

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

[Regulation 8(1), L.N. 19/2017, r. 8.]

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PART I — INTERPRETATION

1. Definition of expressions used in these articles

In these articles—

“the Act” means the Companies Act, 2015;

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

“appointor” has the meaning assigned to it in article 30 (1);

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

“associated company” means—

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

“call” has the meaning assigned to it in article 70 (1);

“call notice” has the meaning assigned to it in article 70 (1);

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

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

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

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

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

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

“notice” means notice in writing;

“paid” means paid or credited as paid;

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

“proxy notice” has the meaning assigned to it in article 53 (1);

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

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

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

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

PART II — DIRECTORS AND COMPANY SECRETARY

Division 1 — Directors' powers and responsibilities

2. Directors' general authority

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

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

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

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

3. Members' reserve power

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

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

4. Directors may delegate their powers

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

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

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

(3) The directors may—

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

5. Committees of directors

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

(2) The committees to comply with the rules.

Division 2— Decision-taking by directors

6. Directors to take decision collectively

A decision of the directors can be taken only—

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

7. Convening directors' meetings

(1) Any director may convene a directors' meeting.

(2) The company secretary shall convene a directors' meeting if a director requests it.

(3) A directors' meeting is convened by giving notice of the meeting to the directors.

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

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

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

(6) If a notice of a directors' meeting has not been given to a director (the failure) but the director waives his or her entitlement to the notice by giving notice to that effect to the company not more than 7 days after the meeting, the failure does not affect the validity of the meeting, or of any business conducted at it.

8. Participation in directors' meetings

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

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

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

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

9. Quorum for directors' meetings

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

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed it is 2.

10. Meetings if total number of directors less than quorum

(1) This article applies if the total number of directors for the time being is less than the quorum required for directors' meetings.

(2) If there is only one director, that director may appoint sufficient directors to make up a quorum or convene a general meeting to do so.

(3) If there is more than one director—

- (a) a directors' meeting may take place, if it is convened in accordance with these articles and at least 2 directors participate in it, with a view to appointing sufficient directors to make up a quorum or convening a general meeting to do so; and
- (b) if a directors' meeting is convened but only one director attends at the date and time fixed for it, that director may appoint sufficient directors to make up a quorum or convene a general meeting to do so.

11. Who is to preside at 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 appoint other directors as deputy or assistant chairpersons to preside at directors' meetings in the chairperson's absence.

(4) The directors may terminate the appointment of the chairperson, or deputy or assistant chairperson at any time.

(5) If neither the chairperson nor the deputy or assistant chairperson is participating in a directors' meeting within 10 minutes of the time at which it was to start or is willing to preside at the meeting, the participating directors may appoint one of themselves to preside over it.

[L.N. 19/2017, r. 8(a).]

12. Voting at directors' meetings: general rules

(1) Subject to these articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Subject to these articles, each director participating in a directors' meeting has one vote.

13. Casting vote of person presiding at directors' meetings

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

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

14. Alternates voting at directors' meetings

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

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

15. Conflicts of interest

(1) This article applies if—

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

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

(3) The director and the director's alternate must neither—

- (a) vote in respect of the transaction, arrangement or contract in which the director or the entity is so interested; nor
- (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.

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

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

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

(6) Subarticle (3) does not apply to—

- (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
- (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed

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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) reference in this article to a body corporate connected with a director has the meaning given by section 124 of the Act (When director connected with a body corporate for the purposes of Part IX of the Act).

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

(9) In this article—

“arrangement to subscribe for or underwrite shares” means—

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

16. Supplementary provisions as to conflicts of interest

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

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

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

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

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

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

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

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

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

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

17. Proposing directors' written resolutions

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

[L.N. 19/2017, r. 8(b).]

18. Adoption of directors' written resolutions

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

19. Effect of directors' written resolutions

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

20. Validity of acts of meeting of directors

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

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

21. Record of decisions to be kept

The directors shall ensure that the company keeps a written record of every decision taken by the directors under article 6 for at least 7 years from the date of the decision.

[L.N. 19/2017, r. 8(c).]

22. Directors discretion to make further rules

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

- (a) how they take decisions; and
 - (b) how the rules are to be recorded or communicated to directors.
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Division 3 — Appointment and retirement of directors

23. Appointment and retirement of directors

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

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

(2) A director appointed under subarticle (1)(a) is subject to article 24.

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

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

(4) A director appointed under subarticle (1)(b) is required to retire from office at the next annual general meeting following the appointment.

24. Retirement of directors by rotation

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

(2) At every subsequent annual general meeting, one-third of the directors for the time being are required to retire from office.

(3) Subarticles (1) and (2) are subject to article 33(2).

(4) For the purposes of subarticle (2), if the number of directors is not 3 or a multiple of 3, then the number nearest one-third are required to retire from office.

(5) The directors to retire in every year are to be those who have been longest in office since their last appointment or reappointment.

(6) For persons who became directors on the same day, those who are to retire are to be determined by lot, unless they otherwise agree among themselves.

(7) At the annual general meeting at which a director retires, the company may appoint a person to fill the vacated office.

(8) A retiring director is regarded as having been reappointed to the office if—

- (a) the company does not appoint a person to the vacated office; and
- (b) the retiring director has not given notice to the company of the intention to decline reappointment to the office.

(9) However, a retiring director is not regarded as having been reappointed to the office if—

- (a) at the meeting at which the director retires, it is expressly resolved not to fill the vacated office; or
- (b) a resolution for the reappointment of the director has been put to the meeting and lost.

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

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

(11) The member who intends to propose the person for appointment for appointment to the office shall authenticate the notice and the person shall endorse on the notice his or her willingness to be appointed. The member shall send the notice to the company in hard

copy form or in electronic form and ensure that it is received by the company at least 7 days before the date of the general meeting.

(12) The company may—

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

25. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

26. Composite resolution

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

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

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

27. Termination of director's appointment

(1) A person ceases to be a director if the person—

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

(2) If a notice of the resignation of a director of a company is required to be given in accordance with the articles of the company or in accordance with any agreement with the company, the resignation does not have effect unless the director gives notice of the resignation—

- (a) in accordance with the requirement
- (b) by leaving it at the registered office of the company; or
- (c) by sending it to the company in hard copy form or in electronic form.

28. Directors' remuneration

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

(2) A director's remuneration may—

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

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

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29. Directors' expenses

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

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

Division 4 — Alternate directors

30. Appointment and removal of alternates

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

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

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

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

(4) The appointor is required to authenticate the appointment or removal.

(5) The notice is effective only if it—

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

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

31. Rights and responsibilities of alternate directors

(1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.

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

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

(3) Subject to article 15(3), a person who is an alternate director but not a director—

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

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

- (a) a quorum is participating; or
 - (b) a directors' written resolution is adopted.
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(5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.

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

32. Termination of alternate directorship

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

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

(2) Subarticle (1)(d) does not apply if the appointor is reappointed after having retired by rotation at a general meeting or is regarded as having been reappointed as a director at the same general meeting, and in such a case, the alternate director's appointment as an alternate continues after the reappointment.

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

- (a) the approval under article 30(1) is withdrawn or revoked; or
- (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

Division 5 — Managing directors

33. Appointment of managing directors and termination of appointment

(1) The directors may—

- (a) from time to time appoint one or more of themselves to the office of managing director for a period and on terms they consider appropriate; and
- (b) subject to the terms of an agreement entered into in any particular case, revoke the appointment.

(2) A director appointed to the office of managing director is not, while holding the office, subject to retirement by rotation under article 24.

(3) The appointment as a managing director is automatically terminated if the managing director ceases to be a director for any reason.

(4) The directors may determine a managing director's remuneration, whether in the form of salary, commission or participation in profits, or a combination of them.

34. Powers of managing directors

(1) The directors may entrust to and confer on a managing director any of the powers exercisable by them on terms and conditions and with restrictions they consider appropriate, either collaterally with or to the exclusion of their own powers.

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

Division 6 — Directors' indemnity and insurance

35. Indemnity of directors for certain liabilities

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

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

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

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

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

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

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

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

36. Insurance of directors against certain risks

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

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

Division 7 — Company secretary

37. Appointment and removal of company secretary

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

(2) The directors may, for misbehaviour, incompetence or lassitude, remove a company secretary appointed by them.

PART III — DECISION-TAKING BY MEMBERS

Division 1 — Organisation of general meetings

38. General meetings

(1) Subject to Division 5 of Part XII of the Act, the company shall, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 310 of the Act (Public companies: annual general meeting).

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

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

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

39. Notice of general meetings

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

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

(3) The notice is to be exclusive of—

- (a) the day on for holding the meeting given; and
- (b) the day for holding the meeting given.

(4) The directors shall ensure that the notice—

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

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

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

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

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- (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.

[L.N. 19/2017, r. 8(d).]

40. Persons entitled to receive notice of general meetings

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

41. Accidental omission to give notice of general meetings

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

42. Attendance and speaking at general meetings

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

43. Quorum for general meetings

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

44. Who is to preside at general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside at the meeting, the chairperson is required to preside over the meeting.
 - (2) The directors present at a general meeting shall elect one of themselves to preside at the meeting if—
 - (a) there is no chairperson of the board of directors;
 - (b) the chairperson is not present within 15 minutes after the time fixed for holding the meeting;
-

- (c) the chairperson is unwilling to act; or
- (d) the chairperson has given notice to the company of the intention not to attend the meeting.

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

- (a) no director is willing to preside at the meeting; or
- (b) no director is present within 15 minutes after the time fixed for holding the meeting.

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

45. Attendance and speaking by non-members

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

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

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

46. Adjournment of general meetings

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

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

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

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

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

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

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

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

(7) If a general meeting is adjourned for 30 days or more, the company shall give notice of the adjourned meeting as for an original meeting.

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

Division 2 — Voting at general meetings

47. General rules on voting

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

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

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

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

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

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

48. Errors and disputes

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

(2) Any objection is to be referred to the person presiding at the meeting. That person's decision is final.

49. When poll may be demanded

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

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

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

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

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

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

50. Number of votes to which a member is entitled

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

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

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

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

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

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

51. Votes of joint holders of shares

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

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

52. Votes of mentally disordered members

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

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

53. Content of proxy notices

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

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

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

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

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

(5) Unless a proxy notice indicates otherwise, the notice is taken—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58. Amendments to proposed resolutions

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

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

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

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

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

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

Division 3 — Restrictions on members' rights

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

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

Division 4 — Application of rules to class meetings

60. Class meetings

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

PART 4 — SHARES AND DISTRIBUTIONS

Division 1— Issue of shares**61. Powers to issue different classes of shares**

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

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

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

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

62. Payment of commissions on subscription for shares

(1) If the conditions in subarticle (2) are satisfied, the company may pay a commission to a person under section 331 of the Act (Permitted commissions).

(2) The conditions are that—

- (a) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares in respect of which the commission is paid are issued;
- (b) if those shares are offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in the prospectus for the public offer; and
- (c) if those shares are not offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in any circular or notice issued by the company inviting subscriptions for those shares.

(3) The commission may be paid—

- (a) in cash;
- (b) fully paid or partly paid shares; or
- (c) partly in one way and partly in the other.

(4) The company may also on any issue of shares pay a brokerage that is lawful.

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Division 2 — Interests in shares

63. Company only bound by absolute interests

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

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

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

Division 3 — Share certificates

64. Certificates to be issued except in certain cases

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

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

(2) A certificate may not be issued in respect of shares of more than one class.

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

65. Contents and execution of share certificates

(1) A certificate is invalid unless it specifies—

- (a) in respect of how many shares and of what class the certificate is issued;
- (b) the amount paid up on them; and
- (c) any distinguishing numbers assigned to them.

(2) A certificate is also invalid unless it—

- (a) has affixed to it the company's common seal or the company's official seal in accordance with Part IV of the Act; or
- (b) is otherwise executed in accordance with the Act.

66. Consolidated share certificates

(1) A member may request the company to replace—

- (a) the member's separate certificates with a consolidated certificate; or
- (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.

(2) A consolidated certificate may be issued only if any certificates that it is to replace have first been returned to the company for cancellation.

(3) Separate certificates may be issued only if the consolidated certificate that they are to replace has first been returned to the company for cancellation.

67. Replacement share certificates

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

(2) A member exercising the right to be issued with a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
 - (b) shall return the certificate that is to be replaced to the company if it is defaced or damaged; and
 - (c) shall comply with the conditions as to evidence, indemnity and the payment of a reasonable fee that the directors decide.
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Division 4 — Partly paid shares

68. Company's lien over partly paid shares

(1) The company has a first and paramount lien on any share that is partly paid for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

(2) The company also has a first and paramount lien on any share that is partly paid standing registered in the name of a single person for all money presently payable by the person or the person's estate to the company.

(3) The company's lien on a share extends to any dividend payable in respect of that share.

(4) The directors may at any time declare a share to be wholly or in part exempt from this article.

69. Enforcement of company's lien

(1) In this article, lien enforcement notice means a notice to enforce a lien in respect of a share of a company.

(1) Subject to this article, the company may sell a share in a manner the directors consider appropriate if—

- (a) a lien enforcement notice has been issued in respect of the share; and
- (b) the person to whom the notice was issued has failed to comply with it.

(2) A lien enforcement notice is valid only if it—

- (a) is issued in respect of a share on which the company has a lien, in respect of which a sum is presently payable;
- (b) specifies the share concerned;
- (c) requires payment of the sum within 14 days after the issue of the notice;
- (d) is issued to the holder of the share or to the person entitled to it because of the holder's death, bankruptcy or otherwise, and
- (e) states the company's intention to sell the share if the notice is not complied with.

(3) To give effect to the sale of shares under this article, the directors may authorise any person to transfer the shares to the purchaser, and the purchaser is to be registered as the holder of those shares.

(4) The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the shares is not affected by any irregularity in or invalidity of the process leading to the sale.

(5) The net proceeds of the sale (after payment of the costs of sale and any other costs of enforcing the lien) are to be applied—

- (a) firstly, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
- (b) secondly to the person entitled to the shares at the date of the sale.

(6) Subarticle (5)(b) applies—

- (a) only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates; and
- (b) subject to a lien equivalent to the company's lien on the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(7) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—

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- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share: and
- (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.

70. Call notices

(1) In this article—

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

(2) Subject to these articles and the terms on which shares are allotted, the directors may send a call notice to a member requiring the member to pay the company a call.

(3) A call notice is not effective if—

- (a) it requires a member to pay a call that exceeds the total sum unpaid on that member's shares.
- (b) it does not specify when and how any call to which it relates is to be paid; and
- (c) does not permit or require the call to be paid by instalments.

(4) A member shall comply with the requirements of a call notice, but is not obliged to pay any call before the elapse of 14 days from the date on which the notice was sent

(5) Before the company has received any call due under a call notice, the directors may, by a further notice to the member in respect of whose shares the call is made—

- (a) revoke the call notice wholly or in part; or
- (b) specify a later time for payment than is specified in the call notice.

71. When call is taken to be made

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

72. Liability to pay calls

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

(2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

(3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—

- (a) to pay calls that are not the same; or
- (b) to pay calls at different times.

73. When call notice need not be issued

(1) A call notice need not be issued in respect of sums that are specified, in the terms on which a share is issued, as being payable to the company in respect of that share—

- (a) on allotment;
- (b) on the occurrence of a particular event; or
- (c) on a date fixed by or in accordance with the terms of issue.

(2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is—

- (a) treated in all respects as having failed to comply with a call notice in respect of that sum; and
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- (b) liable to the same consequences as regards the payment of interest and forfeiture.

74. Failure to comply with call notice: automatic consequences

(1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the member shall pay the company interest on the call or instalment from that date until the call or instalment is paid.

(2) The interest rate is to be determined by the directors, but may not exceed 10 per cent per year.

(3) The directors may waive the payment of the interest wholly or in part.

75. Notice of intended forfeiture

(1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the part of the call or instalment that is unpaid, together with any interest that may have accrued.

(2) The notice is invalid unless it—

- (a) specifies a further date (not before the end of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made;
- (b) states how that payment is to be made; and
- (c) states that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited.

76. Directors' power to forfeit shares

If the requirements of the notice of intended forfeiture under article 75 are not complied with, the shares in respect of which the call was made may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

77. Effect of forfeiture

(1) Subject to these articles, the forfeiture of a share extinguishes—

- (a) all interests in the share, and all claims and demands against the company in respect of it; and
- (b) all other rights and liabilities incidental to the share between the person whose share it was prior to the forfeiture and the company.

(2) When a person's shares have been forfeited, the following provisions have effect:

- (a) the company shall send that person a notice that forfeiture has occurred and record it in the register of members;
- (b) that person ceases to be a member in respect of those shares;
- (c) that person is required to surrender the certificate for the shares forfeited to the company for cancellation;
- (d) that person remains liable to the company for all sums payable by that person under these articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
- (e) the directors may waive the payment of those sums wholly or in part or enforce the payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

78. Procedure following forfeiture

(1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorise any person to execute the document of transfer.

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(2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—

- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
- (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share

(3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any).

(4) The person's title to the share is not affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(5) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of the sale, net of any commission, and excluding any amount that—

- (a) was, or would have become, payable; and
- (b) had not, when the share was forfeited, been paid by that person in respect of the share.

(6) Despite subarticle (5), interest is not payable to such a person in respect of the proceeds and the company is not required to account for any money earned on them.

79. Surrender of shares

(1) A member may surrender any share—

- (a) in respect of which the directors may serve a notice of intended forfeiture under article 75;
- (b) that the directors may forfeit; or
- (c) that has been forfeited.

(2) The directors may accept the surrender of such a share.

(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.

(4) A share that has been surrendered may be dealt with in the same way as a share that has been forfeited.

Division 5 — Transfer and transmission of shares

80. Transfer of shares

(1) Shares may be transferred by means of a document of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.

(2) A fee may not be charged by the company for registering any document of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any document of transfer that is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

81. Power of directors to refuse transfer of shares

(1) The directors may refuse to register the transfer of a share if—

- (a) the share is not fully paid;
 - (b) the document of transfer is not lodged at the company's registered office or another place that the directors have appointed;
 - (c) the document of transfer is not accompanied by the certificate for the share to which it relates, or other evidence directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
 - (d) the transfer is in respect of more than one class of shares.
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(2) If the directors refuse to register the transfer of a share—

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

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

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

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

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

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

83. Transmission of shares

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

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

(2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by the deceased member with other persons.

84. Transmittees' rights

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

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

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

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

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

85. Exercise of transmittees' rights

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

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

- (a) register the transmittee as the holder of the share; or
 - (b) send the transmittee a notice of refusal of registration.
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(3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.

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

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

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

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

86. Transmittees bound by prior notices

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

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

87. Alteration of share capital

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

88. Reduction of share capital

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

89. Acquisition by company of its own shares

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

90. Allotment of shares

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

Division 7 — Dividends and other distributions

91. Procedure for declaring dividends

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

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

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

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

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

(6) The directors may—

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

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

92. Calculation of dividends

(1) Dividends are valid only if they are—

- (a) declared and paid according to the amounts paid on the shares in respect of which the dividend is paid; and
- (b) apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid.

(2) Subarticle (1) is subject to any rights of persons who are entitled to shares with special rights regarding dividend.

(3) If a share is issued on terms providing that it ranks for dividend as from a particular date, the share ranks for dividend accordingly.

(4) For the purposes of this article, an amount paid on a share in advance of calls is not to be treated as paid on the share.

93. Payment of dividends and other distributions

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

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

(2) In this article—

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

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

(1) This article applies if—

- (a) a share is subject to the company's lien under article 68; and
- (b) the directors are entitled to issue a lien enforcement notice under article 69 in respect of it.

(2) Instead of issuing the lien enforcement notice, the directors may deduct from any dividend or other sum payable in respect of the share any sum of money that is payable to the company in respect of that share to the extent that they are entitled to require payment under the lien enforcement notice.

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(3) The money deducted is required to be used to pay any of the sums payable in respect of the share.

(4) The company shall notify the distribution recipient in writing of—

- (a) the fact and amount of the deduction;
- (b) any non-payment of a dividend or other sum payable in respect of a share resulting from the deduction; and
- (c) how the money deducted has been applied.

95. Interest not payable on distributions

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

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

96. Unclaimed distributions

If dividends or other sums remain unclaimed for a period of three years after which the dividend or other sums became due for payment, the dividend or other sums shall be dealt with in accordance with the provisions of the Unclaimed Financial Assets Act, 2011, as amended from time to time.

[L.N. 19/2017, r. 8(e).]

97. Non-cash distributions

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

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

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

98. Waiver of distributions

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

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

Division 8 — Capitalisation of profits

99. Capitalisation of profits

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

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

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

PART V— SUPPLEMENTARY PROVISIONS

Division 1 — Communications to and by company**100. Means of communication to be used**

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

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

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

101. Failure to notify contact details

(1) A member ceases to be entitled to receive notices from the company if—

- (a) the company sends 2 consecutive documents to the member over a period of at least 12 months; and
- (b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered.

(2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive those notices again by sending the company—

- (a) an address to be recorded in the register of members; or
- (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

Division 2 — Administrative arrangements**102. Company seals**

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

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

(3) Subject to subarticle (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Kenya or for sealing securities) is to be used.

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

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

- (a) any director of the company;
- (b) the company secretary; or
- (c) any person authorised by the directors for signing documents to which the common seal is applied.

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

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

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

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

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

104. Auditor's insurance

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

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

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

105. Distribution of surplus on liquidation of company

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

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

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

(3) In this article—

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