

COMPANIES ACT 2011

SCHEDULE 2 (Reg. 5)

Articles of Incorporation for a Private Company

Articles of Incorporation of

\_\_\_\_\_ **(PROPRIETARY) LIMITED**

Arrangement of articles

## **Part 1- Preliminary**

1. Interpretation

## **Part 2 Regulation and management of the company**

2. Power to issue shares
3. Variation of rights attached to shares
4. Payment of commission
5. Registration of share certificates
6. Share certificate
7. Consolidation of share certificates
8. Replacement of share certificate
9. Lien
10. Sale of shares subject to a lien
11. Call notice
12. Liability to pay calls
13. When call notice need not be issued
14. Failure to comply with call notice
15. Advanced payment on call notice
16. Notice of intended forfeiture
17. Directors' power to forfeit shares
18. Effect of forfeiture
19. Disposal of forfeited shares
20. Surrender of shares
21. Transfer of shares

- 22.Registration of other documents
- 23.Transmission of shares
- 24.Conversion of shares into stock
- 25.Alteration of share capital
- 26.General meeting
- 27.Notice of general meeting
- 28.Proceedings at general meeting
- 29.Proceedings at the adjourned meeting
- 30.Demand for a poll
- 31.Withdrawal for demand for a poll
- 32.Casting vote
- 33.Attendance and speaking at general meeting
- 34.Votes of shareholders
- 35.Objection on votes tendered
- 36.Proxy notice
- 37.Delivery of proxy notice
- 38.The rights of a proxy
- 39.Shareholders resolutions
- 40.Amendments to resolutions
- 41.Directors
- 42.Appointment of directors
- 43.Company in distress
- 44.Directors' remuneration
- 45.Directors' expanses
46. Directors' borrowing powers
- 47.Powers and duties of directors

48. Delegation of powers by directors
49. Conflict of interest
50. Payment by and to the company
51. Rotation of directors
52. Filling of vacancies by directors
53. Removal of directors
54. Directors meeting
55. Quorum at directors meeting
56. Chairing directors meeting
57. Participation in directors meeting
58. Directors' decisions
59. Unanimous decisions
60. Validity of directors' decisions
61. Records of directors meeting
62. Directors' written resolutions
63. Adoption of directors' resolutions
64. Directors committees
65. Suspension and termination of directors appointment
66. Managing director
67. Secretary
68. Indemnity
69. Insurance
70. Company seal
71. Accounts
72. Auditor
73. Rights of auditor

- 74. Annual report
- 75. Dividends and reserve
- 76. Payment of dividends
- 77. Method of payment of dividends
- 78. Interest on dividends
- 79. Waiver of dividends
- 80. Unclaimed dividends
- 81. Capitalization of profits
- 82. Service of documents
- 83. Failure to update contact details
- 84. Dissolution

Schedule 1 Form A Proxy appointment form article 41(3)

Schedule 1 Form B proxy appointment form (voting) article 41 (4)

Schedule 2 particulars of first directors Article 46(1)

Explanatory Note

## **Part 1- Preliminary**

### **Interpretation**

1. In these articles-

“Act” means the Companies Act 2011

“articles” means these articles of incorporation;

“certificate” means a printed paper certificate (other than a share warrant) evidencing a person’s title to specified shares or other securities;

“chairperson” means the director appointed as such under article 61;

“chairperson of the general meeting” means a shareholder appointed as such under article 33(4);

“company seal” means an official mark of a company, consisting of an embossed impression on paper evidencing the formality of the company's execution of the document and its intention to be bound;

“director” means a person occupying the position of director of the company by whatever name called;

“distribution recipient” has the meaning given in article 82(1);

“document” includes, unless otherwise specified, a document in electronic form, that is, a document sent or supplied, kept, maintained or recorded –

(a) by electronic means including but not limited to, e-mail or fax; or

(b) by any other means while in an electronic form (for example, a disk delivered by hand or sent by post); or

(c) saved in computer.

“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

“holder” in relation to shares means the person whose name is entered in the register of members as holders of the shares or, in the case of a share in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

“insolvency” includes proceedings in a jurisdiction other than Lesotho which have an effect similar to that of insolvency in Lesotho;

“instrument” means a document in hard copy form, that is, in a paper copy or similar form capable of being read;

“ordinary resolution” has the meaning given in section 2 of the Companies Act 2011;

“paid” means paid or credited as paid;

“participate” in relation to a directors’ meeting, has the meaning given in article 62;

“premium” means the amount at which the share was issued has not been paid to the company;

“proxy notice” has the meaning given in article 41 ;

“subsidiary” has the meaning given in section 2(2)(a) of the Act ;

“shares” means the interest of a shareholder in the company, measured by some of money for the purpose of liability and of interest;

“special resolution” has the meaning given in section 2 of the Act ;

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, and capable of being reproduced in tangible form whether sent, stored or supplied in electronic form or otherwise.

### **Part 3- Regulation and management of the company**

#### **Power to issue shares**

2. (1) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may by special resolution determine.

(2) Subject to the provision of section 21 of the Act, any preference shares may, by ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

#### **Variation of rights attached to shares**

3. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the share of that class) may, whether or not the company is being dissolved, be varied with the consent in writing of the holders of three –



fourth of the issued shares of that class, or by special resolution passed at a special meeting of the holders of the shares of the class.

(2) To every special meeting referred to in sub article (1), the provisions of these articles relating to special meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

(3) The rights conferred upon the holders of the share of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares.

#### **Payment of commission**

4. (1) The company may exercise the powers of paying commissions conferred by section 19 (8) of the Act, provided that the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed 5 per cent of the price at which the shares are issued.

(2) Payment of commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly by payment of cash and partly by allotment of fully or partly paid shares.

## **Registration of trusts as shareholders**

5. (1) The company may in its discretion enter in its register any share held in trust.

(2) The company shall verify the legal status of any trust or of any trustee who is registered as a shareholder but there shall be no obligation on the company, to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

## **Share certificate**

6. (1) Every person whose name is entered as a shareholder in the register of shareholders may, upon payment of twenty Maloti (M20) or such amount as the directors may determine, be issued with a share certificate after allotment or lodgment of transfer within such period as the conditions of issue may provide, but each class of shares shall be represented by a separate certificate.

(2) Every certificate shall be executed in accordance with section 27 of the Act and shall specify –

- (a) the name of the company;
- (b) the name of the person to whom it is issued;
- (c) the number, class and designation of shares issued;
- (d) rights, privileges and limitations; and
- (e) the amount paid for the shares.

- (4) Share certificates shall have affixed to them the company's official seal.
- (5) Where a share or shares are held jointly by several persons the company shall not be bound to issue more than one certificate and delivery of a certificate for a share or shares to one of several joint holders shall be sufficient delivery to all such holders.
- (6) Where the company has not issued a share certificate, the company shall issue a shareholder with written statement, and such statement shall contain details specified in sub article (2).

### **Consolidation of share certificates**

7. (1) When a shareholder's holding of shares of a particular class increases, the company may issue that shareholder with—

(a) a single, consolidated share certificate in respect of all the shares of a particular class which that shareholder holds; or

(b) a separate share certificate in respect of only those shares by which that shareholder's holding has increased.

(2) When a shareholder's holding of shares of a particular class is reduced, the company shall ensure that the shareholder is issued with one or more share certificates in respect of the number of shares held by the shareholder after that reduction.

(3) A shareholder may request the company, in writing, to replace—

- (a) the shareholder's separate share certificates with a consolidated share certificate; or
- (b) the shareholder's consolidated certificate with two or more separate share certificates representing such proportion of the shares as the shareholder may specify.

(4) When the company complies with such a request it may charge such reasonable fee as the directors may decide.

(5) A consolidated share certificate shall not be issued unless the certificate which it is to replace has first been returned to the company for cancellation.

### **Replacement of share certificates**

8. (1) If a share certificate issued in respect of shareholder's shares is—

- (a) damaged or defaced; or
- (b) lost, stolen or destroyed,

the shareholder is entitled to be issued with a replacement share certificate in respect of the same shares upon –

- (i) presentation of the damaged or defaced share certificate, and in the case of lost, stolen or destroyed share certificate, an affidavit accompanied by a police report where applicable;

- (ii) compliance with such conditions as to evidence as the directors may decide;
  - (iii) payment of a fee of fifty Maloti (M50) or such amount, if any, as the directors may, from time to time, determine.
- (2) A shareholder exercising the right to be issued with a replacement share certificate may at the same time exercise the right to be issued with a single share certificate or separate share certificates.

### **Lien**

9. (1) The company has a lien (“the company’s lien”) over every share which is partly paid for any part of—

- (a) that share’s nominal value; and
- (b) any premium at which it was issued,

which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company’s lien over a share—

- (a) takes priority over any third party’s interest in that share, and
- (b) extends to any dividend or to the estate of the shareholders
- (c) extends to other money payable by the company in respect of that share and the proceeds of sale of that share.

(3) The company may, in a special meeting at any time, declare any share to be wholly or in part exempt from the provisions of this article.

(4) A lien enforcement notice—

- (a) may be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;
- (b) shall specify the share concerned;
  
- (c) shall require payment of the sum payable within 14 working days of the notice;
- (d) shall be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, insolvency or otherwise; and
  
- (f) shall state the company's intention to sell the share if the notice is not complied with.

### **Sale of shares subject to lien**

- 10.(1) The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days referred to in article 14(4) (c).
- (2) To give effect to any such sale the director may execute an instrument of the shares sold to the purchaser or a person nominated by the purchaser.
- (3) The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

(4) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the share before the sale) be paid to the person entitled to the shares at the date of the sale.

## **Call Notice**

11. (1) Subject to these articles and the terms on which shares are allotted, the directors may send a notice (a “call notice”) to a shareholder requiring the shareholder to pay the company a specified sum of money (a “call”) which is unpaid in respect of shares which that shareholder holds at the date when the directors decide to send the call notice.

(2) A call notice—

(a) may not require a shareholder to pay a call which exceeds the total sum unpaid on that shareholder’s shares;

(b) shall specify the time, date and place of payment but the date shall not be less than 14 days from the date the call notice was issued; and

(c) may permit or require the call to be paid by installments.

(3) Before the company has received any call due under a call notice the directors may—

(a) revoke it wholly or in part; or

(b) specify a later time for payment than is specified in the notice, by a further notice in writing to the shareholder in respect of whose shares the call is made.

(4) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.

### **Liability to pay calls**

12.(1) The transfer of the share does not extinguish the liability to pay for the call.

(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 which are not the same; or

(b) to pay calls at different times.

### **When call notice need not be issued**

13. (1) A call notice need not be issued in respect of sum which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share (whether in respect of nominal value or premium)—



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

### **Failure to comply with call notice**

14.(1) For the purposes of these articles—

(a) the “**call payment date**” is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the “**call payment date**” is that later date;

(b) the “**relevant rate**” is—

(i) the rate fixed by the terms on which the share in respect of which the call is due was allotted;

(ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

(iii) if no rate is fixed in either the sub-paragraph (i), or (ii), at the rate determined by the market value of the shares.

(2) If a sum called in respect of a share is not paid before or on the call payment date, the person from whom the sum is due shall pay interest the

sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding the relevant rate or as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

(3) If a person is liable to pay a call and fails to do so by the call payment date the directors may issue a notice of intended forfeiture to that person.

(4) The relevant rate shall not exceed the market value of shares.

### **Advance payment on a call notice**

15. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, by for such advances, become payable) pay interest at such rate not exceeding (unless the company in special meeting shall otherwise direct) relevant rate as may be agreed upon between the directors and the member paying such sum in advance.

### **Notice of intended forfeiture**

16. A notice of intended forfeiture—

(a) may be sent in respect of any share for which a call has not been paid as required by a call notice;

(b) shall be sent to the holder of that share or to a person entitled to it by reason of the holder's death, insolvency or otherwise;

- (c) shall require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice;
- (d) shall state how the payment is to be made; and
- (e) shall state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

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

17. (1) If a notice of intended forfeiture is not complied with, the directors may decide that any share in respect of which that notice was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
- (2) A forfeited share may be sold or otherwise disposed off on such terms and in such manner as the directors think fit.

### **Effect of forfeiture**

- 18.(1) If a person's shares have been forfeited—
- (a) the directors shall send that person notice that forfeiture has occurred and record the forfeiture in the register of shareholders;
  - (b) that person ceases to be a shareholder in respect of those shares;
  - (c) that person shall 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 forfeiture) and the liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares; and
- (e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- (2) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

### **Disposal of forfeited shares**

19. (1) If a forfeited share is to be disposed of by being sold, the company may receive the consideration for the sale and the directors may execute the instrument of transfer of the share in favour of the person to whom the share has been sold and that person shall be registered as the holder of the share.
- (2) An affidavit by a director or the company secretary that the deponent is a director or the company secretary and that a share has been forfeited on a specified date is, unless fraud or mistake is proved—

- (a) 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 the Act.

(3) A person to whom a forfeited share is transferred is not bound to see to the application of the purchase money (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(4) 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 such sale, net of any commission, and excluding any amount which—

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

but no interest is payable to such a person in respect of such proceeds.

## **Surrender of shares**

20. (1) A shareholder shall surrender any share—

- (a) in respect of which the directors may issue a notice of intended forfeiture;
- (b) which the directors may forfeit;
- (c) which has been forfeited.

(2) The directors may accept the surrender of any share and if the surrender is not accepted, sub articles (3) and (4) shall not apply.

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

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

### **Transfer of shares**

21. (1) Shares may be transferred by means of an instrument of transfer as prescribed in the Act.

(2) The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of shareholders in respect thereof.

(3) Subject to restrictions of these articles as may be applicable, any shareholder may transfer all or any of the shareholder's shares by instrument in writing in any usual or common form or any other form which the directors may approve.

(4) The directors shall only refuse to register the transfer of a share to a person whom they do not approve and shall, within 15 days, furnish the transferor and transferee with reasons for the refusal.

- (5) The directors may also decline to recognise any instrument of transfer unless-
- (a) a fee of fifty Maloti (M50) or such sum as the directors may determine to be paid to the company.
  - (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
  - (c) the instrument of transfer is in respect of only one class of shares.
- (6) If the directors refuse to register a transfer they shall within 15 days after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.
- (7) The registration of transfers may be suspended at such times and for such period as the directors may determine, but registration of transfer shall not be suspended for more than 30 days in any year.

### **Registration of other documents**

22. The company shall be entitled to charge a fee of five Maloti (M5) or any fee as the directors may determine on the registration of every letters of administration, certificate of death or marriage, power of attorney, deed of settlement, or any other instrument.

### **Transmission of shares**

- 23.(1) In the case of death of a shareholder, the survivor or survivors where the deceased was a joint holder, and the executor of the deceased where he or she was a sole holder, shall be the only person recognized by the company as having any title to the deceased's interest in the shares; but nothing herein contained shall release the estate of the deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.
- (2) Any person entitled to a share in consequence of the death or insolvency of a shareholder may, upon such evidence being produced as may be required by the directors and subject as hereinafter provided, elect either to be registered as a holder of the share or to nominate another person to be registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that shareholder before death or insolvency as the case may be.
- (3) If a person becoming entitled to a share in consequence of the death or insolvency of a shareholder elects to be registered as the shareholder, that person shall deliver or send to the company a signed notice to that effect.
- (4) If the person referred to in sub article (1) elects to have another person registered as a shareholder, the person shall execute an instrument of transfer in favour of that other person.
- (5) All the limitations, restrictions and provisions of these articles relating to the right of transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the shareholder had not occurred and the notice of transfer were a transfer signed by that shareholder.



(6) A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which the person would be entitled if the person was registered as a holder of the share, except that person shall not, before being registered as a shareholder in respect of the share, be entitled in respect of it to exercise any right conferred in relation to meetings of the company:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered or to transfer the share, and if the notice is not complied with within 15 days the directors may thereafter withhold payment of all dividends, bonuses, or other moneys payable in respect of the share until the requirements of the notice have been complied with.

### **Conversion of shares into stock**

24. (1) The directors may convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination provided such a conversion shall be approved by at least 75 percent of the shareholders.
- (2) The holders of stock may transfer the stock, or any part thereof in the same manner, and subject to the same articles applicable to the shares from which the stock arose before the conversion.
- (3) The directors may fix the minimum amount of stock transferable but the minimum amount shall not exceed the nominal amount of the shares from which the stock arose.

- (4) The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting and meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits in the assets of the company on dissolution or liquidation) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
- (5) Articles of the company applicable to paid-up shares shall apply to stock, and the word “share” and “shareholder” therein shall include “stock” and “stockholder”.

### **Alteration of share Capital**

25. (1) The shareholders may by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
- (2) The shareholder may by special resolution-
- (a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (b) Sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by these articles;
  - (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

- (3) The shareholder may by special resolution reduce capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required by the Act.

## **General Meetings**

26. (1) The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next: Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) The annual general meeting shall be held at such time and place as the directors shall appoint.

(3) Sub article (1) shall not apply for as long as the company has less than 10 shareholders and none of the shareholder is a company unless a shareholder requests a company to hold a general meeting.

(4) All other meetings other than annual general meetings shall be called special meetings.

(5) The directors may, whenever they think fit, convene a special meeting, and special meeting shall also be convened on the written request of shareholder's holding shares totaling not less than 5 percent of the voting rights.

(6) If at any time there are not sufficient shareholders capable of acting to form a quorum, any 2 shareholders of the company may convene a

special meeting in the same manner as nearly as possible as that in which meetings may be convened by the shareholders.

### **Notice of General Meetings**

27.(1) A notice for an annual general meeting and a meeting called to pass a special resolution shall –

- (a) be in writing;
- (b) be issued not less than 10 days before the date of the meeting excluding the day on which it is issued; and
- (c) state the time, date and place of meeting and in case of a special meeting the purpose for which the meeting is called.

(2) A company may call a meeting by giving a shorter notice than that specified in article 49 , and such a meeting shall be deemed to have been duly called if it is so agreed-

(a) In the case of a meeting called as the annual general meeting, by all the shareholders entitled to attend and vote ; and

(b) In the case of any other meeting, by a majority in number of the shareholders having a right to attend and vote at the meeting being a majority holding not less than 95 per cent in nominal value of the shares giving that right.

(3) The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **Proceedings at General Meetings**

28. (1) No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business; save as herein otherwise provided, a quorum for transaction of business at the meeting of shareholders shall be a majority of issued shares represented in person or by proxy.

(2) All business shall be deemed special that is transacted at a special meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

(3) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at any such other time and place as the shareholders may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present shall be a quorum.

(4) If the shareholders have elected a chairperson, the chairperson shall preside at every general meeting of the company if present, or if there is no such chairperson, or if the chairperson is not present within fifteen minutes after the time appointed for the holding of the meeting or the elected chairperson is unwilling to act, the shareholders present shall elect one of their number to be chairperson of the meeting and the

appointment of the chairperson of the meeting shall be the first business of the meeting.

(5) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) two-third majority of shareholders voting consent to an adjournment, or

(b) it appears to the chairperson of the meeting 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.

(6) When adjourning a general meeting, the chairperson of the meeting may—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(7) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company shall give at least 7 days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given, and

(c) The notice shall contain the same information which should be in a notice of general meeting.

### **Proceedings at the adjourned meeting**

29.No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### **Demand for a poll**

30.(1) At any general meeting resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by-

(a) the chairperson of the meeting;

(b) the shareholders;

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(2) A poll demanded on-

(a) the election of a chairperson or a question of adjournment shall be taken forthwith; or

(b) any other question shall be taken at such time as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be preceded with pending the taking of a poll.

(3) Except as provided in this article, if a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

### **Withdrawal of the demand for a poll**

31. A demand for a poll may be withdrawn if the poll has not yet been taken and the chairperson of the meeting consents to the withdrawal.

### **Casting vote**

32. In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

### **Attendance and speaking at general meeting**

33.(1) The company shall organise meetings in a way that every shareholder is able to exercise the right to vote and communicate any information or opinions which that shareholder has on the business of the meeting and the directors shall make whatever arrangements they consider appropriate



to enable those attending a general meeting to exercise their rights to speak or vote .

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

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

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

(a) that person is able to speak, during the meeting, on issues raised or under discussion at the meeting; and

(b) that person's opinion can be taken into account in determining whether or not resolutions are passed in the meeting.

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

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

## **Votes of shareholders**

34.(1) Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he or she is the holder.

(2) In the case of joint holders the vote of the senior shareholder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of shareholders.

(3) A shareholder who has been declared of unsound mind by any Court may vote whether on a show of hands or on a poll by his or her curator bonis or other person appointed by that court.

(4) No shareholder shall be entitled to vote at any general meeting unless all calls or other sums presently payable by shareholder in respect of shares in the company have been paid.

(5) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(6) An objection made in sub article(5) shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.

(7) Unless stated otherwise elsewhere in these articles, a poll votes may be given either personally or by proxy.

### **Objection on votes tendered**

35.(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

### **Proxy notice**

36. (1) A shareholder or an agent authorized by the shareholder may appoint a proxy and the appointment shall be in writing. A proxy need not be a shareholder of the company.

(2) Proxies may only be validly appointed by a notice in writing (a “proxy notice”) which—

(a) states the name and address of the shareholder appointing the proxy;

(b) identifies the person appointed to be that shareholder's proxy and the meeting in relation to which that person is appointed;

(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the meeting to which they relate.

(3) The company may require proxy notices to be delivered in an instrument in the form as set out in Schedule 1 Form A or a form as near thereto as circumstances permit and the company may specify different forms for different purposes.

(4) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions and where it is desired to afford the proxy an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the form as set out in Schedule 1 Form B or a form as near thereto as circumstances permit.

(5) Unless a proxy notice indicates otherwise, it shall be treated as—

(a) allowing the person appointed thereunder, a discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

- (c) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **Delivery of proxy notice**

37. (1) Any notice of a meeting shall specify the address or addresses (“**proxy notification address**”) at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered by hand or registered mail.

(2) The proxy notice shall be delivered to the address specified in accordance with sub article (1) not less than 48 hours before holding the meeting or adjourned meeting to which it relates.

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

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

(5) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(6) If a proxy notice is not executed by the shareholder, it shall be accompanied by written evidence of the authority of the person who executed it on behalf of the shareholder.

### **The rights of a proxy**

38. (1) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(2) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death, insolvency or insanity of the principle or revocation of the proxy or of the authority under which the proxy is executed, or the transfer of the share in respect of which the proxy is given: Provided that no intimation in writing of such death, insolvency, insanity, revocation or transfer as aforesaid shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **Shareholders resolutions**

39.(1) Unless a poll be demanded a declaration by the chairperson that the resolution has on a show of hands been carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence

of the fact without proof of the number or of the votes recorded in favour of or against such resolution.

(2) Subject to the provisions of the Act, a resolution in writing signed by all shareholders for the time being entitled to receive notice of and to attend and vote at meeting (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

### **Amendments to resolutions**

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

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the meeting at which it is to be proposed not less than 48 hours before the meeting is to take place or such later time as the chairperson of the meeting may determine; and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a meeting may be amended if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

- (3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

## **Directors**

41.(1)The persons whose particulars appear in Schedule 2 shall be the first directors of the company and they shall hold office until directors are appointed by the company in a general meeting in accordance with article 47.

(2)The minimum number of directors shall be one and there shall be no maximum number.

## **Appointment of directors**

42. (1) Any person who is willing to act as a director, and is permitted by the Act to do so, may be appointed to be a director by ordinary resolution at a shareholders general meeting.

(2) The shareholding qualification for directors may be fixed in a general meeting and, unless and until so fixed no qualification shall be required.

## **Company in distress**

43.(1) The directors shall, within 14 days of incorporation of the company, prepare and submit for approval by the shareholders a succession plan, and



in the absence of such a plan if for a period of 3 months the shareholders and directors either severally or collectively are unable to perform the functions of their office, whether arising from infirmity of body or mind or any such cause, the company shall be managed under Part XVII (Judicial Management) of the Act until the succession issue as to shareholding has been resolved.

(2) Where the shareholders and directors are unable to perform the functions of their office as provided for in sub article (1) a senior officer of the company shall notify the office of the Registrar of Companies.

(3) Within 14 working days after the succession as to shareholding referred to in sub article (1) has been resolved, the shareholders shall appoint directors of the company.

### **Directors' remuneration**

44.(1) Directors may undertake any services for the company that the directors and shareholders may decide.

(2) Directors are entitled to such remuneration as the shareholders determine—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to these articles, a director's remuneration may —

(a) be in a form of-

- (i) cash;
- (ii) tangible or intangible assets ;
- (iii) securities in the company; or
- (iv) movable or immovable property;

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits to, or in respect of that director.

(4) Unless the shareholders decide otherwise directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company has an interest.

### **Directors' expenses**

45. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) special meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## **Directors borrowing powers**

46. (1)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 to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company.

(2) Notwithstanding sub article (1) the amount for the time being remaining unpaid of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued.

(3)No lender or other person dealing with the company shall be concerned to see or inquire whether the limit in sub article (2) is observed and no debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

## **Powers and duties of directors**

47. (1)The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company prescribed by the Act or by these articles, required to be exercised by the company in general meeting.

(2) Notwithstanding sub article (1) the shareholders may by special resolution direct the directors to take or refrain from taking a specified action provided that no such resolution invalidated anything which the directors have done before the passing of the resolution.

### **Delegation of powers by directors**

48.(1) Subject to these articles, the directors may delegate any of the powers which are conferred on them under these articles—

- (a) to such person or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters; and
- (e) on such terms and conditions,

as they think fit.

(2)The delegation in sub article (1) may not authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or in part, or alter its terms and conditions.

### **Conflict of interest**

49. (1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director shall be counted as participating in the decision-

making process for quorum or voting purposes and, the director shall further comply with sections 65 and 67 of the Act.

(2) A director shall not hold more than 5 directorship positions while serving as a director in the company.

(3) A director or the directors' firm may act for the company in a professional capacity, and the director's firm shall be entitled to remuneration for professional services as if the director were not a director, but a director or the directors' firm shall not act as an auditor to the company.

### **Payments by and to the company**

50.(1) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors may determine.

(2) The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his or her widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

### **Rotation of Directors**

51.(1) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not

three or a multiple of three, then the number nearest one-third, shall retire from office.

(2) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(3) A retiring director shall be eligible for re-election.

(4) The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacant office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

(5) The company may by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

### **Filling of vacancies of directors**

52.(1) The shareholders in a general meeting, shall have power 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 at any time exceed the number fixed in accordance with these articles.

(2) A person appointed in place of a director removed or to fill a vacancy shall be subject to retirement at the same time as if the person had

become a director on the day on which the director in whose place he or she is appointed was last elected a director, but shall not be taken into account in determining the directors who are to retire by rotation at meeting referred to in sub article (1).

### **Removal of directors**

53. The company may by ordinary resolution, of which special notice has been given in accordance with section 73 of the Act, remove any director before the expiration of his or her period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him or her and the company.

### **Directors meetings**

54.(1) Subject to these articles directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit.

(2) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(3) Notice of any directors' meeting shall indicate—

- (a) the proposed date and time of the meeting;
- (b) where the meeting is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how they will communicate with each other during the meeting.

(4) Notice of a directors' meeting shall be given to each director, but need not be in writing.

(5) At the instance of the director who was not notified contrary to sub-article 3, the decision made at that directors meeting shall be nullified.

(6) Directors may waive their entitlement to notice of the meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting was held.

(7) A director who waives the right to receive a notice of a meeting loses the entitlement to nullify decisions taken at that meeting or any business conducted at the meeting.

### **Quorum at directors meeting**

55.(1) The quorum necessary for the transaction of the business of the directors shall not be less than a simple majority of all directors.

(2) The directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the directors may act for the purpose of calling a general meeting to appoint sufficient directors.



## **Chairing directors meeting**

56. (1) The directors may appoint a chairperson to chair their meetings and a vice-chairperson who shall chair meetings in the absence of the chairperson.

(2) The directors may determine the period for which a chairperson and vice-chairperson may hold office but the directors may terminate the chairperson's or vice-chairperson's appointment at any time.

(3) If the chairperson or vice-chairperson is not present in a directors' meeting within half an hour of the time at which it was to start, the directors present shall appoint one of themselves to chair the meeting.

## **Participation in directors meetings**

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

(a) the meeting has been called and takes place in accordance with these articles; and

(b) they can each communicate to 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 any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

## **Directors' decisions**

58.(1) Subject to these articles, a decision is taken at a directors' meeting by-

- (a) unanimous decision of the participating directors; and
- (b) majority of the votes of the participating directors.

(2) Subject to these articles, each director participating in a directors' meeting has one vote and if the number of votes for and against a proposal is equal, the chairperson of the meeting has a second or casting vote.

(3) Subject to these articles, the directors may make any rule which they think fit about how they take decisions, and such rules shall be recorded and kept in the Company Register and shall be open for inspection by shareholders.

(4) Decisions of the directors may be taken at a directors' meeting or in the form of a directors' written resolution.

## **Unanimous decisions**

59.(1) A decision of the directors is unanimous when all eligible directors indicate to each other by any means that they share a common view on a matter.

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

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

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

### **Validity of directors' decision**

60. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a director.

### **Records of directors' meetings**

61.(1) The directors shall cause minutes of meetings to record-

(a) the names of the directors present at each meeting of the directors and of any committee of the directors; and

(b) all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

(2) Every director present at any meeting of directors or committee of directors shall sign their names in a book to be kept for that purpose.

(3) The directors shall cause separate books to be kept for recording-

(a) all appointments of officers made by the directors;

(b) the names of the directors present at each meeting of the directors and of any committee of the directors; and

(c) all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

### **Directors' written resolutions**

62.(1) Any director may propose a directors' written resolution by giving a written notice of the proposed resolution to each director and the notice shall indicate-

(a) the proposed resolution, and

(b) the time and date by which it is proposed that the directors should adopt it.

(2) The company secretary shall issue a notice proposing a directors' written resolution if the director so requests.

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

63.(1) A proposed directors' written resolution is adopted when the majority of the directors who would have been entitled to vote on the resolution at a

directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at the meeting of the directors duly convened and held.

(3) It is immaterial whether any director signs the resolution before or after the time and date by which it was proposed that the directors should adopt the resolution.

(4) The company secretary shall ensure that the company keeps a record, in writing, of all directors' written resolutions for at least 10 years from the date of their adoption.

### **Directors' committees**

64.(1) The directors may establish committees consisting of such member or members of their body as they think fit.

(2) The directors may delegate any of their powers to committees established pursuant to sub article (1).

(3) Unless directors make rules for committees, such committees shall follow procedures which govern the proceedings of directors.

(4) A committee may elect a chairperson of its meetings, if no such chairperson is elected, or if at any meeting the chairperson is not present within half an hour after the time appointed for holding the same, the

members present may choose one of their numbers to be chairperson of the meeting.

(5) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairperson shall have a second or casting vote.

### **Suspension and termination of director's appointment**

65.(1) The shareholders may suspend the board of directors pending investigation into affairs of the company.

(2) A person ceases to be a director if disqualified from being a director in terms of section 57 of the Act.

(3) Before a person is disqualified under section 57(6)(f) of the Act from being a director on the ground of unsound mind a registered medical practitioner who is treating that person shall give a written opinion to the company stating that the person has become physically or mentally incapable of acting as a director and may remain so for a period of more than three months.

(4) A company may remove a director from office if a Court has declared that the director incapable of managing his or her financial affairs.

(5) The office of director shall be vacated if a director is absent without permission of chairperson of the board for 3 consecutive meetings of the board.

## **Managing Director**

66.(1) The shareholders may appoint one of their number to the office of managing director for such period and on such terms as they think fit and, may revoke such appointment.

(2) A director appointed pursuant to sub article (1) shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his or her directorship shall be automatically reviewed if he or she cease from any cause to be a managing director.

(3) A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the shareholders may determine.

(4) The directors may entrust to and confer upon such a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## **Secretary**

67. (1) The company shall have a secretary who shall be appointed by the directors.

(2) The secretary shall be appointed on such terms and conditions as the directors think fit and, the appointment may be revoked.

(3) No person shall be appointed or hold office as secretary if the person is the director of the company or a body corporate.

### **Indemnity**

68. Every director, managing director, agent, auditor, secretary and other officer of the company shall be indemnified out of the assets of the company against any liability incurred by that person in defending any civil proceedings, in which judgment is given in his or her favor.

### **Insurance**

69.(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any director, managing director, agent, auditor, secretary and other officer of the company in respect of any-

- (a) liability, not being a criminal liability, for any act or omission in his or her capacity as an officer or an employee;
- (b) costs incurred by that officer or employee in-
  - (i) defending or settling any claim or proceedings relating to any such liability; and
  - (ii) defending any criminal proceedings relating to the activities of the company in which he or she is acquitted.

### **The company seal**

70. (1) The company shall have a seal and the directors shall provide for its safe custody.



(2) The company seal shall only be used by the authority of the directors or of a committee of the directors authorised by the directors on their behalf, and every instrument to which the seal shall be affixed shall be signed by the director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for that purpose.

## **Accounts**

71.(1) The directors shall cause proper books of accounts to be kept with respect to-

- (a) all sum of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchase of goods by the company; and
- (c) the assets and liabilities of the company.

(2) Proper books shall not be deemed to be kept if such books do not reflect a true and fair view of the state of the company's affairs.

(3) The books of account shall be kept at the registered office of the company, or, subject to section 84 of the Act, at such other place or places as the directors think fit, and shall be open to the inspection of the directors and shareholders.

(4) The directors shall, in accordance with section 94 of the Act, cause to be prepared and to be laid before the company in general meeting such accounts referred to in that section.

(5) Not less than 21 days before the date of the general meeting, a copy of the company accounts (including every document required by the Act to be annexed thereto) which are to be laid before the company in the general meeting, together with a copy of the auditor's report, shall be sent to every shareholder, every holder of debentures of the company and every person registered under article 28.

(6) Sub article (1) shall not require a copy of those documents to be sent to any person of whose address the company is not aware of or to more than one of the joint holders of any shares or debentures.

### **Auditor**

72.(1) Seventy five percent of shareholders at a general meeting may, pursuant to section 98 of the Act, appoint an auditor who is qualified to—

(a) hold office as auditor for the period specified by the shareholders;  
and

(b) audit the financial statements of the company.

(2) The shareholders may remove an auditor from office by resolution at the special meeting.

### **Rights of auditor**

73. The directors of the company shall ensure that an auditor of the company—

(a) is permitted to attend a meeting of the shareholders of the company;

(b) receives the notices and communications that shareholders are entitled to receive relating to meetings and decisions of the shareholders; and

(c) is heard at a meeting of the shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

### **Annual report**

74. The directors shall prepare an annual report in respect of any financial year, in accordance with the provisions of the Act.

### **Dividends and reserve**

75.(1) Subject to sub article (2) the company may, by special resolution in general meeting declare dividends.

(2) The company shall not-

(a) declare any dividends unless the company satisfies the solvency test;

(b) declare dividends that exceed the amount recommended by the directors; and

(c) pay dividends otherwise than out of profits of the company.

(3) The directors may, if they are so authorised by an ordinary resolution, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve for any purpose to which the profit of the company may be properly applied, and pending

such application such funds shall, be invested in such investments (other than shares of the company) as the directors may think fit.

### **Payment of dividends**

- 76.(1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the share in respect whereof the dividend is paid.
- (2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this article as paid on the share.
- (3) All dividends shall be apportioned and paid proportionately to the amount paid or portion of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
- (4) The director may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by that shareholder to the company on account of calls or otherwise in relation to the shares of the company.
- (5) 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) to distribution recipient or shareholder.

(6) For the purposes of paying non-cash dividends, the directors may make whatever arrangements they think fit, including, where 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; or
- (c) vesting any assets in trustee or beneficiary.

### **Method of payment of dividends**

77.(1) In these articles, “**the distribution recipient**” means, in respect of a share which a dividend or other sum is payable—

- (a) the holder of the share; or
- (b) if the share has two or more joint holders, whichever of them is named first in the register of shareholders; or
- (c) if the holder is no longer entitled to the share by reason of death or insolvency, or otherwise by operation of law, the agent, trustee or other beneficiary.

(2) Where a dividend or other sum which is a distribution is payable in respect of a share, it shall be paid by one or more of the following means—

(a) transfer to a bank or any financial institution or society account specified by the distribution recipient either in writing or as the distribution recipient may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by registered post to the recipient's registered address or to an address specified by the distribution recipient either in writing or as the distribution recipient may otherwise decide;

(c) Payment of cash or any other means of payment as the directors may agree with the distribution recipient either in writing or by such other means as the distribution recipient may decide.

### **Interest on dividends**

78.No dividends shall bear interest against the company unless otherwise provided for by-

(a) the terms on which the share was issued; or

(b) the provisions of another agreement between the shareholder and the company.

## **Waiver of dividends**

79. Distribution recipients may waive their entitlement to dividends or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(a) the share has more than one holder; or

(b) more than one person is entitled to the share, whether by reason of the death or insolvency of one or more joint holders, or otherwise, the notice shall not be effective unless it is in express form and signed by all the holders or persons otherwise entitled to the share.

## **Unclaimed dividends**

80.(1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or being payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

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

(3) The distribution recipient is not entitled to payment of dividends or other sum if-

(a) eight years have passed from the date on which dividends became due for payment; and

(b) the distribution recipient has not claimed the dividends.

(4) Where the distribution recipient ceases to be entitled to dividends under sub article (3), the dividends shall be paid to the office of the Master of the High Court by the company.

### **Capitalization of profits**

81.(1) The shareholders in the general meeting may, upon recommendations of the directors-

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums shall be applied—

(a) On behalf of the persons entitled, and



(b) In the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted and credited as fully paid to the persons entitled or as shareholders may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted and credited as fully paid to the persons entitled or as shareholders may direct.

(5) Subject to these articles the directors may apply capitalised sums in accordance with sub articles (3) and (4) partly in one way and partly in another.

### **Service of documents**

82.(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 the Act provides.

(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 indicated.

- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and the specified time shall not be less than 2 working days.
- (4) A notice may be given by the company to joint holders of a share by giving the notice to the joint holder first named in the register of shareholders in respect of the share.
- (5) A notice may be given by the company to the persons entitled to share in consequence of the death or insolvency of a shareholder by sending it through a registered mail addressed to them by name, or by the title of representatives of the deceased, or trustee of the insolvent, or by any like description, at the address, if any, within Lesotho supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.
- (6) Notice of every general meeting shall be given in any manner authorised by the Act to-
- (a) every shareholder;
  - (b) every person upon whom the ownership of a share devolves by reason of his or her being the executor, trustee or assignee of a shareholder where the shareholder but for his death or insolvency would be entitled to receive notice of the meeting; and
  - (c) the auditor of the company.

(7) No other person other than persons mentioned in sub article (6) shall be entitled to the receive notice of general meetings.

### **Failure to update contact details**

83.(1) A shareholder loses the right to receive notices from the company if—

- (a) the company sends documents on 2 consecutive occasions to the shareholder over a period of at least 12 months; and
- (b) the documents are returned undelivered, or the company receives notification that the documents had not been delivered.

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

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

## **Dissolution**

84.(1) The company may be dissolved in accordance with the provisions of the Act.

(2) The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

**Schedule1**

**Form A**

**Proxy appointment form [article 41(3)]**

“ .....  
..... Proprietary limited.  
I/We,.....,of.....being a shareholder /shareholders  
of the above-named company, hereby  
appoint.....of.....  
....., of failing him or her,.....  
of....., as my/ our proxy to vote for me / us on  
my/ our behalf at the ( annual or special, as the case may be) general  
meeting of the company to be held on the.....day  
of.....20.....and at any adjournment thereof.  
Signed this.....day of..... 20.....”

**Form B**

**Proxy appointment form- voting [article 41(4)]**

“ .....

..... Proprietary limited.

I/We ....., of .....being  
a shareholder/shareholders of the above-named company, hereby  
appoint....., of ....., or failing  
him or her....., of.....

as my /our proxy to vote for me/us on my /our behalf at the (annual or  
special, as the case may be) general meeting of the company, to be held on  
the.....day of ....., 20.....,  
and at any adjourned thereof.

This form is to be used in favor of/against \* resolution  
No.....unless otherwise instructed, the proxy will vote  
as he thinks fit. (\*strike out whichever is not desired.)”

Signed this ..... day of.....20  
.....

## Schedule2

### Particulars of first directors- article 46 (1)

Title	Full names	ID number	Physical Address	Postal Address	Email Address (if any)	Signature

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

### **EXPLANATORY NOTE**

This document prescribes standard model articles for private companies. A company can either adopt these model articles or prepare its own. However, if a company prepares its own articles and the articles make no provision for a matter for which provision is included in these model articles and they do not expressly exclude that provision, the provision in the standard model article is deemed to apply. Furthermore, these articles shall be read with the relevant provisions of the Act, and where provisions of these articles are in conflict with the provisions of the Act, the provisions of the Act shall prevail.

