

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

[Regulation 8(2), L.N. 19/2017, r. 9.]

**CONTENTS**

**PART I — INTERPRETATION**

*Article*

1. Definition of expressions used in these articles.

**PART II — PRIVATE COMPANY**

2. Company is a private company.

**PART III — DIRECTORS AND COMPANY SECRETARY**

**Division 1 — Directors' powers and responsibilities**

3. Directors' general authority.
4. Members' reserve power.
5. Directors may delegate their powers.
6. Committees of directors.

**Division 2 — Decision-taking by directors**

7. Directors to take decision collectively.
8. Unanimous decisions of directors.
9. Convening directors' meetings.
10. Participation in directors' meetings.
11. Quorum for directors' meetings.
12. Meetings if total number of directors less than quorum.
13. Who is to preside at directors' meetings.
14. Casting vote of person presiding at directors' meetings.
15. Alternates voting at directors' meetings.
16. Conflicts of interest.
17. Supplementary provisions as to conflicts of interest.
18. Validity of acts of meeting of directors.
19. Record of decisions to be kept.
20. Written record of decision of sole director.
21. Directors' discretion to make further rules.

**Division 3 — Appointment and retirement of directors**

22. Appointment and retirement of directors.
23. Retiring director eligible for reappointment.
24. Composite resolution.
25. Termination of director's appointment.
26. Directors' remuneration.
27. Directors' expenses.

**Division 4 — Alternate directors**

28. Appointment and removal of alternates.
29. Rights and responsibilities of alternate directors.
30. Termination of alternate directorship.

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

31. Indemnity of directors for certain liabilities.
32. Insurance of directors against certain risks.

*Companies*

[Subsidiary]

## Division 6 — Company secretary

33. Appointment and removal of appointment

## PART IV — DECISION-TAKING BY MEMBERS

## Division 1 — Organization of General Meetings

34. General meetings.  
35. Notice of general meetings.  
36. Persons entitled to receive notice of general meetings.  
37. Accidental omission to give notice of general meetings.  
38. Attendance and speaking at general meetings.  
39. Quorum for general meetings.  
40. Who is to preside at general meetings.  
41. Attendance and speaking by non-members.  
42. Adjournment of general meetings.

## Division 2 — Voting at general meetings

43. General rules on voting.  
44. Errors and disputes  
45. How poll may be demanded.  
46. Number of votes to which member is entitled.  
47. Votes of joint holders of shares.  
48. Votes of mentally disordered members.  
49. Content of proxy notices.  
50. Execution of appointment of proxy on behalf of member appointing the proxy.  
51. Delivery of proxy notice and notice revoking appointment of proxy.  
52. Effect of member's voting in person on proxy's authority.  
53. Effect of proxy votes in case of death, mental disorder, etc. of member appointing the proxy.  
54. Amendments to proposed resolutions

## Division 3 — Application of rules to class meetings

55. Class meetings.

## PART V — SHARES AND DISTRIBUTIONS

## Division 1 — Issue of shares

56. All shares to be fully paid up.  
57. Powers to issue different classes of shares.

## Division 2 — Interests in shares

58. Company only bound by absolute interests.

## Division 3 — Share certificates

59. Certificates to be issued except in certain cases.  
60. Contents and execution of share certificates.  
61. Consolidated share certificates.  
62. Replacement share certificates.

## Division 4 — Transfer and transmission of shares

63. Transfer of shares.  
64. Power of directors to refuse transfer of shares.  
65. Transmission of shares.  
66. Transmittees' rights.  
67. Exercise of transmittees' rights.

68. Transmittees bound by prior notices.  
     Division 5 — Alteration and reduction of share capital,  
     acquisition of own shares and allotment of shares

69. Alteration of share capital.  
 70. Reduction of share capital.  
 71. Acquisition by the company of its own shares.  
 72. Allotment of shares.

Division 6 — Division and other distributions

73. Procedure for declaring dividends.  
 74. Payment of dividends and other distributions.  
 75. Interest not payable on distributions.  
 76. Unclaimed distributions.  
 77. Non-cash distributions.  
 78. Waiver of distributions.

Division 7 — Capitalisation of profits

79. Capitalisation of profits.

PART VI — SUPPLEMENTARY PROVISIONS

Division 1 — Communications to and by company

80. Means of communication to be used.

Division 2 — Administrative arrangements

81. Company seals.  
 82. Restrictions on right to inspect accounts and other records of the company.  
 83. Auditor's insurance.  
 84. Distribution of surplus on liquidation of company.

---

PART I — INTERPRETATION

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

(1) In these articles—

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

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

“**appointor**” has the meaning assigned to it in article 28 (1);

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

“**associated company**” means—

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

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

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

[Subsidiary]

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

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

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

**“notice”** means notice in writing;

**“paid”** means paid or credited as paid;

**“proxy notice”**, has the meaning assigned to it in article 49(1);

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

**“request”** means request in writing;

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

(2) Other words or expressions used in these articles have the same meaning as in the Act as in force on the date these articles become binding on the company.

(3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which the Act provides for documents or information to be authenticated for the purposes of the Act.

#### PART II — COMPANY IS PRIVATE COMPANY

### 2. Company is a private company

(1) The company is a private company and accordingly—

- (a) a member's right to transfer shares is restricted in the manner specified in this article;
- (b) the number of members is limited to 50; and
- (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.

(2) The directors may in their discretion refuse to register the transfer of a share.

(3) In subarticle (1)(b)—

member does not include —

- (a) a member who is an employee of the company; and
- (b) person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(4) For the purposes of this article, 2 or more persons who hold shares in the company jointly are to be regarded as one member.

#### PART III — DIRECTORS AND COMPANY SECRETARY

##### Division 1 — Directors' powers and responsibilities

### 3. Directors' general authority

(1) Subject to the Act and these articles, the directors are responsible for managing the business and affairs of the company and may exercise all the powers of the company.

(2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.

(3) The powers given by this article are not limited by any other power given to the directors by these articles.

(4) A directors' meeting at which a quorum is present may exercise all powers exercisable by the directors.

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

(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

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

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

- (a) to any person or committee;
- (b) by any means (including by power of attorney);
- (c) to any extent and without territorial limit;
- (d) in relation to any matter; and
- (e) on any terms and conditions.

(2) If the directors so specify, the delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may—

- (a) revoke the delegation wholly or in part; or
- (b) revoke or alter its terms and conditions.

#### **6. Committees of directors**

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

(2) The committees shall comply with the rules.

Division 2 — Decision-taking by directors

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

(1) A decision of the directors can be taken only—

- (a) by a majority of the directors at a meeting; or
- (b) in accordance with article 8.

(2) Subarticle (1) does not apply if—

- (a) the company only has one director; and
- (b) no provision of these articles requires it to have more than one director.

(3) If subarticle (1) does not apply, the director may take decisions without regard to any of the provisions of these articles relating to directors' decision-taking.

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

(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.

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

---

[Subsidiary]

### 9. Convening directors' meetings

(1) Any director may convene a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.

(2) A notice of a directors' meeting is not effective unless it indicates—

- (a) its proposed date and time; and
- (b) where it is to take place

(3) The company shall give notice of a directors' meeting to each director, but the notice need not be in writing.

### 10. Participation in directors' meetings

(1) Subject to these articles, a director participates in a directors' meeting, or part of a directors' meeting, when—

- (a) the meeting has been convened and takes place in accordance with these articles; and
- (b) the director can communicate to the other directors any information or opinions the director has on any particular item of the business of the meeting.

(2) In determining whether a director is participating in a directors' meeting, it is irrelevant where the director and the other directors are located and how they communicate with each other.

(3) If not all the directors participating in a directors' meeting are located in the same place, the meeting may be regarded as taking place in whatever place any one of them is located.

### 11. Quorum for directors' meetings

(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to convene another meeting.

(2) The quorum for the directors' meeting fixed from time to time may be—

- (a) two members present in person or by proxy; or
- (b) one member if the company consists of only one member.

[L.N. 19/2017, r. 9(a).]

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

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

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

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

(1) The directors may appoint a director to preside at their meetings.

(2) The person appointed for the time being is known as the chairperson.

(3) The directors may terminate the appointment of the chairperson at any time.

(4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to preside at the meeting, the participating directors may appoint one of themselves to preside at the meeting.

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

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

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

---

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

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

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

**16. Conflicts of interest**

(1) This article applies if—

- (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
- (b) the director's interest is material.

(2) The director shall declare the nature and extent of the director's interest to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).

(3) Neither the director nor the director's alternate can—

- (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; or
- (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.

(4) Subarticle (3) does not preclude the alternate from—

- (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
- (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.

(5) If the director or the director's alternate contravenes subarticle (3)(a), the vote may not be counted.

(6) Subarticle (3) does not apply to—

- (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
- (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
- (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or
- (d) an arrangement to subscribe for or underwrite shares.

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

(8) In this article—

arrangement to subscribe for or underwrite shares means—

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

---

[Subsidiary]

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

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

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

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

(3) The contract mentioned in subarticle (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.

(4) A director who has entered into a contract mentioned in subarticle (2) or is interested in a transaction, arrangement or contract mentioned in subarticle (3) is not liable to account to the company for any profit realised by the transaction, arrangement or contract because of—

- (a) the director holding the office; or
- (b) the fiduciary relation established by the office.

(5) Subarticle (1), (2), (3) or (4) applies only if the director has declared the nature and extent of the director's interest under the subarticle to the other directors in accordance with section 151 of the Act (Director to declare interest in proposed or existing transaction or arrangement).

(6) A director of the company may be a director or other officer of, or be otherwise interested in—

- (a) any company promoted by the company; or
- (b) any company in which the company may be interested as shareholder or otherwise.

(7) Subject to the Act, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

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

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

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

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

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

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

(1) This article applies if the company has only one director and the director takes any decision that—

- (a) may be taken in a directors' meeting; and
-

(b) has effect as if agreed in a directors' meeting.

(2) The director shall provide the company with a written record of the decision within 7 days after the decision is made.

(3) The director is not required to comply with subarticle (2) if the decision is taken by way of a resolution in writing.

(4) If the decision is taken by way of a resolution in writing, the company shall keep the resolution for at least 10 years from the date of the decision.

(5) The company shall also keep a written record provided to it in accordance with subarticle (2) for at least 10 years from the date of the decision.

## 21. Directors' discretion to make further rules

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

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

Division 3 — Appointment and retirement of directors

## 22. Appointment and retirement of directors

(1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- (a) by ordinary resolution; or
- (b) by a decision of the directors.

(2) Unless otherwise specified in the appointment, a director appointed under subarticle (1)(a) holds office for an unlimited period of time.

(3) An appointment under subarticle (1)(b) may only be made to—

- (a) fill a casual vacancy; or
- (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.

(4) A director appointed under subarticle (1)(b)—

- (a) retires from office at the next annual general meeting following the appointment; or
- (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings—retires from office before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

## 23. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

## 24. Composite resolution

(1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.

(2) The proposals may be divided and considered in relation to each director separately.

(3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

---

[Subsidiary]

## 25. Termination of director's appointment

A person ceases to be a director if the person—

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

## 26. Directors' remuneration

(1) Directors' remuneration may be determined by the company only at a general meeting.

(2) A director's remuneration may—

- (a) take any form; and
- (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.

(3) Directors' remuneration accrues from day to day.

## 27. Directors' expenses

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

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

Division 4 — Alternate directors

## 28. Appointment and removal of alternates

(1) A director may appoint as an alternate any other director, or any other person approved by resolution of the directors.

(2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(3) An appointment or removal of an alternate by the alternate's appointor may be made only—

- (a) by notice to the company; or
- (b) by some other means approved by the directors.

(4) The appointor shall authenticate the notice.

(5) The notice has no effect unless—

- (a) it identifies the proposed alternate; and
-

- (b) if it is a notice of appointment, it contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.

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

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

(1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 7(1).

(2) Unless these articles specify otherwise, alternate directors—

- (a) are taken for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their appointors; and
- (d) are taken to be agents of or for their appointors.

(3) Subject to article 16(3), a person who is an alternate director but not a director—

- (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
- (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

(4) An alternate director may not be counted or regarded as more than one director for determining whether—

- (a) a quorum is participating; or
- (b) a directors' written resolution is adopted.

(5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.

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

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

(1) An alternate director's appointment as an alternate terminates—

- (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
- (c) on the death of the alternate's appointor; or
- (d) when the alternate's appointor's appointment as a director terminates.

(2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—

- (a) the approval under article 28(1) is withdrawn or revoked; or
- (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

Division 5 — Directors' indemnity and insurance

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

(1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company.

(2) Subarticle (1) applies only if the indemnity does not cover—

*Companies*

[Subsidiary]

- (a) any liability of the director to pay—
  - (i) a fine imposed in criminal proceedings; or
  - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
- (b) any liability incurred by the director—
  - (i) in defending criminal proceedings in which the director is convicted;
  - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
  - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
  - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
  - (v) in connection with an application for relief under section 763 or 1005 of the Act (Power of Court to grant relief in certain cases) in which the Court refuses to grant the director relief.

(3) A reference in subarticle (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.

(4) For the purposes of subarticle (3), a conviction, judgment or refusal of relief—

- (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
- (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.

(5) For the purposes of subarticle (4)(b), an appeal is disposed of if—

- (a) it is determined, and the period for bringing any further appeal has ended; or
- (b) it is abandoned or otherwise ceases to have effect.

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

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

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

Division 6 — Company secretary

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

(1) The directors may appoint a company secretary for such term, at such remuneration and on such other conditions they may determine.

(2) The directors may remove a company secretary appointed by them.

---

## PART IV — DECISION-TAKING BY MEMBERS

**Division V — Organisation of general meetings****34. General meetings**

(1) The company shall, in respect of each financial year of the company, hold a general meeting as its annual general meeting. (This subarticle does not have effect if the company has only one member or has passed a resolution dispensing with the holding of an annual general meeting).

(2) The directors may, if they consider appropriate, convene a general meeting.

(3) If the directors are required to convene a general meeting under section 277 of the Act (Right of members to require directors to convene general meeting), they shall convene it in accordance with section 278 of the Act (Directors duty to convene general meetings required by members).

(4) If the directors do not convene a general meeting in accordance with section 278 of the Act, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a general meeting in accordance with section 279 of the Act (Power of members to convene general meeting at the expense of the company).

**35. Notice of general meetings**

(1) The directors may convene an annual general meeting only by giving members at least 21 days' notice of the meeting.

(2) The directors may convene a general meeting other than an annual general meeting only by giving members at least 14 days' notice.

(3) The notice is to be exclusive of—

- (a) the day on which it is served or taken to be served; and
- (b) the day on which the meeting is to be held.

(4) The directors shall ensure that the notice—

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

(5) Subarticle (4)(e) does not apply in relation to a resolution of which—

- (a) notice has been included in the notice of the meeting under section 278(2) or section 279(2) of the Act; or
  - (b) notice has been given under section 289 of the Act (Members' power to request circulation of resolution for annual general meeting).
-

---

[Subsidiary]

(6) Despite the fact that a general meeting is convened by shorter notice than that specified in this article, it is regarded as having been duly convened if it is so agreed—

- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95 per cent of the total voting rights at the meeting of all the members.

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

(1) Each member and each director are entitled to be given notice of a general meeting.

(2) In subarticle (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.

(3) If a member is entitled to be given notice of a general meeting or any other document relating to the meeting, the company must give a copy of it to its auditor (if more than one auditor, to each of them) at the same time as the notice or the other document is given to the member.

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

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

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

(1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

- (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

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

(1) The quorum for the companies general meeting, in respect of each financial year of the company may be—

- (a) two members present in person or by proxy; or
- (b) one member if the company consists of only one member.

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

[L.N. 19/2017, r. 9(b).]

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

(1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside at the meeting, the chairperson is required to preside over the meeting.

---

(2) The directors present at a general meeting are required to elect one of themselves to preside at the meeting if —

- (a) there is no chairperson of the board of directors;
- (b) the chairperson is not present within 15 minutes after the time fixed for holding the meeting;
- (c) the chairperson is unwilling to act; or
- (d) the chairperson has given notice to the company that he or she will not attend the meeting.

(3) The members present at a general meeting must elect one of themselves to preside at the meeting if—

- (a) none of the directors is willing to preside at the meeting; or
- (b) none of the directors is present within 15 minutes after the time fixed for holding the meeting.

(4) A proxy may be elected to preside at a general meeting by a resolution of the company passed at the meeting.

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

(1) Directors may attend and speak at general meetings, whether or not they are members of the company.

(2) The person presiding at a general meeting may permit other persons to attend and speak at a general meeting even though they are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings.

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

(1) If a quorum is not present within half an hour from the time fixed for holding a general meeting, the meeting must—

- (a) if convened at the request of members, be dissolved; or
- (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.

(2) If at the adjourned meeting, a quorum is not present within half an hour from the time fixed for holding the meeting, the member or members present in person or by proxy constitute a quorum.

(3) The person presiding at a general meeting at which a quorum is present may adjourn the meeting if—

- (a) the meeting consents to an adjournment; or
- (b) it appears to the person presiding that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(4) The person presiding must adjourn a general meeting if directed to do so by the meeting.

(5) When adjourning a general meeting, the person presiding must specify the date, time and place to which it is adjourned.

(6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.

(7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.

(8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

---

---

[Subsidiary]

**Division 2 — Voting at general meetings**

**43. General rules on voting**

(1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.

(2) If there is an equality of votes, whether on a show of hands or on a poll, the person presiding at the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.

(3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the person presiding that the resolution—

- (a) has or has not been passed; or
- (b) has passed by a particular majority,

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

(4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

**44. Errors and disputes**

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

(2) Any objection must be referred to the person presiding at the meeting whose decision is final.

**45. How poll may be demanded**

(1) A poll on a resolution may be demanded —

- (a) in advance of the general meeting where it is to be put to the vote; or
- (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.

(2) A poll on a resolution may be demanded by—

- (a) the person presiding at the meeting;
- (b) at least 2 members present in person or by proxy; or
- (c) any member or members present in person or by proxy and representing at least 5 per cent of the total voting rights of all the members having the right to vote at the meeting.

(3) The document appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.

(4) A demand for a poll on a resolution may be withdrawn.

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

(1) On a vote on a resolution on a show of hands at a general meeting—

- (a) each member present in person has one vote; and
- (b) each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.

(3) On a vote on a resolution on a poll taken at a general meeting—

- (a) each member present in person has one vote for each share held by him or her; and
  - (b) each proxy present who has been duly appointed by a member has 1 vote for each share in respect of which the proxy is appointed.
-

(4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

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

(1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorised by the holder) may be counted.

(2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

#### **48. Votes of mentally disordered members**

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

(2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

#### **49. Content of proxy notices**

(1) In this article—  
proxy notice means a notice given by a member in accordance with subarticle (2).

(2) A proxy may only validly be appointed by a notice that—

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

(3) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(4) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.

(5) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.

(6) Unless a proxy notice indicates otherwise, it—

- (a) allows the person appointed under it as a proxy discretion as to how
- (b) appoints that person as a proxy to vote on any ancillary or procedural resolutions put to the general meeting; and in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

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

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

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

(1) A proxy notice does not take effect unless it is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.
-

---

[Subsidiary]

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking the appointment only takes effect if it is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

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

(1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—

- (a) attends in person the general meeting at which the resolution is to be decided; and
- (b) exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.

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

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

(1) A vote given in accordance with the terms of a proxy notice is valid despite—

- (a) the previous death or mental disorder of the member appointing the proxy;
- (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
- (c) the transfer of the share in respect of which the proxy is appointed.

(2) Subarticle (1) does not apply if notice of the death, mental disorder, revocation or transfer is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time fixed for holding the meeting or adjourned meeting; and
- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time fixed for taking the poll.

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

(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

- (a) notice of the proposed amendment is given to the company secretary in writing; and
- (b) the proposed amendment does not, in the reasonable opinion of the person presiding at the meeting, materially alter the scope of the resolution.

(2) The notice may be given only by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the person presiding at the meeting determines).

(3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—

- (a) the person presiding at the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
-

(4) If the person presiding at the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

Division 3 — Application of rules to class meetings

## 55. Class meetings

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

### PART V — SHARES AND DISTRIBUTIONS

#### *Division 1 — Issue of shares*

## 56. All shares to be fully paid up

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

## 57. Powers to issue different classes of shares

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

- (a) preferred, deferred or other special rights; or
- (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.

(2) Subject to Part XX of the Act, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed, at the option of the company or the holders of the shares.

(3) The directors may determine the terms, conditions and manner of redemption of the shares.

Division 2 — Interests in shares

## 58. Company only bound by absolute interests

(1) Except as required by law, no person is to be recognised by the company as holding any share on any trust.

(2) Except as otherwise required by law or these articles, the company is not bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

(3) Subarticle (2) applies even though the company has notice of the interest.

Division 3 — Share certificates

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

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

- (a) 2 months after allotment or lodgment of a proper document of transfer; or
- (b) any other period that the conditions of issue provide.

(2) The company may not issue a certificate in respect of shares of more than one class.

(3) If more than one person holds a share, the company may issue only one certificate in respect of it.

## 60. Contents and execution of share certificates

(1) When issuing a share certificate, the company shall ensure —

- (a) that the certificate specifies—
  - (i) the number and class of shares for which the certificate is issued;

---

[Subsidiary]

- (ii) the fact that the shares are fully paid; and
  - (iii) any distinguishing numbers assigned to the shares; and
- (b) that the certificate has affixed to it the company's common seal or the company's official seal or is otherwise executed in accordance with the Act.

### 61. Consolidated share certificates

- (1) A member may request the company to replace—
- (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate may be issued only if any certificates that it is to replace have first been returned to the company for cancellation.
- (3) The company may not issue separate certificates unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

### 62. Replacement share certificates

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

Division 4 — Transfer and transmission of shares

### 63. Transfer of shares

- (1) Shares may be transferred by means of a document of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) A fee may not be charged by the company for registering any document of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any document of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

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

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

- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
- (b) the directors shall return the document of transfer to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.

(3) The document of transfer is required to be returned in accordance with subarticle (2) (b) together with a notice of refusal within 2 months after the date on which the document of transfer was lodged with the company.

(4) If a request is made under subarticle (2)(a), the directors shall, within 28 days after receiving the request—

- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
- (b) register the transfer.

### 65. Transmission of shares

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

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

### 66. Transmittees' rights

(1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.

(2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.

(3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

(4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.

(5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other money payable in respect of the share until the requirements of the notice have been complied with.

### 67. Exercise of transmittees' rights

(1) If a transmittee chooses to become the holder of a share, the transmittee shall notify the company in writing of the choice.

(2) Within 2 months after receiving the notice, the directors shall—

- (a) register the transmittee as the holder of the share; or
- (b) send the transmittee a notice of refusal of registration.

(3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.

(4) If a request is made under subarticle (3), the directors shall, within 28 days after receiving the request—

- (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the holder of the share.
-

---

[Subsidiary]

(5) If the transmittee chooses to have the share transferred to another person, the transmittee shall execute a document of transfer in respect of it.

(6) All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of shares apply to the notice under subarticle (1) or the transfer under subarticle (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

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

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

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

### **69. Alteration of share capital**

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

### **70. Reduction of share capital**

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

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

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

### **72. Allotment of shares**

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

Division 6 — Dividends and other distributions

### **73. Procedure for declaring dividends**

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

(2) The directors may from time to time pay the members interim dividends that appear to the directors to be justified by the profits of the company.

(3) A dividend may only be paid out of the profits in accordance with Part XVII of the Act (How companies' assets are to be distributed).

(4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

(5) Before recommending any dividend, the directors may set aside out of the profits of the company any sums they consider appropriate as reserves.

(6) The directors may—

- (a) apply the reserves for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application, use the reserves in the business of the company or invest them in any investments (other than shares of the company) that they consider appropriate.
-

(7) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

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

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

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

(2) In this article—

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

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

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

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

#### **76. Unclaimed distributions**

(1) If dividends or other sums are payable in respect of shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the directors for the benefit of the company until claimed.

(2) The payment of the dividends or other sums into a separate account does not make the company a trustee in respect of it.

(3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—

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

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

(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) For paying a non-cash distribution, the directors may make whatever arrangements they consider appropriate, including, if any difficulty arises regarding the distribution—

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

---

[Subsidiary]

- (c) vesting any assets in trustees.

### **78. Waiver of distributions**

(1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.

(2) But if the share has more than one holder or more than one person is entitled to the share (whether because of the death or bankruptcy of one or more joint holders, or otherwise), the deed is not effective unless it is expressed to be executed by all the holders or other persons entitled to the share.

#### ***Division 7— Capitalisation of profits***

### **79. Capitalisation of profits**

(1) The company may capitalise profits by ordinary resolution on the recommendation of the directors.

(2) If the capitalisation is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalised in the proportions in which the members would be entitled if the sum was distributed by way of dividend.

(3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they consider appropriate, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

#### **PART VI—SUPPLEMENTARY PROVISIONS**

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

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

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

(2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### ***Division 2 — Administrative arrangements***

### **81. Company seals**

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

(2) The company shall ensure that its common seal is made of durable metal that has its name engraved on it in legible form.

(3) Subject to subarticle (2), the directors may decide by what means and in what form a common seal is to be used.

(4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one director of the company and one authorised person.

(5) For the purposes of this article, an authorised person is —

- (a) any director of the company;
  - (b) the company secretary; or
-

- (c) any person authorised by the directors for signing documents to which the common seal is applied.

(6) If the company has an official seal for use outside Kenya, it may only be affixed to a document if its use on the document, or documents of a class to which it belongs, has been authorised by a decision of the directors.

(7) If the company has an official seal for sealing securities, it may only be affixed to securities by the company secretary or a person authorised to apply it to securities by the company secretary.

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

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

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

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

(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—

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

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

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

(1) If the company is liquidated and a surplus remains after the payment of debts proved in the winding up, the liquidator—

- (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
- (b) may determine how the division is to be carried out between the members or different classes of members.

(2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.

(3) In this article—

---

*Companies*

---

[Subsidiary]

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

---

---