable in respect of it and the Company shall not be required to account for any money earned from the net proceeds which may be employed in the business of the Company or as thinks fit. Any sale under this Bye-law shall be valid and effective notwithstanding that the Member holding the shares sold is dead, bankrupt otherwise under any legal disability or incapacity.

### **GENERAL MEETINGS**

56 annual general meeting of the Company shall be held in each year other than the year of incorporation at such time (within a period of not more than fifteen (15) months after the holding of the last preceding annual general meeting unless a longer period would not infringe the rules of any Designated Stock Exchange, if any) and place as may be determined by the Board.



57 Each general meeting, other than an annual general meeting, shall be called a special general meeting. General meetings may be held in any part of the world as may be determined by the Board.

58 The Board may whenever it thinks fit call special general meetings, and Members holding at the date of deposit of the requisition not less than one-tenth of the paid up capital of the Company carrying the right of voting at general meetings of the company shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require a special general meeting to be called by the Board for the transaction of any business specified in such requisition; and such meeting shall be held within two (2) months after the deposit of such requisition. If within twenty-one (21) days of such deposit the Board fails to proceed to convene such meeting the requisitionists themselves may do so in accordance with the provisions of Section 74(3) of the Act.

### **NOTICE OF GENERAL MEETINGS**

59 (1) An annual general meeting and any special general meeting at which the passing of a special resolution is to be considered shall be called by not less than twenty-one (21) clear days' Notice. All other special general meetings may be called by not less than fourteen (14) clear days' Notice but a general meeting may be called by shorter notice if it is so agreed:

- (a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. (95%) in nominal value of the issued shares giving that right.

(2) The period of notice shall be exclusive of the day on which it is served or deemed to be served and exclusive of the day on which the meeting is to be held, and the notice shall specify the time and place of the meeting and, in case of special business, the general nature of the business. The notice convening an annual general meeting shall specify the meeting as such. Notice of every general meeting shall be given to all Members other than to such Members as, under the provisions of these Bye-laws or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, to all persons entitled to a share in consequence of the death or bankruptcy or winding-up of a Member and to each of the Directors and the Auditors.

60 The accidental omission to give Notice of a meeting or (in cases where instruments of proxy are sent out with the Notice) to send such instrument of proxy to, or the non-receipt of such Notice or such instrument of proxy by, any person entitled to receive such Notice shall not invalidate any resolution passed or the proceedings at that meeting,

## **PROCEEDINGS AT GENERAL MEETINGS**

61 (1) All business shall be deemed special that is transacted at a special general meeting, and also all business that is transacted at an annual general meeting, with the exception of sanctioning dividends, the reading, considering and adopting of the accounts and balance sheet and the reports of the Directors and Auditors and other documents required to be annexed to the balance sheet, the election of Directors and appointment of Auditors and other officers in the place of those retiring, the fixing of the remuneration of the Auditors, and the voting of remuneration or extra remuneration to the Directors.

(2) No business shall be transacted at any general meeting unless a quorum is present at the commencement of the business. Two (2) Members entitled to vote and present in person or (in the case of a member being a corporation) by its duly authorised representative or by proxy shall form a quorum for all purposes.

62 If within thirty (30) minutes (or such longer time not exceeding one hour as the chairman of the meeting may determine to wait) after the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the meeting shall be dissolved.

63 The president of the Company or the chairman shall preside as chairman at every general meeting. If at any meeting the president or the chairman, as the case may be, is not present within fifteen (15) minutes after the time appointed for holding the meeting, or if neither of them is willing to act as chairman, the Directors present shall choose one of their number to act or if one Director only is present he shall preside as chairman if willing to act. If no Director is present, or if each of the Directors present declines to take the chair, or if the chairman chosen shall retire from the chair, the Members present and entitled to vote shall elect one of their number to be chairman.

64 The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place as the meeting shall determine, but no business shall be transacted at any adjourned meeting other than might lawfully have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen (14) days or more, at least seven (7) clear days' Notice of the adjourned meeting shall be given specifying the time and place of the adjourned meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting and the general nature of the business to be transacted. Save as aforesaid, it shall be unnecessary to give Notice of an adjournment. No business shall be transacted at any such adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

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

proposed as a special resolution, no amendment thereto (other than a mere clerical amendment to correct a patent error) may in any event be considered or voted upon.

## VOTING

66 Subject to any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with these Bye-laws, at any general meeting on a show of hands every Member present in person (or being a corporation, is present by a representative duly authorised under Section 78 of the Act), or by proxy shall have one vote and on a poll every Member present in person or by proxy or, in the case of a Member being a corporation, by its duly authorised representative shall have one vote for every fully paid share of which he is the holder but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share. Notwithstanding anything contained in these Bye-laws, where more than one proxy is appointed by a Member which is a corporation (or its nominee(s)), each such proxy shall have one vote on a show of hands. A resolution put to the vote of a general meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands or on the withdrawal of any other demand for a poll) a poll is demanded:

- (a) by the chairman of such meeting; or
- (b) by at least three Members present in person (or in the case of a Member being a corporation by its duly authorised representative) or by proxy for the time being entitled to vote at the meeting; or
- (c) by a Member or Members present in person (or in the case of a Member being a corporation by its duly authorised representative) or by proxy and representing not less than one-tenth of the total voting rights of all Members having the right to vote at the meeting; or
- (d) by a Member or Members present in person (or in the case of a Member being a corporation by its duly authorised representative) or by proxy and holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all shares conferring that right.

A demand by a person as proxy for a Member or in the case of a Member being a corporation by its duly authorised representative shall be deemed to be the same as a demand by a Member.”;

67 Unless a poll is duly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or not carried by a particular majority, or lost, and an entry to that effect made in the minute book of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

68 If a poll is duly demanded the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. There shall be no requirement for the chairman to disclose the voting figures on a poll.

69 A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken in such manner (including the use of ballot or voting papers or tickets) and either forthwith or at such time (being not later than thirty (30) days after the date of the demand) and place as the chairman directs. It shall not be necessary (unless the chairman otherwise directs) for notice to be given of a poll not taken immediately.

70 The demand for a poll shall not prevent the continuance of a meeting or the transaction of any business other than the question on which the poll has been demanded, and, with the consent of the chairman, it may be withdrawn at any time before the close of the meeting or the taking of the poll, whichever is the earlier.

71 On a poll votes may be given either personally or by proxy.

72 A person entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.

73 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such meeting shall be entitled to a second or casting vote in addition to any other vote he may have.

74 Where there are joint holders of any share anyone of such joint holders may vote, either in person or by proxy, in respect of such share as if he were solely entitled thereto. but if more than one of such joint holders be present at any meeting the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding. Several executors or administrators of a deceased Member in whose name any share stands shall for the purposes of this Bye-law be deemed joint holders thereof.

75 (1) A Member who is a patient for any purpose relating to mental health or in respect of whom an order has been made by any court having jurisdiction for the protection or management of the affairs of persons incapable of managing their own affairs may vote, whether on a show of hands or on a poll, by his receiver, committee, curator bonis or other person in the nature of a receiver, committee or curator bonis appointed by such court, and such receiver, committee, curator bonis or other person may vote on a poll by proxy, and may otherwise act and be treated as such Member for the purposes of general meetings, provided that such evidence as the Board may require of the authority of the person claiming to vote shall have been deposited at the Office, head office or Registration Office, as appropriate, not less than forty-eight (48) hours before the time appointed for holding the meeting, or adjourned meeting or poll, as the case may be.

(2) Any person entitled under Bye-law 53 to be registered as the holder of any shares may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of such shares. provided that forty-eight (48) hours at least before the time of the holding of the meeting or adjourned meeting, as the case may be, at which he proposes to vote, he shall satisfy the Board of his entitlement to such shares, or the Board shall have previously admitted his right to vote at such meeting in respect thereof.

76 (1) No Member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.

(2) Where the Company has knowledge that any Member is, under the rules of the Designated Stock Exchange, required to abstain from voting on any particular resolution of the Company or restricted to voting only for or only against any particular resolution of the Company, any votes cast by or on behalf of such Member in contravention of such requirement or restriction shall not be counted.”;

77 If:

(a) any objection shall be raised to the qualification of any voter; or

(b) any votes have been counted which ought not to have been counted or which might have been rejected; or

(c) any votes are not counted which ought to have been counted;

the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless the same is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs. Any objection or error shall be referred to the chairman of the meeting and shall only vitiate the decision of the meeting on any resolution if the chairman decides that the same may have affected the decision of the meeting. The decision of the chairman on such matters shall be final and conclusive.

### **PROXIES**

78 Any Member, whether an individual or a corporation, entitled to attend and vote at a meeting of the Company or a meeting at the holders of any class of shares in the Company shall be entitled to appoint another person as his proxy to attend and vote instead of him. Votes may be given either personally or by proxy. A Member who is the holder of two or more shares may appoint more than one proxy to attend and vote on the same occasion provided that, if more than one proxy is so appointed, the appointment shall specify the number and class of shares in respect of which each such proxy is so appointed. A proxy need not be a Member. In addition, each proxy appointed shall be entitled to exercise the same powers as if such proxy was the registered holder of the shares of the Company held by the Member appointing him, including the right to vote individually on a show of hand."

79 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its seal or under the hand of an officer, attorney or other person authorised to sign the same. In the case of an instrument of proxy purporting to be signed on behalf of a corporation by an officer thereof it shall be assumed, unless the contrary appears, that such officer was duly authorised to sign such instrument of proxy on behalf of the corporation without further evidence of the fact.

80 The instrument appointing a proxy and (if required by the Board) the power of attorney or other authority (if any) under which it is signed, or a notorally certified copy of such power or

authority, shall be delivered to such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no place is so specified, at the Registration Office or the Office, as may be appropriate) not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve (12) months from such date. Delivery of an instrument appointing a proxy shall not preclude a Member from attending and voting in person at the meeting convened and in such event, the instrument appointing a proxy shall be deemed to be revoked.

81 Instruments of proxy shall be in any common form or in such other form as the Board may approve (provided that this shall not preclude the use of the two-way form) and the Board may, if it thinks fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll and to vote on any amendment of a resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy shall, unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

82 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the instrument of proxy or of the authority under which it was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the Office or the Registration Office (or such other place as may be specified for the delivery of instruments of proxy in the notice convening the meeting or other document sent therewith) two (2) hours at least before the commencement of the meeting or adjourned meeting, or the taking of the poll, at which the instrument of proxy is used.

83 Anything which under these Bye-laws a Member may do proxy he may likewise do by his duly appointed attorney and the provisions of these Bye-laws relating to proxies and instruments appointing proxies shall apply mutatis mutandis in relation to any such attorney and the instrument under which such attorney is appointed.

### **CORPORATIONS ACTING REPRESENTATIVES**

84 Any corporation which is a Member, including a clearing house or a nominee of a clearing house being a Member, may, by resolution of its directors or other governing body or by power of attorney, authorise such person or persons as it thinks fit to act as its corporate representative or representatives at any meeting of the Company or at any meeting of any class of members of the Company provided that, if more than one person is so authorised, the authority shall specify the number and class of shares held by the relevant member in respect of which each such person is authorised to act as such corporate representative. Each person so authorised or appointed under the provisions of this Bye-law shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member and as if such person was the registered holder of the shares of the Company held by the Member in respect of the number and class of shares specified in the

relevant authorization including the right to vote individually on a show of hands and such corporation shall for the purposes of these Bye-laws be deemed to be present in person at any such meeting if a person so authorised in present thereat. The number of persons a corporation may authorise to act as its corporate representative or representatives shall not exceed the number of shares held by that corporation (or its nominee), being shares in respect of which there is an entitlement to attend and vote at the relevant meeting. Any reference in these Bye-laws to a duly authorised representative of a Member being a corporation shall mean a representative authorised under the provisions of this Bye-law.”;

### **WRITTEN RESOLUTIONS OF MEMBERS**

85 (1) Subject to the Act, a resolution in writing signed (in such manner as to indicate, expressly or impliedly, unconditional approval) by or on behalf of all persons for the time being entitled to receive notice of and to attend and vote at general meetings of the Company shall, for the purposes of these Bye-laws, be treated as a resolution duly passed at a general meeting of the Company and, where relevant, as a special resolution so passed. Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last Member to sign, and where the resolution states a date as being the date of his signature thereof by any Member the statement shall be prima facie evidence that it was signed by him on that date. Such a resolution may consist of several documents in the like form, each signed by one or more relevant Members.

(2) Notwithstanding any provisions contained in these Bye-laws, a resolution in writing shall not be passed for the purpose of removing a Director before the expiration of his term office under Bye-law 86(4) or for the purposes set out in Bye-law 154(3) relating to the removal and appointment of the Auditor.

### **BOARD OF DIRECTORS**

86 (1) Unless otherwise determined by the Company in general meeting, the number of Directors shall not be less than two (2). There shall be no maximum number of Directors. The Directors shall be elected or appointed in the first place at the statutory meeting of Members and thereafter in accordance with Bye-law 87 and shall hold office until the next appointment of Directors or until their successors are elected or appointed. Any general meeting may authorise the Board to fill and vacancy in their number left unfilled at a general meeting.

(2) The Directors shall have the power from time to time and at any time to appoint any person as a Director either to fill a casual vacancy on the Board or, subject to authorisation by the Members in general meeting, as an addition to the existing Board but so that the number of Directors so appointed shall not exceed any maximum number determined from time to time by the Members in general meeting. All Directors appointed to fill a casual vacancy should be subject to election by Members at the first general meeting after their appointment. Any other Director so appointed by the Board shall hold office only until the next following annual general meeting of the Company and shall then be eligible for re-election at that meeting.;

(3) Neither a Director nor an alternate Director shall be required to hold any shares of the Company by way of qualification and a Director or alternate Director (as the case may be) who is not a Member shall be entitled to receive notice of and to attend and speak at any general meeting of the Company and of all classes of shares of the Company.

(4) Subject to any provision to the contrary in these Bye-laws the Members may, at any general meeting convened and held in accordance with these Bye-laws, by special resolution remove a Director (including a managing director or other executive director) at any time before the expiration of his period of office notwithstanding anything in these Bye-laws or in any agreement between the Company and such Director (but without prejudice to any claim for damages under any such agreement) provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than fourteen (14) days before the meeting and at such meeting such Director shall be entitled to be heard on the motion for his removal.

(5) A vacancy on the Board created by the removal of a Director under the provisions of subparagraph (4) above may be filled by the election or appointment of the Members at the meeting at which such Director is removed to hold office until their successors are elected or appointed or until the next following annual general meeting of the Company and shall then be eligible for re-election or, in the absence of such election or appointment such general meeting may authorise the Board to fill any vacancy in the number left unfilled.

(6) The Company may from time to time in general meeting by ordinary resolution increase or reduce the number of Directors but so that the number of Directors shall never be less than two (2).

### **RETIREMENT OF DIRECTORS**

87 (1) Notwithstanding any other provisions in the Bye-laws, at each annual general meeting one-third of the Directors for the time being (or, if their number is not a multiple of three(3), the number nearest to but not less than one-third) shall retire from office by rotation such that every Director (including those appointed for a specific term) shall be subject to retirement by rotation at least once every three years.;

(2) A retiring Director shall be eligible for re-election. The Directors to retire by rotation shall include (so far as necessary to ascertain the number of directors to retire by rotation) any Director who wishes to retire and not to offer himself for re-election. Any further Directors so to retire shall be those of the other Directors subject to retirement by rotation who have been longest in office since their last re-election or appointment and so that as between persons who became or were lost re-elected Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. Any Director appointed pursuant to Bye-law 86(2) shall not be taken into account in determining which particular Directors or the number of Directors who are to retire by rotation.



88 No person other than a Director retiring at the meeting shall, unless recommended by the Board for election, be eligible for election to the office of Director at any general meeting unless a notice in writing of the intention to propose such person for election as a Director, signed by a Member (other than the person to be proposed for election as a Director) duly qualified to attend and vote at the meeting for which such notice is given, and a notice in writing signed by such person of his willingness to be elected shall have been lodged at the head office or at the Registration Office. The minimum length of the period during which such notices are given shall be at least seven (7) days and the period for lodgement of such notices shall commence no earlier than the day after the dispatch of the notice of the general meeting appointed for such election and end no later than seven (7) days prior to the date of such general meeting.”;

### **DISQUALIFICATION OF DIRECTORS**

89A The office of a Director shall be vacated if the Director:

- (1) resigns his office by notice in writing delivered to the Company at the Office or tendered at a meeting of the Board whereupon the Board resolves to accept such resignation;
- (2) becomes of unsound mind or dies;
- (3) without special leave of absence from the Board, is absent from meetings of the Board for six consecutive months, and his alternate Director, if any, shall not during such period have attended in his stead and the Board resolves that his office be vacated; or
- (4) becomes bankrupt or has a receiving order made against him or suspends payment or compounds with his creditors;
- (5) is prohibited by law from being a Director;
- (6) ceases to be a Director by virtue of any provision of the Statutes or is removed from office pursuant to these Bye-laws; or
- (7) is convicted in any jurisdiction of a criminal offence involving dishonesty.

89B No director shall be required to vacate office or be ineligible for re-election or re-appointment as a Director, and no person shall be ineligible for appointment as a Director by reason only of his having attained any particular age.

### **EXECUTIVE DIRECTORS**

90 The Board may from time to time appoint any one or more of its body to be a managing director, joint managing director or deputy managing director or to hold any other employment or executive office with the Company for such period (subject to their continuance as Directors) and upon such terms as the Board may determine and the Board may revoke or terminate any of such appointments. Any such revocation or termination as aforesaid shall be without prejudice to any claim for damages that such Director may have against the Company or the Company may have against such Director. A Director appointed

to an office under this Bye-law shall be subject to the same provisions as to resignation and removal as the other Directors of the Company, and he shall (subject to the provisions of any contract between him and the Company) ipso facto and immediately cease to hold such office if he shall cease to hold the office of Director for any cause.

91 Notwithstanding Bye-laws 96, 97, 98 and 99, an executive director appointed to an office under Bye-law 90 hereof shall receive such remuneration (whether by way of salary), commission, participation in profits or otherwise or by all or any of those modes) and such other benefits (including pension and/or gratuity and/or other benefits on retirement) and allowances as the Board may from time to time determine. and either in addition to or in lieu of his remuneration as a Director.

### **ALTERNATE DIRECTORS**

92 Any Director may at any time by Notice delivered to the Office or head office or at a meeting of the Directors appoint any person to be his alternate Director. Any person so appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present. An alternate Director may be removed at any time by the body which appointed him and, subject thereto, the office of alternate Director shall continue until the next annual election of Directors or, if earlier, the date on which the relevant Director ceases to be a Director. Any appointment or removal of an alternate Director shall be effected by Notice signed by the appointor and delivered to the Office or head office or tendered at a meeting of the Board. An alternate Director may also be a Director in his own right and may act as alternate to more than one Director. An alternate Director shall, if his appointor so requests, be entitled to receive notices of meetings of the Board or of committees of the Board to the same extent as and in addition to the Director appointing him and shall be entitled to such extent to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to exercise and discharge all the functions, powers and duties of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these Bye-laws shall apply as if he were a Director save that as an alternate for more than one Director his voting rights shall be cumulative.

93 An alternate Director shall only be a Director for the purposes of the Act and shall only be subject to the provisions of the Act insofar as they relate to the duties and obligations of a Director when performing the functions of the Director for whom he is appointed in the alternative and shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of or for the Director appointing him. An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified by the Company to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company any fee in his capacity as an alternate Director except only such part, if any, of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct.

94 Every person acting as an alternate Director shall have one vote for each Director for whom he acts as alternate (in addition to his own vote if he is also a Director). If his appointor is for the time being absent from Hong Kong or otherwise not available or unable to act, the signature or an alternate Director to any resolution in writing of the Board or a committee of the Board of which his appointor is a member shall, unless the notice of his appointment provides to the contrary, be as effective as the signature of his appointor.

95 An alternate Director shall ipso facto cease to be an alternate Director if his appointor ceases for any reason to be a Director, however. such alternate Director or any other person may be re-appointed by the Directors to serve as an alternate Director PROVIDED always that, if at any meeting any Director retires but is re-elected at the same meeting, any appointment of such alternate Director pursuant to these Bye-laws which was in force immediately before his retirement shall remain in force as though he had not retired.

### **DIRECTORS' FEES AND EXPENSES**

96 The ordinary remuneration of the Directors shall from time to time be determined by the Company in general meeting and shall (unless otherwise directed by the resolution by which it is voted) be divided amongst the Board in such proportions and in such manner as it may agree or, failing agreement, equally, except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of remuneration related to the period during which he has held office. Such remuneration shall be deemed to accrue from day to day.

97 Each Director shall be entitled to be prepaid or repaid all travelling, hotel and incidental expenses reasonably expected to be incurred or reasonably incurred by him in attending meetings of the Board or committees of the Board or general meetings or separate meetings of any class of shares or of debentures of the Company or otherwise in connection with the discharge of his duties as a Director.

98 Any Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration provided for by or pursuant to any other Bye-law.

99 The Board shall obtain the approval of the Company in general meeting before making any payment to any Director or past Director of the Company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office (not being payment to which the Director is contractually entitled).

### **DIRECTORS' INTERESTS**

100 A Director may:

- (a) hold any other office or place of profit with the Company (except that of Auditor) in conjunction with his office of Director for such period and, subject to the relevant provisions of the Act. upon such terms as the Board may determine. Any remuneration (whether by way of salary. commission. participation in profits or otherwise) paid to any Director in respect of any such other office or place of profit shall be in addition to any remuneration provided for by or pursuant to any other Bye-law;
- (b) act by himself or his firm in a professional capacity for the Company (otherwise than as Auditor) and he or his firm may be remunerated for professional services as if he were not a Director;
- (c) continue to be or become a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or member of any other company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and (unless otherwise agreed) no such Director shall be accountable for any remuneration, profits or other benefits received by him as a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or member of or from his interests in any such other company. Subject as otherwise provided by these Bye-laws the Directors may exercise or cause to be exercised the voting powers conferred by the shares in any other company held or owned by the Company, or exercisable by them as Directors of such other company in such manner in all respects as they think fit including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, joint managing directors, deputy managing directors, executive directors, managers or other officers of such company or voting or providing for the payment of remuneration to the director, managing director, joint managing director, deputy managing director, executive director, manager or other officers of such other company and any Director of the Company may vote in favour of the exercise of such voting rights in manner aforesaid notwithstanding that he may be, or about to be, appointed a director, managing director, joint managing director, deputy managing director, executive director. manager or other officer of such a company, and that as such he is or may become interested in the exercise of such voting rights in manner aforesaid.
- (d) A Director shall not vote or be counted in the quorum on any resolution of the Board concerning his own appointment as the holder of any office or place of profit with the Company or any other company in which the Company is interested (including the arrangement or variation of the terms thereof, or the termination thereof).

101 Subject to the Act and to these Bye-laws, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor. purchaser or in any other manner whatever, nor shall any such contract or any other contract or arrangement in which any

Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the Members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established provided that such Director shall disclose the nature of his interest in any contract or arrangement in which he is interested in accordance with Bye-law 102 herein.

102 A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Bye-law, a general notice to the Board by a Director to the effect that:

- (a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract or arrangement which may after the date of the notice be made with a specified person who is connected with him;

shall be deemed to be a sufficient declaration of interest under this Bye-law in relation to any such contract or arrangement, provided that no such notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.

103 (1) A Director shall not vote (nor be counted in the quorum) on any resolution of the Board approving any contract or arrangement or any other proposal in which he or any of his associates is materially interested, but this prohibition shall not apply to any of the following matters namely:

- (i) any contract or arrangement for the giving by the Company or any of its subsidiaries of any security or indemnity to the Director or his associate(s) in respect of money lent by him or any of his associates or obligations incurred or undertaken by him or any of his associates at the request of or for the benefit of the Company or any of its subsidiaries;
- (ii) any contract or arrangement for the giving by the Company or any of its subsidiaries of any security or indemnity to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the Director or his associate(s) has himself/themselves assumed responsibility in whole or in part whether alone or jointly under a guarantee or indemnity or by the giving of security;
- (iii) any contract or arrangement by a Director or his associate(s) to subscribe for shares or debentures or other securities of the Company or any of its subsidiaries to be issued pursuant to any offer or invitation to the members or debenture holders or to the public which does not provide the Director or his associate(s) any privilege not accorded to any other members or debenture holders or to the public;
- (iv) any contract, arrangement or proposal concerning an offer of shares or debentures or other securities of or by the Company or any of its subsidiaries for subscription or purchase where the Director or his associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;
- (v) any contract or arrangement in which the Director or his associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the Company or any of its subsidiaries by virtue only of his/their interest in shares or debentures or other securities of the Company or any of its subsidiaries;
- (vi) any contract, arrangement or proposal concerning any company in which the Director or his associate(s) is/are interested only, whether directly or indirectly, as an officer or executive or a shareholder or in which the Director and any of his associate(s) are not in aggregate beneficially interested in five (5) per cent. or more of the issued shares or of the voting rights of any class of shares of such company (or of any third company through which his interest or that of any of his associates is derived);

- (vii) any proposal or arrangement for the benefit of employees of the Company or its subsidiaries or its associated companies including the adoption, modification, or operation of a pension fund or retirement, death or disability benefits scheme which relates both to directors, his associates and employees of the Company or of any of its subsidiaries or its associated companies and does not give the Director or his associate(s) any privilege or advantage not accorded to the employees to whom such scheme or fund relates; or
  - (viii) any proposal concerning the adoption, modification or operation of any share scheme involving the issue or grant of options over shares or other securities by the Company to, or for the benefit of the employees of the Company or its subsidiaries or its associated companies under which the Director or his associate(s) may benefit.
- (2) A company shall be deemed to be a company in which a Director and/or his associate(s) own(s) five (5) per cent or more if and so long as (but only if and so long as) he and/or his associates (either directly or indirectly) is/are the holder(s) of or beneficially interested in five (5) per cent or more of any class of the equity share capital of such company or of the voting rights available to members of such company (or of any third company through which his interest or that of any of his associates is derived). For the purpose of this paragraph there shall be disregarded any shares held by a Director or his associate(s) as bare or custodian trustee and in which he or any of them has no beneficial interest, any shares comprised in a trust in which the interest of the Director and/or his associate(s) is/are in reversion or remainder if and so long as some other person is entitled to receive the income thereof, and any shares comprised in an authorized unit trust scheme in which the Director and/or his associate(s) is/are interested only as a unit holder.
  - (3) Where a company in which a Director and/or his associate(s) hold(s) five (5) per cent or more is materially interested in a transaction, then that Director and/or his associate(s) shall also be deemed materially interested in such transaction.
  - (4) If any question shall arise at any meeting of the Board as to the materiality of the interest of a Director (other than the chairman of the meeting) or his associate(s) or as to the entitlement of any Director (other than such chairman) to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be referred to the chairman of the meeting and his ruling in relation to such other Director shall be final and conclusive except in a case where the nature or extent of the interest of the Director and/or his associate(s) concerned as known to such Director has not been fairly disclosed to the Board. If any question as aforesaid shall arise in respect of the chairman of the meeting such question shall be decided by a resolution of the Board (for which purpose such chairman shall not vote thereon) and such resolution shall be final and conclusive except in a case where the nature or extent of the interest of such chairman as known to such chairman has not been fairly disclosed to the Board.

- (5) The Company may by ordinary resolution ratify any transaction not duly authorised by reason of a contravention of this Bye-law provided that no Director who is materially interested in such transaction, together with any of his associates, shall vote upon such ordinary resolution in respect of any shares in the Company in which they are interested.”;

### **GENERAL POWERS OF THE DIRECTORS**

104 (1) The business of the Company shall be managed and conducted by the Board, which may pay all expenses incurred in forming and registering the Company and may exercise all powers of the Company (whether relating to the management of the business of the Company or otherwise) which are not by the Statutes or by these Bye-laws required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Statutes and of these Bye-laws and to such regulations being not inconsistent with such provisions, as may be prescribed by the Company in general meeting, but no regulations made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if such regulations had not been made. The general powers given by this Bye-law shall not be limited or restricted by any special authority or power given to the Board by any other Bye-law.

(2) Any person contracting or dealing with the Company in the ordinary course of business shall be entitled to rely on any written or oral contract or agreement or deed, document or instrument entered into or executed as the case may be by any two of the Directors acting jointly on behalf of the Company and the same shall be deemed to be validly entered into or executed by the Company as the case may be and shall, subject to any rule of law, be binding on the Company.

(3) Without prejudice to the general powers conferred by these Bye-laws it is hereby expressly declared that the Board shall have the following powers:



- (a) To give to any person the right or option of requiring at a future date that an allotment shall be made to him of any share at par or at such premium as may be agreed.
- (b) To give to any Directors, officers or servants of the Company an interest in any particular business or transaction or participation in the profits thereof or in the general profits of the Company either in addition to or in substitution for a salary or other remuneration.
- (c) To resolve that the Company, be discontinued in Bermuda and continued in a named country or jurisdiction outside Bermuda subject to the provisions of the Act.

105 The Board may establish any regional or local boards or agencies for managing any of the affairs of the Company in any place, and may appoint any persons to be members of such local boards, or any managers or agents, and may fix their remuneration (either by way of salary or by commission or by conferring the right to participation in the profits of the Company or by a combination of two or more of these modes) and pay the working expenses of any staff employed by them upon the business of the Company. The Board may delegate to any local board, manager or agent any of the powers, authorities and discretions vested in or exercisable by the Board (other than its powers to make calls and forfeit shares), with power to sub-delegate, and may authorise the members of any local board or any of them to fill any vacancies therein and to act notwithstanding vacancies. Any such appointment or delegation may be made upon such terms and subject to such conditions as the Board may think fit, and the Board may remove any person appointed as aforesaid, and may revoke or vary such delegation, but no person dealing in good faith and without notice of any such revocation or variation shall be affected thereby.

106 The Board may by power of attorney appoint under the Seal any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under these Bye-laws) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Such attorney or attorneys may, if so authorised under the Seal of the Company, execute any deed or instrument under their personal seal with the same effect as the affixation of the Company's Seal.

107 The Board may entrust to and confer upon a managing director, joint managing director, deputy managing director, an executive director or any Director any of the powers exercisable by it upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time revoke or vary all or any of such powers but no person dealing in good faith and without notice of any such revocation or variation shall be affected thereby.

108 All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be. in such manner as the Board shall from time to time by resolution determine. The Company's banking accounts shall be kept with such banker or bankers as the Board shall from time to time determine.

109 (1) The Board may establish or concur or join with other companies (being subsidiary companies of the Company or companies with which it is associated in business) in establishing and making contributions out of the Company's moneys to any schemes or funds for providing pensions, sickness or compassionate allowances, life assurance or other benefits for employees (which expression as used in this and the following paragraph shall include any Director or ex-Director who may hold or have held any executive office or any office of profit under the Company or any of its subsidiary companies) and ex-employees of the Company and their dependants or any class or classes of such person.

(2) The Board may pay, enter into agreements to pay or make grants of revocable or irrevocable, and either subject or not subject to any terms or conditions, pensions or other benefits to employees and ex-employees and their dependants, or to any of such persons, including pensions or benefits additional to those, if any, to which such employees or ex-employees or their dependants are or may become entitled under any such scheme or fund as mentioned in the last preceding paragraph. Any such pension or benefit may, as the Board considers desirable, be granted to an employee either before and in anticipation of or upon or at any time after his actual retirement.

### **BORROWING POWERS**

110 The Board may exercise all the powers of the Company to raise or borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to the Act, to issue debentures, debenture stock, bonds and other securities. whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

111 Debentures, debenture stock, bonds and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.

112 Any debentures, debenture stock, hands or other securities may be issued at a discount (other than shares), premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise.

113 (1) Where any uncalled capital of the Company is charged, all persons taking any subsequent charge thereon shall take the same subject to such prior charge, and shall not be entitled, by notice to the Members or otherwise, to obtain priority over such prior charge.

(2) The Board shall cause a proper register to be kept, in accordance with the provisions of the Act, of all charges specifically affecting the property of the Company and of any series of debentures issued by the Company and shall duly comply with the requirements of the Act in regard to the registration of charges and debentures therein specified and otherwise.

### **PROCEEDINGS OF THE DIRECTORS**

114 The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it considers appropriate. Questions arising at any meeting shall be determined by a majority of votes. In the case of any equality of votes the chairman of the meeting shall have an additional or casting vote.

115 A meeting of the Board may be convened by the Secretary on request of a Director or by any Director. The Secretary shall convene a meeting of the Board of which notice may be given in writing or by telephone or in such other manner as the Board may from time to time determine whenever he shall be required so to do by the president or chairman, as the case may be, or any Director. Any Director may waive notice of any meeting either prospectively or retrospectively.

116 (1) The quorum necessary for the transaction of the business of the Board may be fixed by the Board and, unless so fixed at any other number, shall be two (2). An alternate Director shall be counted in a quorum in the case of the absence of a Director for whom he is the alternate provided that he shall not be counted more than once for the purpose of determining whether or not a quorum is present.

(2) Directors may participate in any meeting of the Board by means of a conference telephone or other communications equipment through which all persons participating in the meeting can communicate with each other simultaneously and instantaneously and, for the purpose of counting a quorum, such participation shall constitute presence at a meeting as if those participating were present in person.

(3) Any Director who ceases to be a Director at a Board meeting may continue to be present and to act as a Director and be counted in the quorum until the termination of such Board meeting if no other Director objects and if otherwise a quorum of Directors would not be present.

117 The continuing Directors or a sole continuing Director may act notwithstanding any vacancy in the Board but, if and so long as the number of Directors is reduced to the minimum number fixed by or in accordance with these Bye-laws, the continuing Directors or Director, notwithstanding that the number of Directors is below the number fixed by or in accordance with these Bye-laws as the quorum or that there is only one continuing Director, may act for the purpose of filling vacancies in the Board or of summoning general meetings of the Company but not for any other purpose.

118 The Board may elect a chairman and one or more deputy chairmen of its meetings and determine the period for which they are respectively to hold such office. If no chairman or

deputy chairman is elected, or if at any meeting neither the chairman nor any deputy chairman is present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

119 A meeting of the Board at which a quorum is present shall be competent to exercise all the powers, authorities and discretions for the time being vested in or exercisable by the Board.

120 (1) The Board may delegate any or its powers, authorities and discretions to committees, consisting of such Director or Directors and other persons as it thinks fit, and they may, from time to time, revoke such delegation or revoke the appointment of and discharge any such committees either wholly or in part, and either as to persons or purposes. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations which may be imposed on it by the Board.

(2) All acts done by any such committee in conformity with such regulations, and in fulfilment of the purposes for which it was appointed, but not otherwise, shall have like force and effect as if done by the Board, and the Board shall have power, with the consent of the Company in general meeting, to remunerate the members of any such committee, and charge such remuneration to the current expenses of the Company.

121 The meetings and proceedings of any committee consisting of two or more members shall be governed by the provisions contained in these Byc-laws for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board under the last preceding Bye-law.

122 A resolution in writing signed by all the Directors except such as are absent from the territory in which the head office is for the time being situate or temporarily unable to act through ill-health or disability, and all the alternate Directors, if appropriate, whose appointors are temporarily unable to act as aforesaid shall (provided that such number is sufficient to constitute a quorum and further provided that a copy of such resolution has been given or the contents thereof communicated to all the Directors for the time being entitled to receive notices of Board meetings in the same manner as notices of meetings are required to be given by these Bye-laws) be as valid and effectual as if a resolution had been passed at a meeting of the Board duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the Directors or alternate Directors and for this purpose a facsimile signature of a Director or an alternate Director shall be treated as valid provided that the document containing the original signature of the Director or alternate Director is deposited with the Secretary within ten (10) days from the date of the facsimile.

123 All acts bona fide done by the Board or by any committee or by any person acting as a Director or members of a committee, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member or the Board or such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

## **MANAGERS**

124 The Board may from time to time appoint a general manager, a manager or managers of the Company and may fix his or their remuneration either by way of salary or commission or other benefits or by conferring the right to participation in the profits of the Company or by a combination of two or more of these modes and pay the working expenses of any of the staff of the general manager, manager or managers who may be employed by him or them upon the business of the Company.

125 The appointment of such general manager, manager or managers may be for such period as the Board may decide, and the Board may confer upon him or them all or any of the powers of the Board as they may think fit.

126 The Board may enter into such agreement or agreements with any such general manager, manager or managers upon such terms and conditions in all respects as the Board may in their absolute discretion think fit, including a power for such general manager, manager or managers to appoint an assistant manager or managers or other employees whatsoever under them for the purpose of carrying on the business of the Company.

## **OFFICERS**

127 (1) The officers of the Company shall consist of a president and vice-president or chairman and deputy chairman, the Directors and Secretary and such additional officers (who may or may not be Directors) as the Board may from time to time determine, all of whom shall be deemed to be officers for the purposes of the Act and these Bye-laws.

(2) The Directors shall, as soon as may be after each appointment or election of Directors, elect amongst the Directors a president and a vice-president or a chairman and a deputy chairman; and if more than one (1) Director is proposed for either of these offices, the election to such office shall take place in such manner as the Directors may determine.

(3) The officers shall receive such remuneration as the Directors may from time to time determine.

(4) Where the Company does not have a quorum of Directors ordinarily resident in Bermuda, the Company shall in accordance with the Act appoint and maintain a resident representative ordinarily resident in Bermuda and the resident representative shall maintain an office in Bermuda and comply with the provisions of the Act.

The Company shall provide the resident representative with such documents and information as the resident representative may require in order to be able to comply with the provisions of the Act.

The resident representative shall be entitled to have notice of, attend and be heard at any Directors' meetings or general meeting of the Company.

128 (1) The Secretary and additional officers, if any, shall be appointed by the Board and shall hold office on such terms and for such period as the Board may determine. If thought fit, two (2) or more persons may be appointed as joint Secretaries. The Board may also appoint from time to time on such terms as it thinks fit one or more assistant or deputy Secretaries.

(2) The Secretary shall attend all meetings of the Members and shall keep correct minutes of such meetings and enter the same in the proper books provided for the purpose. He shall perform such other duties as are prescribed by the Act or these Bye-laws or as may be prescribed by the Board.

129 The president or the chairman, as the case may be, shall act as chairman at all meetings of the Members and of the Directors at which he is present. In his absence a chairman shall be appointed or elected by those present at the meeting.

130 The officers of the Company shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Directors from time to time.

131 A provision of the Act or of these Bye-laws requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as or in place of the Secretary.

### **REGISTER OF DIRECTORS AND OFFICERS**

132 (1) The Board shall cause to be kept in one or more books at its Office a Register of Directors and Officers and shall enter therein the following particulars with respect to each Director and Officer, that is to say:

(a) his or her first name and surname; and

(b) his or her address.

(2) The Board shall within a period of fourteen (14) days from the occurrence of:

(a) any change among its Directors and Officers; or

(b) any change in the particulars contained in the Register of Directors and Officers,

cause to be entered on the Register of Directors and Officers the particulars of such change and of the date on which it occurred.

(3) The Register of Directors and Officers shall be open to inspection by members of the public without charge at the Office between 10:00 a.m. and 12:00 noon on every business day.

(4) In this Bye-law "Officer" has the meaning ascribed to it in Section 92A(7) of the Act.

### **MINUTES**

133 The Board shall cause Minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of officers;
- (b) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
- (c) of all resolutions and proceedings of each general meeting of the Members, meetings of the Board and meetings of committees of the Board.

### **SEAL**

134 (1) The Company shall have one or more Seals, as the Board may determine. For the purpose of sealing documents creating or evidencing securities issued by the Company, the Company may have a securities seal which is a facsimile of the Seal of the Company with the addition of the words "Securities Seal" on its face or in such other form as the Board may approve. The Board shall provide for the custody of each Seal and no Seal shall be used without the authority of the Board or of a committee of the Board authorised by the Board in that behalf. Subject as otherwise provided in these Bye-laws. any instrument to which a Seal is affixed shall be signed autographically by one Director and the Secretary or by two Directors or by such other person or persons as the Board may appoint, either generally or in any particular case, save that as regards any certificates for shares or debentures or other securities of the Company the Board may by resolution determine that such signatures or either of them shall be dispensed with or affixed by some method or system of mechanical signature. Every instrument executed in manner provided by this Bye-law shall be deemed to be sealed and executed with the authority of the Board previously given.

(2) Where the Company has a Seal for use abroad, the Board may by writing under the Seal appoint any agent or committee abroad to be the duly authorised agent of the Company for the purpose of affixing and using such Seal and the Board may impose restrictions on the use thereof as may be thought fit. Wherever in these Bye-laws reference is made to the Seal, the reference shall, when and so far as may be applicable, be deemed to include any such other Seal as aforesaid.

### **AUTHENTICATION OF DOCUMENTS**

135 Any Director or the Secretary or any person appointed by the Board for the purpose may authenticate any documents affecting the constitution of the Company and any resolution passed by the Company or the Board or any committee, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts

therefrom as true copies or extracts, and if any books, records, documents or accounts are elsewhere than at the Office or the head office the local manager or other officer of the Company having the custody thereof shall be deemed to be a person so appointed by the Board. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting, of the Company or of the Board or any committee which is so certified shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such minutes or extract is a true and accurate record of proceedings at a duly constituted meeting.

### **DESTRUCTION OF DOCUMENTS**

136 The Company shall be entitled to destroy the following documents at the following times:

- (a) any share certificate which has been cancelled at any time after the expiry of one (1) year from the date of such cancellation;
- (b) any dividend mandate or any variation or cancellation thereof or any notification of change of name or address at any time after the expiry of two (2) years from the date such mandate variation, cancellation or notification was recorded by the Company;
- (c) any instrument of transfer of shares which has been registered at any time after the expiry of six (6) years from the date of registration;
- (d) any allotment letters after the expiry of six (6) years from the date of issue thereof;
- (e) copies of powers of attorney, grants of probate and letters of administration at any time after the expiry of six (6) years after the account to which the relevant power of attorney, grant of probate or letters of administration related has been closed; and
- (f) any other document, on the basis of which any entry in the register is made, at any time after the expiry of six (6) years from the date on which an entry in the register was first made in respect of it;

and it shall conclusively be presumed in favour of the Company that every entry in the Register purporting to be made on the basis of any such documents so destroyed was duly and properly made and every share certificate so destroyed was a valid certificate duly and properly cancelled and that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document destroyed hereunder was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company. Provided always that: (1) the foregoing provisions of this Bye-law shall apply only to the destruction of a document in good faith and without express notice to the Company that the preservation of such document was relevant to a claim; (2) nothing contained in this Bye-law shall be construed as imposing upon the Company any



liability in respect of the destruction of any such document earlier than as aforesaid or in any case where the conditions of proviso (1) above are not fulfilled; and (3) references in this Bye-law to the destruction of any document include references to its disposal in any manner.

### **DIVIDENDS AND OTHER PAYMENTS**

137 Subject to the Act, the Company in general meeting may from time to time declare dividends in any currency to be paid to the Members, but no dividend shall be declared in excess of the amount recommended by the Board. The Company in general meeting may also make a distribution to the Members out of any contributed surplus (as ascertained in accordance with the Act).

138 No dividend shall be paid or distribution made out of contributed surplus if to do so would render the Company unable to pay its liabilities as they become due or the realisable value of its assets would thereby become less than the aggregate of its liabilities and its issued share capital and share premium accounts.

139 Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide:

- (a) all dividends shall be declared and paid according to the amounts paid up on the shares in respect of which the dividend is paid. but no amount paid up on a share in advance of calls shall be treated for the purposes of this Bye-law as paid up on the share; and
- (b) all dividends shall be apportioned and paid pro rata according to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

140 The Board may from time to time pay to the Members such interim dividends as appear to the Board to be justified by the profits of the Company and in particular (but without prejudice to the generality of the foregoing) if at any time the share capital of the Company is divided into different classes, the Board may pay such interim dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferential rights as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividend and provided that the Board acts bona fide the Board shall not incur any responsibility to the holders of shares conferring any preference for any damage that they may suffer by reason of the payment of an interim dividend on any shares having deferred or non-preferential rights and may also pay any fixed dividend which is payable on any shares of the Company half-yearly or on any other dates, whenever such profits, in the opinion of the Board, justifies such payment.

141 The Board may deduct from any dividend or other moneys payable to a Member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

142 No dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.

143 Any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the Register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company notwithstanding that it may subsequently appear that the same has been stolen or that any endorsement thereon has been forged. Anyone of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the shares held by such joint holders.

144 All dividends or bonuses unclaimed for one (1) year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. Any dividend or bonuses unclaimed after a period of six (6) years from the date of declaration shall be forfeited and shall revert to the Company. The payment by the Board or any unclaimed dividend or other sums payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect thereof.

145 Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared, the Board may further resolve that such dividend be satisfied wholly or in part by the distribution of specific assets of any kind and in particular of paid up shares, debentures or warrants to subscribe securities or the Company or any other company, or in any one or more of such ways, with or without offering any rights to Members to elect to receive such dividend in cash, and where any difficulty arises in regard to the distribution the Board may settle the same as it thinks expedient, and in particular may issue certificates in respect of fractions of shares, disregard fractional entitlements or round the same up or down, and may fix the value for distribution of such specific assets, or any part thereof, and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all parties, and may determine that fractional entitlements shall be aggregated and sold and the benefit shall accrue to the Company rather than to the Members concerned, and vest any such specific assets in trustees as may seem expedient to the Board and may appoint any person to sign any requisite instruments of transfer and other documents on behalf of the persons entitled to the dividend, and such appointment shall be effective. The Board may resolve that no such assets shall be made available to Members with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the Board, be unlawful or impracticable and in such event the only entitlement of the Members aforesaid shall be to receive cash payments as aforesaid. Members affected as a result of the foregoing sentence shall not be or be deemed to be a separate class of Members for any purpose whatsoever.

146 (1) Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared on the share capital of the Company, the Board may further resolve either:

- (a) that such dividend be satisfied wholly or in part in the form of an allotment of shares credited as fully paid up, provided that the shareholders entitled thereto will be entitled to elect to receive such dividend (or part thereof) in cash in lieu of such allotment. In such case, the following provisions shall apply:
  - (i) the basis of any such allotment shall be determined by the Board;
  - (ii) the Board, after determining the basis of allotment, shall give not less than two (2) weeks' notice in writing to the holders of the relevant shares of the right of election accorded to them and shall send with such notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;
  - (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and
  - (iv) the dividend (or that part of the dividend to be satisfied by the allotment of shares as aforesaid) shall not be payable in cash on shares in respect whereof the cash election has not been duly exercised ("the non-elected shares") and in satisfaction thereof shares shall be allotted credited as fully paid up to the holders of the non-elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the credit of any reserves or other special account other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares for allotment and distribution to and amongst the holders of the non-elected shares on such basis; or
- (b) that the shareholders entitled to such dividend shall be entitled to elect to receive an allotment of shares credited as fully paid up in lieu of the whole or such part of the dividend as the Board may think fit. In such case, the following provisions shall apply:
  - (i) the basis of any such allotment shall be determined by the Board;
  - (ii) the Board, after determining the basis of allotment, shall give not less than two (2) weeks' notice in writing to the holders of the relevant shares of the right of election accorded to them and shall send with

such notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;

- (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and
  - (iv) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable in cash on shares in respect whereof the share election has been duly exercised ("the elected shares") and in lieu thereof shares shall be allotted credited as fully paid up to the holders of the elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the credit of any reserves or other special account other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares for allotment and distribution to and amongst the holders of the elected shares on such basis,
- (2)
- (a) The shares allotted pursuant to the provisions of paragraph (1) of this Bye-law shall rank *pari passu* in all respects with shares of the same class (if any) then in issue save only as regards participation in the relevant dividend or in any other distributions, bonuses or rights paid, made, declared or announced prior to or contemporaneously with the payment or declaration of the relevant dividend unless, contemporaneously with the announcement by the Board of their proposal to apply the provisions of sub-paragraph (a) or (b) of paragraph (2) of this Bye-law in relation to the relevant dividend or contemporaneously with their announcement of the distribution, bonus or rights in question, the Board shall specify that the shares to be allotted pursuant to the provisions of paragraph (1) of this Bye-law shall rank for participation in such distribution, bonus or rights.
  - (b) The Board may do all acts and things considered necessary or expedient to give effect to any capitalisation pursuant to the provisions of paragraph (1) of this Bye-law, with full power to the Board to make such provisions as it thinks fit in the case of shares becoming distributable in fractions (including provisions whereby, in whole or in part, fractional entitlements are aggregated and sold and the net proceeds distributed to those entitled, or are disregarded or rounded up or down or whereby the benefit of fractional entitlements accrues to the Company rather than to the Members concerned). The Board may authorise any person to enter into on behalf of all members interested, an agreement with the Company providing for such capitalisation and matters incidental thereto and any agreement made

pursuant to such authority shall be effective and binding on all concerned.

(3) The Company may upon the recommendation of the Board by ordinary resolution resolve in respect of any one particular dividend of the Company that notwithstanding the provisions of paragraph (1) of this Bye-law a dividend may be satisfied wholly in the form of an allotment of shares credited as fully paid up without offering any right to shareholders to elect to receive such dividend in cash in lieu of such allotment.

(4) The Board may on any occasion determine that rights of election and the allotment of shares under paragraph (1) of this Bye-law shall not be made available or made to any shareholders with registered addresses in any territory where in the absence of a registration statement or other special formalities the circulation of an offer of such rights of election or the allotment of shares would or might, in the opinion of the Board, be unlawful or impracticable, and in such event the provisions aforesaid shall be read and construed subject to such determination. Members affected as a result of the foregoing shall not be deemed to be or treated as a separate class of Members for any purpose whatsoever.

(5) Any resolution declaring a dividend on shares of any class, whether a resolution of the Company in general meeting or a resolution of the Board, may specify that the same shall be payable or distributable to the persons registered as the holders of such shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable or distributable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se in respect of such dividend of transferors and transferees of any such shares. The provisions of this Bye-law shall mutatis mutandis apply to bonuses, capitalisation issues, distributions of realised capital profits or offers or grants made by the Company to the Members.

### **RESERVES**

147 Before recommending any dividend, the Board may set aside out of the profits of the Company such sums as it determines as reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may, also at such discretion, either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit and so that it shall not be necessary to keep any investments constituting the reserve or reserves separate or distinct from any other investments of the Company. The Board may also without placing the same to reserve carry forward any profits which it may think prudent not to distribute.

### **CAPITALISATION**

148 The Company may in general meeting, upon the recommendation of the Board, at any time and from time to time pass an ordinary resolution to the effect that it is desirable to capitalise all or any part of any amount for the time being standing to the credit of any

reserve or fund (including the profit and loss account) whether or not the same is available for distribution and accordingly that such amount be set free for distribution among the Members or any class of Members who would be entitled thereto if it were distributed by way of dividend and in the same proportions, on the footing that the same is not paid in cash but is applied either in or towards paying up the amounts for the time being unpaid on any shares in the Company held by such Members respectively or in paying up in full unissued shares, debentures or other obligations of the Company, to be allotted and distributed credited as fully paid up among such Members. or partly in one way and partly in the other, and the Board shall give effect to such resolution provided that, for the purposes of this Bye-law and subject to Section 40(2A) of the Act, a share premium account and any reserve or fund representing unrealised profits, may be applied only in paying up in full unissued shares of the Company to be allotted to such Members credited as fully paid. In carrying sums to reserve and in applying the same the Board shall comply with the provisions of the Act.

149 The Board may settle, as it considers appropriate, any difficulty arising in regard to any distribution under the last preceding Bye-law and in particular may issue certificates in respect of fractions of shares or authorise any person to sell and transfer any fractions or may resolve that the distribution should be as nearly as may be practicable in the correct proportion but not exactly so or may ignore fractions altogether, and may determine that cash payments shall be made to any Members in order to adjust the rights of all parties, as may seem expedient to the Board. The Board may appoint any person to sign on behalf of the persons entitled to participate in the distribution any contract necessary or desirable for giving effect thereto and such appointment shall be effective and binding upon the Members.

### **SUBSCRIPTION RIGHTS RESERVE**

150 The following provisions shall have effect to the extent that they are not prohibited by and are in compliance with the Act:

- (1) If, so long as any of the rights attached to any warrants issued by the Company to subscribe for shares of the Company shall remain exercisable, the Company does any act or engages in any transaction which, as a result of any adjustments to the subscription price in accordance with the provisions of the conditions of the warrants, would reduce the subscription price to below the par value of a share, then the following provisions shall apply:
  - (a) as from the date of such act or transaction the Company shall establish and thereafter (subject as provided in this Bye-law) maintain in accordance with the provisions of this Bye-law a reserve (the "Subscription Rights Reserve") the amount of which shall at no time be less than the sum which for the time being would be required to be capitalised and applied in paying up in full the nominal amount of the additional shares required to be issued and allotted credited as fully paid pursuant to sub- paragraph (c) below on the exercise in full of all the subscription rights outstanding and shall apply the Subscription Rights Reserve in paying up such additional shares in full as and when the same are allotted;

- (b) the Subscription Rights Reserve shall not be used for any purpose other than that specified above unless all other reserves of the Company (other than share premium account) have been extinguished and will then only be used to make good losses of the Company if and so far as is required by law;
- (c) upon the exercise of all or any of the subscription rights represented by any warrant, the relevant subscription rights shall be exercisable in respect of a nominal amount of shares equal to the amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be the relevant portion thereof in the event of a partial exercise of the subscription rights) and, in addition, there shall be allotted in respect of such subscription rights to the exercising warrant holder, credited as fully paid, such additional nominal amount of shares as is equal to the difference between:
  - (i) the said amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be, the relevant portion thereof in the event of a partial exercise of the subscription rights); and
  - (ii) the nominal amount of shares in respect of which such subscription rights would have been exercisable having regard to the provisions of the conditions of the warrants, had it been possible for such subscription rights to represent the right to subscribe for shares at less than par and immediately upon such exercise so much of the sum standing to the credit of the Subscription Rights Reserve as is required to pay up in full such additional nominal amount of shares shall be capitalised and applied in paying up in full such additional nominal amount of shares which shall forthwith be allotted credited as fully paid to the exercising warrant holders; and
- (d) if, upon the exercise of the subscription rights represented by any warrant, the amount standing to the credit of the Subscription Rights Reserve is not sufficient to pay up in full such additional nominal amount of shares equal to such difference as aforesaid to which the exercising warrant holder is entitled, the Board shall apply any profits or reserves then or thereafter becoming available (including, to the extent permitted by law, share premium account) for such purpose until such additional nominal amount of shares is paid up and allotted as aforesaid and until then no dividend or other distribution shall be paid or made on the fully paid shares of the Company then in issue. Pending such payment and allotment, the exercising warrant holder shall be issued by the Company with a certificate evidencing his right to the allotment of such additional nominal amount of shares. The rights represented by any such certificate shall be in registered form and shall be transferable in whole or in part in units of one share in the like manner as the shares for the time being are transferable, and the Company shall make such arrangements in relation to the maintenance of a register therefor and other matters in relation thereto as

the Board may think fit and adequate particulars thereof shall be made known to each relevant exercising warrant holder upon the issue of such certificate.

- (2) Shares allotted pursuant to the provisions of this Bye-law shall rank *pari passu* in all respects with the other shares allotted on the relevant exercise of the subscription rights represented by the warrant concerned. Notwithstanding anything contained in paragraph (1) of this Bye-law, no fraction of any share shall be allotted on exercise of the subscription rights.
- (3) The provision of this Bye-law as to the establishment and maintenance of the Subscription Rights Reserve shall not be altered or added to in any way which would vary or abrogate, or which would have the effect of varying or abrogating the provisions for the benefit of any warrant holder or class of warrant holders under this Bye-law without the sanction of a special resolution of such warrant holders or class of warrant holders.
- (4) A certificate or report by the auditors for the time being of the Company as to whether or not the Subscription Rights Reserve is required to be established and maintained and if so the amount thereof so required to be established and maintained, as to the purposes for which the Subscription Rights Reserve has been used, as to the extent to which it has been used to make good losses of the Company, as to the additional nominal amount of shares required to be allotted to exercising warrant holders credited as fully paid, and as to any other matter concerning the Subscription Rights Reserve shall (in the absence of manifest error) be conclusive and binding upon the Company and all warrant holders and shareholders.

### **ACCOUNTING RECORDS**

151 The Board shall cause true accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place, and of the property, assets, credits and liabilities of the Company and of all other matters required by the Act or necessary to give a true and fair view of the Company's affairs and to explain its transactions.

152 The accounting records shall be kept at the Office or, subject to the Act, at such other place or places as the Board decides and shall always be open to inspection by the Directors of the Company. No Member (other than a Director of the Company) shall have any right of inspecting any accounting record or book or document of the Company except as conferred by law or authorised by the Board.

153 Subject to Section 88 of the Act, a printed copy of the Directors' report, accompanied by the balance sheet and profit and loss account, including every document required by law to be annexed thereto, made up to the end of the applicable financial year and containing a summary of the assets and liabilities of the Company under convenient heads and a statement of income and expenditure, together with a copy of the Auditors' report, shall be sent to each person entitled to receive notices of general meetings of the Company in accordance with the provisions of the Act and these Bye-laws at least twenty-one (21) days before the date of the general meeting and laid before the Company in general meeting in accordance with the requirements of the Act provided that this Bye-law shall not require a copy of those



documents to be sent to any person whose address the Company is not aware of or to more than one of the joint holders of any shares or debentures,

### AUDIT

154 (1) Subject to Section 88 of the Act. at the annual general meeting or at a subsequent special general meeting in each year, the Members shall appoint an auditor to audit the accounts of the Company and such auditor shall hold office until the Members appoint another auditor. Such auditor may be a Member but no Director or officer or employee of the Company shall, during his continuance in office, be eligible to act as an auditor of the Company.

(2) Subject to Section 89 of the Act, a person, other than a retiring Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless notice in writing of an intention to nominate that person to the office of Auditor has been given not less than "twenty-one (21) days" before the annual general meeting and furthermore, the Company shall send a copy of any such notice to the retiring Auditor.

(3) The Members may, at any general meeting convened and held in accordance with these Bye-laws, by special resolution remove the Auditor at any time before the expiration of his term of office and shall by ordinary resolution at that meeting appoint another Auditor in his stead for the remainder of his term.

155 Subject to Section 88 of the Act the accounts of the Company shall be audited at least once in every year.

156 The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine.

157 Subject always to the statutes, if the office of auditor becomes vacant by the resignation or death of the Auditor, or by his becoming incapable of acting by reason of illness or other disability at a time when his services are required, the Directors may fill any casual vacancy in the office of auditor.";

158 The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto; and he may call on the Directors or officers of the Company for any information in their possession relating to the books or affairs of the Company.

159 The statement of income and expenditure and the balance sheet provided for by these Bye-laws shall be examined by the Auditor and compared by him with the books, accounts and vouchers relating thereto; and he shall make a written report thereon stating whether such statement and balance sheet are drawn up so as to present fairly the financial position of the Company and the results of its operations for the period under review and, in case information shall have been called for from Directors or officers of the Company, whether the same has been furnished and has been satisfactory, The financial statements of the Company shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor

shall make a written report thereon in accordance with generally accepted auditing standards and the report of the Auditor shall be submitted to the Members in general meeting, The generally accepted auditing standards referred to herein may be those of a country or jurisdiction other than Bermuda. If so, the financial statements and the report of the Auditor should disclose this fact and name such country or jurisdiction.

### NOTICES

160 Any Notice from the Company to a Member shall be given in writing or by cable, telex or facsimile transmission message and any such Notice and (where appropriate) any other document may be served or delivered by the Company on or to any Member either personally or by sending it through the post in a prepaid envelope addressed to such Member at his registered address as appearing in the Register or at any other address supplied by him to the Company for the purpose or, as the case may be, by transmitting it to any such address or transmitting it to any telex or facsimile transmission number supplied by him to the Company for the giving of Notice to him or which the person transmitting the Notice reasonably and bona fide believes at the relevant time will result in the notice being duly received by the Member or may also be served by advertisement in appointed newspapers (as defined in the Act) or the Newspapers and in accordance with the requirements of the Designated Stock Exchange. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the Register and notice so given shall be deemed a sufficient service on or delivery to all the joint holders.

161 Any Notice or other document:

- (a) if served or delivered by post, shall be sent airmail where appropriate and shall be deemed to have been served or delivered on the day following that on which the envelope containing the same, properly prepaid and addressed, is put into the post; in proving such service or delivery it shall be sufficient to prove that the envelope or wrapper containing the notice or document was properly addressed and put into the post and a certificate in writing signed by the Secretary or other officer of the Company or other person appointed by the Board that the envelope or wrapper containing the notice or other document was so addressed and put into the post shall be conclusive evidence thereof;
- (b) if served or delivered in any other manner contemplated by these Bye-laws other than by advertisement in appointed newspapers or Newspapers, shall be deemed to have been served or delivered at the time of personal service or delivery or, as the case may be, at the time of the relevant despatch or transmission; and in proving such service or delivery a certificate in writing signed by the Secret or other officer of the Company or other person appointed by the to the fact and time of such service, delivery, despatch or transm on shall be conclusive evidence thereof; and
- (c) if served by advertisement in appointed newspapers or Newspapers, shall be deemed to have been served on the day on which the notice is first published.

162 (1) Any Notice or other document delivered or sent by post to or left at the registered address of any Member in pursuance of these Bye-laws shall, notwithstanding that such Member is then dead or bankrupt or that any other event has occurred, and whether or not the Company has notice of the death or bankruptcy or other event, be deemed to have been duly served or delivered in respect of any share registered in the name of such Member as sole or joint holder unless his name shall, at the time of the service or delivery or the notice or document, have been removed from the Register as the holder of the share, and such service or delivery shall for all purpose be deemed a sufficient service or delivery of such Notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

(2) A notice may be given by the Company to the person entitled to a share in consequence of the death, mental disorder or bankruptcy of a Member by sending it through the post in a prepaid letter, envelope or wrapper addressed to him by name, or by the title of representative of the deceased, or trustee or the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the person claiming to be so entitled. or (until such an address has been so supplied) by giving tile notice in any manner in which the same might have been given if the death, mental disorder or bankruptcy had not occurred.

(3) Any person who by operation of law, transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which prior to his name and address being entered on the Register shall have been duly given to the person from whom he derives his title to such share.

### **SIGNATURES**

163 For the purposes of these Bye-laws, a cable or telex or facsimile transmission message purporting to come from a holder of shares or, as the case may be, a Director or alternate Director, or, in the case of a corporation which is a holder of shares from a director or the secretary thereof or a duly appointed attorney or duly authorised representative thereof for it and on its behalf, shall in the absence of express evidence to the contrary available to the person relying thereon at the relevant time be deemed to be a document or instrument in writing signed by such holder or Director or alternate Director in the terms in which it is received.

### **WINDING UP**

164 (1) The Board shall have power in the name and on behalf of the Company to present a petition to the court for the Company to be wound up.

(2) A resolution that the Company be wound up by the court or be wound up voluntarily shall be a special resolution.

165 If the Company shall be wound up (whether the liquidation is voluntary or by the court) the liquidator may, with the authority, of a special resolution and any other sanction required by the Act, divide among the Members in specie or kind the whole or any part of the assets

of the Company and whether or not the assets shall consist of properties of one kind or shall consist of properties to be divided as aforesaid or different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of the Members as the liquidator with the like authority shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no contributory shall be compelled to accept any shares or other property in respect of which there is a liability.

### **INDEMNITY**

166 (1) The Directors, Secretary and other officers and the Auditor of the Company for the time being or the Company and the liquidator or trustees (if any) for the time being acting in relation to any or the affairs of the Company and everyone of them, and everyone of their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or any of their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their respective duty, or supposed duty, in their respective offices or trusts; and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto; PROVIDED THAT this indemnity shall not extend to any matter in respect of any wilful negligence, wilful default, fraud or dishonesty which may attach to any of said persons.

(2) Each Member agrees to waive any claim or right of action he might have, whether individually or by or in the right of the Company, against any Director on account of any action taken by such Director, or the failure of such Director to take any action in the performance of his duties with or for the Company; PROVIDED THAT such waiver shall not extend to any matter in respect of any wilful negligence, wilful default, fraud or dishonesty which may attach to such Director.

### **ALTERATION OF BYE-LAWS AND AMENDMENT TO MEMORANDUM OF ASSOCIATION AND NAME OF COMPANY**

167 No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Directors and confirmed by a special resolution of the Members. A special resolution shall be required to alter the provisions of the memorandum of association or to change the name of the Company.

## **INFORMATION**

168 No Member (not being a Director) shall be entitled to require discovery of or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors it will be inexpedient in the interests of the Members to communicate to the public.