

Companies Act 2006 – amendments to articles of association of a listed company: a pro forma circular to shareholders describing changes to articles of association to reflect the provisions of the Companies Act 2006 in force December 2007 and those coming into force in October 2008. This pro forma circular was developed by a number of firms represented on the Company Law Sub-Committee and the UKLA has confirmed that the changes described can be regarded as not containing unusual features (see List Issue No 17 and minutes of the meetings of the Sub-Committee on 18 October 2007 and 27 November 2007).

The aim of this circular is to make suggestions only and not to give definitive advice. No liability whatsoever is accepted by those involved in the preparation of the circular to any company or individual who relies on material in it.

Amended to reflect the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 - 3 January 2008

General update - 26 February 2008

Amended to reflect institutional concern regarding the inclusion of dispute resolution provisions – 14 August 2008

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.

If you are in any doubt as to any aspect of the proposals referred to in this document or as to the action you should take, you should seek your own advice from a stockbroker, solicitor, accountant, or other professional adviser.

If you have sold or otherwise transferred all of your shares, please pass this document together with the accompanying documents to the purchaser or transferee, or to the person who arranged the sale or transfer so they can pass these documents to the person who now holds the shares.

13.3.1(6)

Company plc

(incorporated and registered in England and Wales under number [•])

NOTICE OF ANNUAL GENERAL MEETING

Notice of the Annual General Meeting of the Company to be held at [•] on [•] at [•] is set out at the end of this circular.

Whether or not you propose to attend the Annual General Meeting, please complete and submit a proxy form in accordance with the instructions printed on the enclosed form. The proxy form must be received not less than [48] hours before the time of the holding of the Annual General Meeting.

PART I

Company plc

(incorporated and registered in England and Wales under number [•])

Registered Office:

[•]

[Date]

To the Shareholders of Company Shares

Notice of Annual General Meeting

Dear Shareholder,

I am pleased to be writing to you with details of our Annual General Meeting (“**AGM**”) which we are holding at [•] on [•] at [•]. The formal notice of Annual General Meeting is set out on page [•] of this document.

If you would like to vote on the resolutions but cannot come to the AGM, please fill in the proxy form sent to you with this notice and return it to our registrars as soon as possible. They must receive it by [•] on [•].

[Final dividend

Shareholders are being asked to approve a final dividend of [•] per ordinary share for the year ended [•]. If you approve the recommended final dividend, this will be paid on [•] to all ordinary shareholders who were on the register of members on [•].]

[Board changes

[As applicable]

[Other relevant business]

New Articles of Association

We are also asking shareholders to approve a number of amendments to our articles of association primarily to reflect the provisions of the Companies Act 2006. An explanation of the main changes between the proposed and the existing articles of association is set out in the appendix on page [•] of this document.

Explanatory notes on all the business to be considered at this year’s AGM appear on pages [•] to [•] of this document.

The directors consider that all the resolutions to be put to the meeting are in the best interests of the Company and its shareholders as a whole. Your Board will be voting in favour of them and unanimously recommends that you do so as well.

13.3.1(5)

Yours sincerely,

Chairman

Inspection of documents

The following documents will be available for inspection at [•] and at the office of [•] from [•] until the time of the AGM and at [the AGM location] from 15 minutes before the AGM until it ends:

13.8.10(2)

- *Copies of the executive directors' service contracts*
- *Copies of letters of appointment of the non-executive directors*
- *A copy of the proposed new articles of association of the Company, and a copy of the existing articles of association marked to show the changes being proposed in resolution [•].*

Company plc

NOTICE OF ANNUAL GENERAL MEETING

This year's annual general meeting will be held at [•] on [•] at [•]. You will be asked to consider and pass the resolutions below. Resolutions [•] to [•] (inclusive) will be proposed as special resolutions. All other resolutions will be proposed as ordinary resolutions.

Ordinary resolutions

1. [insert relevant text]

Special resolutions

2. [insert relevant text]

- [x] That the Articles of Association produced to the meeting and initialled by the chairman of the meeting for the purpose of identification be adopted as the Articles of Association of the Company in substitution for, and to the exclusion of, the existing Articles of Association.

[Date]

By order of the Board

[]

Company Secretary

Registered Office:

[]

Registered in England and Wales No. [•]

Notes

1. Members are entitled to appoint a proxy to exercise all or any of their rights to attend and to speak and vote on their behalf at the meeting. A shareholder may appoint more than one proxy in relation to the Annual General Meeting provided that each proxy is appointed to exercise the rights attached to a different share or shares held by that shareholder. A proxy need not be a shareholder of the Company. A proxy form which may be used to make such appointment and give proxy instructions accompanies this notice. [If you do not have a proxy form and believe that you should have one, or if you require additional forms, please contact [•] on [•].] *[NOTE: Any*

additional rights to appoint more than one proxy contained in the Company's articles also need to be described (CA 2006, s325(1)(b))

2. To be valid any proxy form or other instrument appointing a proxy must be received by post or (during normal business hours only) by hand at [•] no later than [•] on [•].
3. The return of a completed proxy form, other such instrument or any CREST Proxy Instruction (as described in paragraph 9 below) will not prevent a shareholder attending the Annual General Meeting and voting in person if he/she wishes to do so.
4. Any person to whom this notice is sent who is a person nominated under section 146 of the Companies Act 2006 to enjoy information rights (a "Nominated Person") may, under an agreement between him/her and the shareholder by whom he/she was nominated, have a right to be appointed (or to have someone else appointed) as a proxy for the Annual General Meeting. If a Nominated Person has no such proxy appointment right or does not wish to exercise it, he/she may, under any such agreement, have a right to give instructions to the shareholder as to the exercise of voting rights.
5. The statement of the rights of shareholders in relation to the appointment of proxies in paragraphs 1 and 2 above does not apply to Nominated Persons. The rights described in these paragraphs can only be exercised by shareholders of the Company.
6. To be entitled to attend and vote at the Annual General Meeting (and for the purpose of the determination by the Company of the votes they may cast), Shareholders must be registered in the Register of Members of the Company at [•] on [•] (or, in the event of any adjournment, [•] on the date which is two days before the time of the adjourned meeting). Changes to the Register of Members after the relevant deadline shall be disregarded in determining the rights of any person to attend and vote at the meeting.
7. As at [•] (being the last business day prior to the publication of this Notice) the Company's issued share capital consists of [•] ordinary shares, carrying one vote each. Therefore, the total voting rights in the Company as at [•] are [•].
8. CREST members who wish to appoint a proxy or proxies through the CREST electronic proxy appointment service may do so by using the procedures described in the CREST Manual. CREST Personal Members or other CREST sponsored members, and those CREST members who have appointed a service provider(s), should refer to their CREST sponsor or voting service provider(s), who will be able to take the appropriate action on their behalf.
9. In order for a proxy appointment or instruction made using the CREST service to be valid, the appropriate CREST message (a "CREST Proxy Instruction") must be properly authenticated in accordance with CRESTCo's specifications, and must contain the information required for such instruction, as described in the CREST Manual. The message, regardless of whether it constitutes the appointment of a proxy or is an amendment to the instruction given to a previously appointed proxy must, in order to be valid, be transmitted so as to be received by the issuer's agent (ID [•]) by [•] on [•]. For this purpose, the time of receipt will be taken to be the time (as determined by the timestamp applied to the message by the CREST Application Host) from which the issuer's agent is able to retrieve the message by enquiry to CREST in the manner prescribed by CREST. After this time any change of instructions to proxies appointed through CREST should be communicated to the appointee through other means.
10. CREST members and, where applicable, their CREST sponsors, or voting service providers should note that CRESTCo does not make available special procedures in CREST for any particular message. Normal system timings and limitations will, therefore, apply in relation to the input of CREST Proxy Instructions. It is the responsibility of the CREST member concerned to take (or, if the CREST member is a CREST personal member, or sponsored member, or has appointed a voting service provider, to procure that his CREST sponsor or voting service provider(s) take(s) such action as shall be necessary to ensure that a message is transmitted by means of the CREST system by any particular time. In this connection, CREST members and, where applicable, their

CREST sponsors or voting system providers are referred, in particular, to those sections of the CREST Manual concerning practical limitations of the CREST system and timings.

11. The Company may treat as invalid a CREST Proxy Instruction in the circumstances set out in Regulation 35(5)(a) of the Uncertificated Securities Regulations 2001.

12. *[NOTE: This language is only required to be included from the time that Part 16 CA 2006 comes into force (i.e. 6 April 2008) and then only where (i) the Company is a quoted company within the meaning of section 531 CA 2006, and (ii) the meeting is also the accounts meeting, i.e. the meeting at which the company's report and accounts are to be laid in accordance with section 437 CA 2006.]* [Shareholders should note that it is possible that, pursuant to requests made by shareholders of the Company under section 527 of the Companies Act 2006, the Company may be required to publish on a website a statement setting out any matter relating to: (i) the audit of the Company's accounts (including the auditor's report and the conduct of the audit) that are to be laid before the Annual General Meeting; or (ii) any circumstance connected with an auditor of the Company ceasing to hold office since the previous meeting at which annual accounts and reports were laid in accordance with section 437 of the Companies Act 2006. The Company may not require the shareholders requesting any such website publication to pay its expenses in complying with sections 527 or 528 of the Companies Act 2006. Where the Company is required to place a statement on a website under section 527 of the Companies Act 2006, it must forward the statement to the Company's auditor not later than the time when it makes the statement available on the website. The business which may be dealt with at the Annual General Meeting includes any statement that the Company has been required under section 527 of the Companies Act 2006 to publish on a website.]

13. In order to facilitate voting by corporate representatives at the meeting, arrangements will be put in place at the meeting so that (i) if a corporate shareholder has appointed the chairman of the meeting as its corporate representative with instructions to vote on a poll in accordance with the directions of all of the other corporate representatives for that shareholder at the meeting, then on a poll those corporate representatives will give voting directions to the chairman and the chairman will vote (or withhold a vote) as corporate representative in accordance with those directions; and (ii) if more than one corporate representative for the same corporate shareholder attends the meeting but the corporate shareholder has not appointed the chairman of the meeting as its corporate representative, a designated corporate representative will be nominated, from those corporate representatives who attend, who will vote on a poll and the other corporate representatives will give voting directions to that designated corporate representative. Corporate shareholders are referred to the guidance issued by the Institute of Chartered Secretaries and Administrators on proxies and corporate representatives (www.icsa.org.uk) for further details of this procedure. The guidance includes a sample form of representation letter if the chairman is being appointed as described in (i) above.

EXPLANATORY NOTES TO THE NOTICE OF ANNUAL GENERAL MEETING

The notes on the following pages give an explanation of the proposed resolutions.

Resolutions [•] to [•] are proposed as ordinary resolutions. This means that for each of those resolutions to be passed, more than half of the votes cast must be in favour of the resolution. Resolutions [•] to [•] are proposed as special resolutions. This means that for each of those resolutions to be passed, at least three-quarters of the votes cast must be in favour of the resolution.

[Explanation of resolutions]

Resolution [•]: Adoption of new articles of association

It is proposed in resolution [•] to adopt new articles of association (the “**New Articles**”) in order to update the Company’s current articles of association (the “**Current Articles**”) primarily to take account of changes in English company law brought about by the Companies Act 2006. The Company is also proposing changes to its Current Articles to incorporate dispute resolution provisions all as detailed in the Appendix.

The principal changes introduced in the New Articles are summarised in the Appendix. Other changes, which are of a minor, technical or clarifying nature and also some more minor changes which merely reflect changes made by the Companies Act 2006 have not been noted in the Appendix. The New Articles showing all the changes to the Current Articles are available for inspection, as noted on page [•] of this document.

APPENDIX

EXPLANATORY NOTES OF PRINCIPAL CHANGES TO THE COMPANY'S ARTICLES OF ASSOCIATION

1. Articles which duplicate statutory provisions

Provisions in the Current Articles which replicate provisions contained in the Companies Act 2006 are in the main [to be removed in the New Articles] [amended to bring them into line with the Companies Act 2006]. [This is in line with the approach advocated by the Government that statutory provisions should not be duplicated in a company's constitution.] Certain examples of such provisions include provisions as to the form of resolutions, the variation of class rights, the requirement to keep accounting records and provisions regarding the period of notice required to convene general meetings. The main changes made to reflect this approach are detailed below.

2. Form of resolution

The Current Articles contain a provision that, where for any purpose an ordinary resolution is required, a special or extraordinary resolution is also effective and that, where an extraordinary resolution is required, a special resolution is also effective. This provision is being [removed] [amended] as the concept of extraordinary resolutions has not been retained under the Companies Act 2006. [Further, the remainder of the provision is reflected in full in the Companies Act 2006.]

The Current Articles enable members to act by written resolution. Under the Companies Act 2006 public companies can no longer pass written resolutions. These provisions have therefore been removed in the New Articles.

3. Variation of class rights

The Current Articles contain provisions regarding the variation of class rights. The proceedings and specific quorum requirements for a meeting convened to vary class rights are contained in the Companies Act 2006. The relevant provisions have therefore been [removed] [amended] in the New Articles.

4. Convening extraordinary and annual general meetings

The provisions in the Current Articles dealing with the convening of general meetings and the length of notice required to convene general meetings are being [removed in the New Articles] because the relevant matters are provided for in the Companies Act 2006] [amended to conform to new provisions in the Companies Act 2006]. In particular an extraordinary general meeting to consider a special resolution can be convened on 14 days' notice whereas previously 21 days' notice was required.

5. Votes of members

Under the Companies Act 2006 proxies are entitled to vote on a show of hands whereas under the Current Articles proxies are only entitled to vote on a poll. [The time limits for the appointment or termination of a proxy appointment have been altered by the Companies Act 2006 so that the articles cannot provide that they should be received more than 48 hours before the meeting or in the case of a poll taken more than 48 hours after the meeting, more than 24 hours before the time for the taking of a poll, with weekends and bank holidays being permitted to be excluded for this purpose.] Multiple proxies may be appointed provided that each proxy is appointed to exercise the rights attached to a different share held by the shareholder. [Multiple corporate representatives may be appointed (but if they purport to exercise their rights in different ways, then the power is treated as not being exercised).] The New Articles reflect all of these new provisions.

6. Age of directors on appointment

The Current Articles contain a provision [requiring a director's age to be disclosed if he has attained the age of 70 years or more in the notice convening a meeting at which the director is proposed to be elected or re-elected] [limiting the age at which a director can be appointed]. Such provision could now fall foul of the Employment Equality (Age) Regulations 2006 and so has been removed from the New Articles.

7. Conflicts of interest

The Companies Act 2006 sets out directors' general duties which largely codify the existing law but with some changes. Under the Companies Act, from 1 October 2008 a director must avoid a situation where he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the company's interests. The requirement is very broad and could apply, for example, if a director becomes a director of another company or a trustee of another organisation. The Companies Act 2006 allows directors of public companies to authorise conflicts and potential conflicts, where appropriate, where the articles of association contain a provision to this effect. The Companies Act 2006 also allows the articles of association to contain other provisions for dealing with directors' conflicts of interest to avoid a breach of duty. The New Articles give the directors authority to approve such situations and to include other provisions to allow conflicts of interest to be dealt with in a similar way to the current position.

There are safeguards which will apply when directors decide whether to authorise a conflict or potential conflict. First, only directors who have no interest in the matter being considered will be able to take the relevant decision, and secondly, in taking the decision the directors must act in a way they consider, in good faith, will be most likely to promote the company's success. The directors will be able to impose limits or conditions when giving authorisation if they think this is appropriate.

It is also proposed that the New Articles should contain provisions relating to confidential information, attendance at board meetings and availability of board papers to protect a director being in breach of duty if a conflict of interest or potential conflict of interest arises. These provisions will only apply where the position giving rise to the potential conflict has previously been authorised by the directors. It is the Board's intention to report annually on the Company's

procedures for ensuring that the Board's powers of authorisation of conflicts are operated effectively and that the procedures have been followed.

8. Notice of board meetings

Under the Current Articles, when a director is abroad he can request that notice of directors' meetings are sent to him at a specified address and if he does not do so he is not entitled to receive notice while he is away. This provision has been removed, as modern communications mean that there may be no particular obstacle to giving notice to a director who is abroad. It has been replaced with a more general provision that a director is treated as having waived his entitlement to notice, unless he supplies the Company with the information necessary to ensure that he receives notice of a meeting before it takes place.

9. Records to be kept

The provision in the Current Articles requiring the Board to keep accounting records has been removed as this requirement is contained in the Companies Act 2006.

10. Distribution of assets otherwise than in cash

The Current Articles contain provisions dealing with the distribution of assets in kind in the event of the Company going into liquidation. These provisions have been removed in the New Articles on the grounds that a provision about the powers of liquidators is a matter for insolvency law rather than the articles and that the Insolvency Act 1986 confers powers on the liquidator which would enable it to do what is envisaged by the Current Articles.

11. Electronic and web communications

Provisions of the Companies Act 2006 which came into force in January 2007 enable companies to communicate with members by electronic and/or website communications. The New Articles continue to allow communications to members in electronic form and, in addition, they also permit the Company to take advantage of the new provisions relating to website communications. Before the Company can communicate with a member by means of website communication, the relevant member must be asked individually by the Company to agree that the Company may send or supply documents or information to him by means of a website, and the Company must either have received a positive response or have received no response within the period of 28 days beginning with the date on which the request was sent. The Company will notify the member (either in writing, or by other permitted means) when a relevant document or information is placed on the website and a member can always request a hard copy version of the document or information.

12. Directors' indemnities and loans to fund expenditure

The Companies Act 2006 has in some areas widened the scope of the powers of a company to indemnify directors and to fund expenditure incurred in connection with certain actions against directors. In particular, a company that is a trustee of an occupational pension scheme can now indemnify a director against liability incurred in connection with the company's activities as trustee of the scheme. In addition, the existing exemption allowing a company to provide

money for the purpose of funding a director's defence in court proceedings now expressly covers regulatory proceedings and applies to associated companies.

13. [Dispute resolution

The Company believes it is appropriate to provide for a dispute resolution procedure and governing law in its articles. The New Articles provide that arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce will be the primary procedure for dispute resolution in matters involving the Company. Where a court determines that the arbitration provisions cannot be used in respect of a particular dispute or in cases where a member is bringing a derivative claim under the provisions of the Companies Act 2006, the New Articles provide that the courts of England and Wales are to have exclusive jurisdiction.

The governing law of the New Articles is expressed to be English law.]¹

14. General

Generally the opportunity has been taken to bring clearer language into the New Articles.

¹ The ABI and the NAPF have both indicated that they will only approve the inclusion of dispute resolution provisions in the articles of association of the company in circumstances where there are legitimate reasons for its inclusion. Inclusion of the provisions requires discussion with both ABI and NAPF before the proposal is put to shareholders.