

**COMPANIES ACT 1963-2009  
COMPANY LIMITED BY SHARES**

**MEMORANDUM  
AND  
ARTICLES OF ASSOCIATION  
OF  
AUGHINISH ALUMINA LIMITED**

**6065634**



(Incorporating amendments to 25 November 2009)



Arthur Cox  
Earlsfort Terrace  
Earlsfort Centre  
Dublin 2

COMPANIES ACTS 1963 – 2009

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COMPANY LIMITED BY SHARES

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MEMORANDUM OF ASSOCIATION

of

AUGHINISH ALUMINA LIMITED

(as amended by Special Resolution passed 25 November 2009)

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1. The name of the Company is "Aughinish Alumina Limited".
  2. The objects for which the Company is established are:
    - (1) To operate a factory, plant and other facilities for and ancillary to the production of alumina from bauxite and/or other ores of aluminium and to carry on any other operations or businesses which may seem capable of being usefully or profitably carried on in connection with the production of alumina.
    - (2) For the purposes of and in connection with the construction and supply of such a factory, plant and other facilities as aforesaid, to act as representative of the owners of the construction site and of such factory, plant and other facilities and in that capacity to supervise and deal with all relevant suppliers, contractors, sub-contractors and other persons and generally to supervise and carry out functions entrusted to it in connection with the construction and supply of such factory plant and other facilities.
    - (3) To act as agent on behalf of the owners of the said factory, plant and other facilities in purchasing and selling assets and otherwise as may be entrusted to the Company from time to time.
    - (4) To apply for, purchase or otherwise acquire any patents, brevets d'invention, licences, trade marks, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used, for any of the purposes of the Company or the acquisition of which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop, or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired.
    - (5) To enter into occupation of any lands and premises as licensee but not to acquire or hold any estate or interest in land.
    - (6) To carry on any other business (whether manufacturing or otherwise), except the issuing of policies of insurance, which may seem to the Company capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property or rights.

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- (7) To acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the Company is authorised to carry on or which is capable of being conducted so as to benefit this Company directly or indirectly or which is possessed of property suitable for the purposes of this Company.
- (8) To take or otherwise acquire and to hold shares and securities of any company and to sell, hold, re-issue with or without guarantee or otherwise deal with the same.
- (9) To construct, maintain and alter any buildings or works necessary or convenient for any of the purposes of the Company or for the benefit of its employees.
- (10) To lend money to such persons or companies, either with or without security and upon such terms as may seem expedient, and in particular to customers and others having dealings with the Company.
- (11) To borrow or raise or secure the payment of money in such manner as the Company shall think fit, and in particular by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Company's property, both present and future, including its uncalled capital, and to purchase, redeem or pay off any such securities.
- (12) To adopt such means of making known the products of the Company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations.
- (13) To sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
- (14) To guarantee, grant indemnities in respect of, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company, or by both such methods, the performance of the contracts or obligations of and the repayment or payment of the principal amounts of and premiums, interest and dividends on any securities of any person, firm or company, including (without prejudice to the generality of the foregoing) any company which is for the time being the Company's holding company as defined by section 155 of the Companies Act, 1963, or another subsidiary as defined by the said section of the Company's holding company or otherwise associated with the Company in business notwithstanding the fact that the Company may not receive any consideration, advantage or benefit, direct or indirect from entering into such guarantee or other arrangement or transaction contemplated herein.
- (15) To amalgamate with any other company.
- (16) To enter into any arrangement with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the Company may think it desirable to obtain, and carry out exercise and comply with any such arrangements, rights, privileges and concessions.

- (17) To establish and maintain or propose the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary, or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, or any persons in whose welfare the Company or any such other company as aforesaid is or has been at any time interested and the wives, widows, families and dependants of any such persons, and also to establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well being of the Company or of any other such company as aforesaid or of any such persons as aforesaid and to make payments for or towards the insurance of any such persons as aforesaid and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.
- (18) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of this Company or for any other purpose which may seem directly or indirectly calculated to benefit this Company.
- (19) To remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the Company's capital or any debentures, debenture stock or other securities of the Company, or in or about the formation or promotion of the Company or the conduct of its business.
- (20) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, letters of credit and other negotiable or transferable instruments.
- (21) To undertake and execute any trusts the undertaking whereof may seem desirable, whether gratuitously or otherwise.
- (22) To sell or dispose of the undertaking of the Company or any part thereof for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this Company.
- (23) To obtain any Order or Act of the Oireachtas for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.
- (24) To procure the Company to be registered or recognised in any country or place.
- (25) To promote freedom of contract and to resist, insure against, counteract and discourage interference therewith, to join any lawful Federation, Union or Association, or do any other lawful act or thing with a view to preventing or resisting directly or indirectly any interruption of or interference with the Company's or any other trade or business, or providing or safeguarding against the same, or resisting or opposing any strike movement or organisation which may be thought detrimental to the interests of the Company or its employees, and to subscribe to any association or fund for any such purposes.

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(26) To do all or any of the above things in any part of the world as principals, agents, contractors, trustees, or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others.

(27) To distribute any of the property of the Company in specie among the members.

(28) To do all such other things as the Company may think incidental or conducive to the attainment of the above objects or any of them.

NOTE: It is hereby declared that the word "company" in this clause (except where it refers to this Company) shall be deemed to include any partnership or other body of persons, whether incorporated or not incorporated and whether domiciled in the Republic of Ireland, Northern Ireland, Great Britain or elsewhere, and the intention is that the objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraph, be in no wise limited or restricted by reference to, or inference from, the terms of any other paragraph.

3. The liability of the members is limited.

4. The share capital of the Company is €2,000 divided into 1,000 shares of €2.00 each.

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**COMPANIES ACTS 1963 to 2006**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**AUGHINISH ALUMINA LIMITED**

**(As amended by special resolution dated 24 February 2014)**

1. The regulations in Part II of Table A (as amended by the Acts) will apply to the Company subject to the alterations herein contained and will, so far as not inconsistent with these Articles, bind the Company and the shareholders.

2. **Definitions:**

In these Articles, unless the context otherwise requires:

**"the 1963 Act"** means the Companies Act, 1963 (No. 3.3 of 1963) as amended by the Companies Acts 1977 to 2005, Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and the Companies (Amendment) Act 2009, and all statutory instruments which are to be read as one with, or construed, or to be read together with the Acts;

**"the 1983 Act"** means the Companies (Amendment) Act 1983;

**"the 1990 Act"** means the Companies Act 1990;

**"the Acts"** means the Companies Acts, 1963 to 2005, Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and the Companies (Amendment) Act 2009, all statutory instruments which are to be read as one with, or construed or read together with or as one with, the Companies Acts and every statutory modification and re-enactment thereof for the time being in force;

**"the Auditors"** means the auditors or auditor for the time being of the Company;

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for business in Dublin;

**"Board"** means the board of Directors of the Company;

**"Director"** means a director of the Company;

**"Chairman"** means the chairperson of the Company as appointed in accordance with Article 35;

**"Ireland"** means Ireland excluding Northern Ireland and all references in Table A to "the State" will be construed as meaning references to Ireland;

**"the Seal"** means the common seal of the Company;

**"the Secretary"** means any person appointed to perform the duties of the secretary of the Company;

**"the Single-Member Company Regulations"** means the European Communities (Single-Member Private Limited Companies) Regulations 1994;

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"subsidiary" has the meaning given to that term in section 155 of the Companies Act 1963;

"Table A" means Table A in the First Schedule to the Companies Act 1963; and

"undertaking" means a body corporate, general or limited partnership or an unincorporated joint venture or association or a trust carrying on trade or a business with or without a view to profit; in relation to an undertaking which is not a body corporate, expressions in these Articles appropriate to companies are to be construed as reference to the corresponding undertakings or persons, officers, organisational or constitutional documents or organs (as the case may be) appropriate to undertakings of that description.

3. All references in Table A to the Companies Acts 1963 to 1983 will be construed as references to the Acts.
4. Unless the contrary is clearly stated, reference to any section of any of the Acts is to such section as same may be amended, extended or re-enacted (whether before or after the date hereof) from time to time.
5. Reference to any legislation or document includes that legislation or document as amended or supplemented from time to time.
6. Unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing the masculine include the feminine, and words importing persons include corporations.
7. Headings are inserted for convenience only and do not affect the construction of these Articles.

#### SHARE CAPITAL

8. The capital of the Company is EUR2,000 divided into 1000 Ordinary Shares of EUR2.00 each.
9. The Directors are generally and unconditionally authorised to exercise all powers of the Company to allot relevant securities (as defined for the purposes of section 20 of the 1983 Act) up to an amount equal to the authorised but unissued share capital of the Company at the date of adoption of these Articles, and such authority will expire five years from the date of adoption of these Articles save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the Directors may allot relevant securities in pursuance of such offer or agreement as if the authority conferred hereby had not expired.
10. The Directors are hereby empowered pursuant to sections 23 and 24(1) of the 1983 Act to allot equity securities within the meaning of the said section 23 for cash pursuant to the authority conferred by Article 9 as if section 23(1) of the said Act did not apply to any such allotment. The Company may before the expiry of such authority make an offer or agreement which would or might require equity securities to be allotted after such expiry and the Directors may allot equity securities in pursuance of such an offer or agreement as if the power conferred by this Article 10 had not expired.
11. Subject to and in accordance with the provisions of the Acts and these Articles, the Company may purchase its own shares (including any redeemable shares).
12. The Company may, subject to the provisions of these Articles and the Acts, give any form of financial assistance which is permitted by the Acts for the purpose of or in connection with a purchase or subscription made or to be made by any person or for any shares in the Company or in the Company's holding company and regulation 10 of Part I of Table A will be modified accordingly.

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### PRIVATE COMPANY

13. The Company is a private company and accordingly:
- (a) the right to transfer shares is restricted in the manner hereinafter prescribed;
  - (b) the number of members of the Company (exclusive of persons who are in the employment of the Company and of persons who, having been formerly in the employment of the Company, were while in such employment and have continued after the termination of such employment to be members of the Company) is limited to fifty (or such greater number as may be prescribed by the 1963 Act as being the maximum permitted number of members in a private company) so, however, that where two or more persons hold one or more shares in the Company jointly, they shall for the purpose of this article be treated as a single member;
  - (c) any invitation to the public to subscribe for any shares or debentures of the Company is prohibited;
  - (d) the Company shall not have power to issue share warrants to bearer.

### TRANSFER OF SHARES

- 14.
- (a) The instrument of transfer of a fully paid up share need not be signed by or on behalf of the transferee and regulation 22 of Part I of Table A will be modified accordingly.
  - (b) Notwithstanding anything contained in these Articles (and, in particular, Regulation 3 of Part II of Table A in the First Schedule to the Companies Act, 1963 ("**Regulation 3 of Part II**")) or in any agreement or arrangement applicable to any shares in the Company:
    - (i) the Directors shall promptly register any transfer of share(s) and shall not suspend registration thereof where such transfer:
      - (A) is to:
        - (I) a Secured Party; or
        - (II) any nominee of a Secured Party; or
        - (III) any receiver appointed by a Secured Party;
        - (IV) any transferee of, or purchaser from, such Secured Party or nominee of such Secured Party or receiver appointed by such Secured Party (whether or not such transferee or purchaser is a third party transferee or purchaser); or
        - (V) any combination of the foregoing,
      - for the purpose of registering such party or parties as legal owner(s) of the relevant shares;
    - (B) is delivered to the Company for the purposes set out at (a) above by or on behalf of a Secured Party, by its nominee(s), by any receiver appointed by it or by any purchaser or transferee from a Secured Party or from any nominee of a Secured Party; and

- (C) is executed by (as appropriate) a Secured Party, its nominee(s) or any receiver appointed by it pursuant to any power of sale or other power under, or arising in respect of, the security over those shares created in favour of a Secured Party,

where "**Secured Party**" means any person or entity in whose favour such shares have been secured whether acting for its own benefit, or as agent, security agent, security trustee or otherwise for itself and/or another person or entity; and

- (ii) no transferor or proposed transferor of any such shares, nor any party listed in (A) above, shall be subject to, or obliged to comply with, any rights of pre-emption contained in these Articles of Association or in any other arrangement or agreement applicable to any shares in the Company nor shall such person or entity be otherwise required to offer the shares which are or will be the subject of any transfer contemplated by this Article 14 to any or all of the shareholders for the time being in the Company or to any other person or entity and no such shareholder, person or entity shall have any rights under these Articles of Association or otherwise to require that such shares be transferred to them for consideration or otherwise.
- (c) No resolution may be proposed or passed the effect of which would be to delete or amend this Article 14 unless, for so long as a Secured Party holds security over shares in the Company, not less than 45 days prior written notice thereof shall have been given to any such Secured Party by the Company and Regulation 3 of Part II shall be modified accordingly."

#### GENERAL MEETINGS

15. Subject to sections 133 and 141 of the 1963 Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least and a meeting of the Company (other than an annual general meeting or a meeting for the passing of a special resolution) shall be called by seven days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the day, the place and the hour of the meeting and in the case of special business the general nature of that business, and shall be given in a manner authorised by these Articles to such persons as are under the Articles of the Company entitled to receive such notices from the Company.
16. Subject to the Acts, a meeting of the member(s) may be convened on shorter notice provided that the Auditors and all the member(s) entitled to attend and vote consent in writing to such shorter notice.
17. Annual general meetings of the Company shall be held in the State unless in respect of any particular such meeting either:
- (a) all the members entitled to attend and vote at such meetings consent in writing to its being held elsewhere; or
  - (b) a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting.
18. Extraordinary general meetings may be held in or outside Ireland. Regulation 47 of Part I of Table A will not apply and regulation 50 will be construed as if the words "within the State" were deleted therefrom.
19. An extraordinary general meeting shall be convened upon the requisition of the Auditors under the circumstances described in section 186 of the 1990 Act, as well as upon the requisition described in regulation 50 of Part I of Table A.

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### PROCEEDINGS AT GENERAL MEETINGS

20. In regulation 70 of Part I of Table A the words "not less than 48 hours before the time for holding" and "not less than 48 hours before the time appointed for" will be deleted and there shall be substituted therefor the words "before the commencement of" on both occasions.
21. A poll may be demanded at any general meeting by any member present in person or by proxy who is entitled to vote thereat and regulation 59 of Part I of Table A will be modified accordingly.
22. At any meeting of the shareholders of the Company the Chairman shall not be entitled to a second or casting vote.

### VOTES OF MEMBERS

23. For so long as:
  - 23.1 the Company holds shares as treasury shares; or
  - 23.2 any subsidiary of the Company holds shares in the Company,the Company or the subsidiary as the case may be shall not exercise any voting rights in respect of the shares and regulations 63 to 73 of Part I of Table A shall not apply accordingly.

### RESOLUTIONS IN WRITING BY MEMBERS

24. Subject to section 141 of the 1963 Act a resolution in writing signed by all of the members for the time being entitled to attend and vote on such resolutions at a general meeting (or being bodies corporate by their duly authorised representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held, and may consist of several documents in like form, each signed by one or more persons, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the 1963 Act. Any such resolution shall be served on the Company.
25. Any corporation which is a member of the Company may authorise such persons as it thinks fit to act as its representative at any meeting or meetings of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company. The corporation shall serve on the Company a copy of such resolution duly certified by a director or other officer of such corporation.
26.
  - (a) Subject to section 140 of the 1963 Act concerning annual general meetings, all general meetings (including annual, extraordinary and class meetings of the members of the Company) may be conducted by the use of a conference telephone or similar facility provided that all the members of the Company and the auditors have been notified of the convening of the meeting and the availability of the conference telephone or similar facility for the meeting and, if present at the meeting as hereinafter provided, can hear and contribute to the meeting. Such participation in a meeting shall constitute presence in person at the meeting and the members may be situated in any part of the world for any such meeting.
  - (b) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided a quorum of members shall be two, present in person or by proxy.



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### SINGLE-MEMBER COMPANY

27. If at any time the Company has only one member, that is to say that all the issued shares of the Company are registered in the name of a sole person (whether a natural person or a body corporate), it will be a single-member company within the meaning of the Single-Member Company Regulations. If and for so long as the Company is a single-member company, the following provisions will apply notwithstanding anything to the contrary in these Articles or Table A:
- (a) No business shall be transacted at any general meeting unless a quorum is present and the sole member entitled to vote (being the sole member of the Company or a proxy for that member or, if such member is a body corporate, a duly authorised representative of that member) shall be a quorum.
  - (b) The sole member of the Company (or the proxy or the authorised representative of the sole member) shall be the chairman of any general meeting of the Company.
  - (c) The sole member of the Company shall be entitled to take any decision which may be taken by the Company in general meeting with the exception of the removal of an auditor and such decision shall have the same effect and validity as a resolution duly passed at a general meeting duly convened and held provided that such decision is notified in writing to the Company within seven days of the date on which it was taken.
  - (d) Annual general meetings shall be held within the State unless in respect of any particular such meeting, in addition to the circumstances outlined in Article 17, the sole member has decided to dispense with the holding of an annual general meeting pursuant to Regulation 8 of the Single-Member Company Regulations.
  - (e) In Article 24 the words "by all of the members" shall be replaced with the words "by the sole member" and in Article 25 the words "which is a member" shall be replaced with the words "which is the sole member".
  - (f) Regulations 55, 56, 57, 59, 60, 61, 62, 63 and 72 of Part I of Table A and Article 26 hereof shall not apply to the Company. In regulation 50 of Part I Table A the reference to "any director or any 2 members" shall be replaced by the words "any Director or the sole member".
28. If and whenever the Company becomes a single-member company or ceases to be a single-member company, it shall notify the Registrar of Companies as provided in the Single-Member Company Regulations.

### DIRECTORS

29. Unless otherwise determined by an ordinary resolution of the Company in general meeting the number of Directors shall not be less than two or more than 20.
30. At any time when the Company is a single-member company, the sole member (or his personal representatives in consequence of his death or bankruptcy) shall be entitled at any time and from time to time by notice in writing to the Company to appoint any person to be a Director provided that as a result the total number of Directors shall not be more than the maximum permitted by Article 29.
31. At any time when the Company is a multi-member company, any member or members having the right to attend and vote at a general meeting and holding for the time being not less than 50% in nominal value of the shares giving that right shall be entitled at any time and from time to time to appoint any person to be a Director provided that as a result the total number of Directors shall not be more than the maximum permitted by Article 29.

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32. The Directors shall have the power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not be more than the maximum permitted by Article 29.
33. A Director or alternate Director will not be required to hold any shares in the Company by way of qualification, and regulation 77 of Part I of Table A will not apply.
34. A Director who is not a member of the Company will nevertheless be entitled to receive notice of, attend and speak at any general meeting or separate meeting of the holders of any class of shares, and regulation 136 of Part I of Table A will be modified accordingly.

#### CHAIRMAN

35. The Chairman of the Board shall be appointed by unanimous resolution of the Board.
36. At any meeting of the Board, or at any meeting of the shareholders of the Company, the Chairman shall not be entitled to a second or casting vote.

#### POWERS AND DUTIES OF DIRECTORS

37. Subject to the provisions of these Articles, the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and, subject to section 20 of the 1983 Act, to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Regulation 79 of Part I of Table A will not apply.
38. The obligations of a Director to disclose the nature of his interest in any contract or proposed contract with the Company will apply equally to any shadow Director who shall declare his interest in the manner prescribed by section 27(3) of the 1990 Act.
39. A Director may vote in respect of any contract, appointment or arrangement in which he is interested, and he shall be counted in the quorum present at the meeting.
40. The Directors may exercise the voting powers conferred by the shares of any other company held or owned by the Company in such manner in all respects as they think fit and in particular they may exercise the voting powers in favour of any resolution appointing the Directors or any of them as directors or officers of such other company or providing for the payment of remuneration or pensions to the directors or officers of such other company. Any Director of the Company may vote in favour of the exercise of such voting rights notwithstanding that he may be or may be about to become a director or officer of such other company.
41. No contract will be entered into by the Company for the employment of, or the provision of services by, a Director or a director of a holding company of the Company containing a term to which section 28 of the 1990 Act applies without obtaining the approval provided for in that section, and regulation 85 of Part I of Table A will be modified accordingly.
- 42.
- (a) The Directors may delegate any of their powers to committees consisting of such member or members of the board as think fit. The meetings and proceedings of any committee formed by the Directors shall be governed by the provisions of these Articles regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded by any regulations imposed upon such committee by the Directors.
- (b) When forming a committee of the Directors, the Directors may authorise, or may authorise such committee to authorise, any person who is not a Director to attend

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all or any meetings of any such committee on such terms as the Directors (or as the case may be such committee) shall think fit, but any person so authorised shall not be entitled to vote at such meetings.

#### DISQUALIFICATION OF DIRECTORS

43. The office of Director will be ipso facto vacated if the Director:
- (a) becomes prohibited from being a director by reason of any declaration or order made under section 150 or 160 of the 1990 Act;
  - (b) is removed from office by notice in writing served upon him signed by all his co-Directors;
  - (c) is adjudged a bankrupt or insolvent or makes any arrangement or composition with his creditors generally;
  - (d) is sentenced to a term of imprisonment (whether actual or suspended) following his conviction of an indictable offence;
  - (e) becomes of unsound mind;
  - (f) resigns his office by notice in writing served on the Company;
  - (g) resigns his office by spoken declaration at any board meeting and such resignation is accepted by resolution of that meeting, in which case such resignation shall take effect at the conclusion of such meeting;
  - (h) is in full-time employment of the Company or the Company's holding company or a subsidiary of the Company, upon the termination of such employment unless the Directors otherwise resolve.

#### REMOVAL AND APPOINTMENT OF DIRECTORS

43A.

- (a) At any time when the Company is a single-member company, either:
- (i) the sole member of the Company; or
  - (ii) any receiver appointed by a Secured Lender in respect of not less than 75% of the shares in the Company held by the sole member (acting as agent for such sole member, and hereinafter a "Share Receiver");

shall be entitled at any time and from time to time by notice in writing to the Company to appoint and/or remove any person as a director and/or as company secretary. If the sole member is a body corporate any such notice in writing to the Company may be signed by:

- (A) a duly authorised director of the sole member; or
- (B) a Share Receiver acting as agent for and on behalf of the sole member; or
- (C) any other authorised person for the time being acting for and on behalf of, the sole member,

and any such appointment or removal may be made by the sole member at the absolute discretion of the sole member (or at the absolute discretion of any Share Receiver acting as agent of the sole member, as the case may be).

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- (b) At any time when the Company is a multi-member company:
- (i) any member or members having the right to attend and vote at a general meeting and holding for the time being not less than 75% in nominal value of the shares giving that right; or
  - (ii) any receiver appointed by a Secured Lender in respect of the shares held by such members,

shall be entitled at any time and from time to time by notice in writing to the Company to appoint and/or remove any person as a director and/or company secretary. If such member or members is/are a body corporate any such notice in writing to the Company may be signed by:

- (A) a duly authorised director of such member; or
- (B) a Share Receiver acting as agent for such member; or
- (C) such other authorised person for the time being acting for and on behalf of, that member

and any such appointment or removal may be made by the relevant member or members and at the absolute discretion of the relevant member or members (or at the absolute discretion of any Share Receiver acting as agent of such member(s), as the case may be).

- (c) Any appointment or removal of any director or the company secretary pursuant to this Article 43A shall be immediately effective by the service of notice in writing on the Company at the address of its registered office. Without prejudice to the effectiveness of any such appointment or removal of any officer of the Company by such notice, promptly after receipt of such a notice, the Company shall inform the person of his or, as the case may be, her or its appointment or, as the case may be, removal and make all necessary and appropriate entries in the books and registers of the Company and arrange for the appropriate filings in the Companies Registration Office.
- (d) Any notice given under this Article 43A shall be deemed to have been served and received:
- (i) in the case of delivery by hand, at the time of delivery or, if delivery is refused, then when tendered; and
  - (ii) the case of post, at the expiration of 24 hours after despatch.

#### EXECUTIVE DIRECTOR

44. The Directors from time to time may appoint any person (not being a Director) to the office of "Executive Director" for such period and on such terms as they think fit, and fix, determine and vary his duties, powers and functions. The Directors may revoke such appointment, but without prejudice to any claim such Executive Director may have for damages for breach of any contract of service between him and the Company. An Executive Director shall not be a member of the board of Directors or any committee of Directors, he shall not attend meetings of Directors except on the invitation of the board and he shall not be entitled to vote at any meeting of Directors.

#### ROTATION AND RE-ELECTION

45. The Directors will not retire at the first annual general meeting or by rotation, nor will they be required to be re-elected in general meeting following appointment by the Directors. Regulations 92 to 100 inclusive of Part I of Table A will be modified accordingly.



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### PROCEEDINGS OF DIRECTORS

46. The quorum for meetings of the Board shall be a majority of the Directors present in person or by alternate, but so that, except as hereinafter provided, not less than two individuals shall be present in person.
47. A meeting of the Directors or of a committee of the board of Directors may consist of a conference between some or all of the Directors (including any alternate Directors) who are not all in one place, but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others and:
- (a) a Director (or an alternate Director appointed under these Articles) taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly; and
  - (b) such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled, or, if there is no such group, where the Chairman then is; and
  - (c) the word "meeting" where used in these Articles in the context of a meeting of the Company's Directors or committee of Directors shall be construed accordingly.

### RESOLUTIONS IN WRITING BY DIRECTORS

48. A resolution in writing signed by each of the Directors (or their alternate Director) will be as valid as if it had been passed at a meeting of the Directors duly convened and held and may consist of one document or two or more documents to the same effect, each signed by one or more Directors (or their alternates or substitutes), and regulation 109 of Part I of Table A, will be modified accordingly.

### ALTERNATE DIRECTORS

- 49.
- (a) A Director may, with the approval of the Directors, appoint any person to be his alternate Director and at his own discretion may remove such person from office as his alternate Director.
  - (b) The alternate Director shall be subject in all respects to the terms and conditions existing with reference to the other Directors and shall be entitled to receive notices of all meetings of the Directors and to attend, speak and vote at any such meeting at which his appointer is not present.
  - (c) One person may act as an alternate Director to more than one Director and while he is so acting shall be entitled to a separate vote for each Director he is representing and, if he is himself a Director, his vote or votes as an alternate Director shall be in addition to his own vote.
  - (d) Any appointment or removal of an alternate Director shall be in writing signed by the Director making such appointment or removal and shall be served on the Company.
  - (e) If a Director shall cease to be a Director for any reason then any person holding office as alternate Director for that Director shall cease ipso facto to hold such office.
  - (f) An alternate Director shall not be taken into account in reckoning the minimum or maximum number of Directors allowed for the time being, but he shall be counted

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for the purpose of reckoning whether a quorum is present at any meeting of the Directors attended by him at which he is entitled to vote.

#### THE SEAL

50. An alternate who is not also a Director will be entitled to sign or countersign an instrument to which the seal is affixed as if he were the Director who appointed him, and regulation 115 of Part I of Table A will be modified accordingly.

#### ACCOUNTS

51. The Directors shall cause proper books of account to be kept which shall contain:
- (a) entries from day to day of all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
  - (b) a record of the assets and liabilities of the Company;
  - (c) a record of all goods purchased, and of all goods sold (except those sold for cash by way of ordinary retail trade), showing the goods and the sellers and buyers in sufficient detail to enable the goods and the sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales;
  - (d) statements of stock held by the Company at the end of each financial year and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and
  - (e) a record of the services provided and of all the invoices relating thereto.

Proper books of account shall be deemed to be kept if they comply with sections 202(1) and (2) of the 1990 Act and give a true and fair view of the state of affairs of the Company and explain its transactions.

52. The books of account shall be kept at the office or, subject to section 202 of the 1990 Act, at such other place as the Directors think fit, and shall at all reasonable times be open for inspection by the Directors.
53. Subject to section 159(3) of the 1963 Act a copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the Company together with a copy of the directors' report and auditors' report shall be sent, by post or electronic mail not less than twenty-one days before the date of the annual general meeting, to every person entitled under the provisions of the Companies Acts to receive them.

#### CAPITALISATION OF PROFITS

54. The reference in regulation 130 of Part I of Table A to section 64 of the 1963 Act will be construed as a reference to section 207 of the 1990 Act.

#### AUDITORS

55. The Auditors will be appointed and removed and their rights and duties regulated in accordance with the Acts and these Articles. The Auditors will be entitled to attend any general meeting and to receive all notices of, and other communications relating to, any general meeting which any member is entitled to receive, and to be heard on any part of the business which concerns them as Auditors. Regulation 132 of Part I of Table A will not apply.

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## NOTICES

56.

- (a) Any notice required to be given by the Company to any person ("the recipient") under these Articles may be given by means of delivery, post, cable, telegram, telex, telefax, facsimile, electronic mail (including email) or any other means of communication approved by the Directors, to the address or number of the recipient notified to the Company by the recipient for such purpose (or, if not so notified, then to the address or number of the recipient last known to the Company). Any notice so given shall be deemed, in the absence of any agreement to the contrary between the Company and the recipient, to have been served at the time of delivery (or, if delivery is refused, then when tendered) in the case of telegrams and at the expiration of 24 hours after despatch in the case of post, cables and telefax, facsimile, electronic mail (including email) or other method of communication approved by the Directors.
- (b) Any document (including, but not limited to, any notice, appointment, removal and resolution) required or authorised by these Articles to be sent to or served on the Company shall be in writing sent to or served on the Company at its registered office or its principal place of business in Ireland, and may be sent or served by means of delivery, post, cable, telegram, telex, telefax, facsimile, electronic mail (including email) or any other means of communication approved by the Directors, and may bear a printed or facsimile signature of the person or persons required by these Articles to sign such document. The communication of such a document by such means shall be confirmed as soon as possible by delivery to the Company at its registered office or principal place of business in Ireland of such document bearing an original signature of the person by whom it is required to be signed but (provided that the Directors are satisfied as to the authenticity of the document communicated as aforesaid) shall be acted upon by the Company and the Directors meanwhile; provided that any such document shall be valid and effective for all purposes notwithstanding that for any reason the document is not subsequently so confirmed. Any such document shall take effect, in the absence of any agreement to the contrary between the Company and the person by whom or on whose behalf the document was sent or served, at the time of receipt in the case of delivery and post, and at the expiration of six hours after receipt thereof at the Company's registered office or principal place of business in Ireland in any other case.

## INDEMNITY

- 57. Subject to section 200 of the 1963 Act every Director and Secretary shall be indemnified by the Company against, and it shall be the duty of the Directors out of the funds of the Company to pay, all costs, losses and expenses which any such Director or Secretary may incur or become liable to by reason of any contract entered into or any act or thing done by him as such Director or Secretary or in any way in the discharge of his duties. No Director or Secretary shall be liable for the acts, receipts, neglects or defaults of any other Director or officer of the Company, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be vested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act by any person with whom any moneys securities or effects shall be deposited, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own wilful act or default.
- 58. The Directors shall have power to purchase and maintain for or for the benefit of any persons (including themselves) who are or were at any time Directors or other officers of the

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Company, insurance against any liability incurred by such persons in respect of any act or omission when in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the Company and the Directors shall be entitled to vote (and be counted in the quorum) in respect of any resolution concerning the purchase of such insurance.

#### LIEN

59. Notwithstanding anything else contained in these Articles, any lien conferred by these Articles on any paid up or partly paid up share shall, where such share has been mortgaged or charged by way of security be postponed to, and rank after, such mortgage or charge.

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