

Articles of Association

Companies Act 2006 and Shareholders Rights Regulations – amendments to articles of association of a listed company; a pro forma circular describing the changes to articles of association to reflect (i) the changes to the Companies Act 2006 as a result of the implementation of the Companies (Shareholders' Rights) Regulations 2009 in August 2009 and (ii) provisions of the Companies Act 2006 coming into force in October 2009

UKLA and ABI

The UKLA has confirmed that the changes to the articles of association described in this circular can be regarded as not containing unusual features.

The ABI has also reviewed this proforma circular and has confirmed that it is in line with views on current good practice.

Disclaimer

This pro forma circular was developed by a number of firms represented on the City of London Law Society. 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.

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 by [•].

PART I

Company plc

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

Registered Office:

[•]

[Date]

To the holders of Ordinary 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 [•].]

[Other relevant business]

New Articles of Association

We are asking shareholders to approve a number of amendments to our articles of association primarily to reflect the implementation of the Shareholder Rights Directive in the UK in August 2009 and the remaining provisions of the Companies Act 2006 [and certain amendments to the Uncertificated Securities Regulations 2001]¹ in October 2009. An explanation of the main

¹ Amendments to the Uncertificated Securities Regulations 2001 being made by the Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009 (SI 2009/1889) may be relevant to companies' articles, for instance provisions in the articles which deal with voting record dates for uncertificated shares or refusal to register transfers of shares.

changes between the proposed and the existing articles of association is set out in Part III 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 Board considers 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 memorandum and articles of association marked to show the changes being proposed in resolution [•]*

PART II**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

[•]

Special resolutions[•] That [with effect from 00.01 a.m. on 1 October 2009]²:

- (A) the Articles of Association of the Company be amended by deleting all the provisions of the Company's Memorandum of Association which, by virtue of section 28 Companies Act 2006, are to be treated as provisions of the Company's Articles of Association; and
- (B) 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.

[•] That a general meeting other than an annual general meeting may be called on not less than 14 clear days' notice.

[Date]

By order of the Board

[]

Company Secretary

² The wording in square brackets is to be included where the AGM is held before 1 October 2009.

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 [•] or [•].] *[NOTE: 1: 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) - the description in this paragraph 1 only discharges the obligation to describe the statutory rights.)] [Note 2: S333A CA2006 requires the provision by traded companies of an electronic address for receipt of proxies; the electronic address should be included either in this paragraph, in the form of proxy or on the website. However, where the company's shares are held through CREST and the CREST electronic proxy appointment service is available, the view being taken is that the s333A requirement is satisfied by referring to the CREST website –see Notes 8-11 – and so no further method of electronic voting needs to be made available under s333A]*
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 [•] or at [the electronic address] provided in [Note 1][the proxy form][the website], in each case 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. *[NOTE: If separate forms of notice are being sent to registered members and Nominated Persons, move this rubric to the notice being sent to the Nominated Persons.]*
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. *[NOTE: Only to be included if a single form of notice is being sent to registered members and Nominated Persons.]*
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. *[NOTE: Under s360B of the Companies Act, a traded company must determine the right to vote at any general meeting by reference to the register of members as at a time that is not more than 48 hours before the time for the holding of the meeting. In calculating this maximum permitted period non-working days are excluded. With effect from 1 October 2009, the Uncertificated Securities Regulations 2001 are being amended also to allow for non-working days to be excluded for this purpose.]*

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 Euroclear UK & Ireland Limited's specifications, and must contain the information required for such instruction, as described in the CREST Manual (available via www.euroclear.com/CREST). 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 time stamp 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 Euroclear UK & Ireland Limited 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. Any corporation which is a member can appoint one or more corporate representatives who may exercise on its behalf all of its powers as a member provided that they do not do so in relation to the same shares.
13. *[NOTE: This language is only required to be included when section 527 CA 2006 applies 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. Note section 527(1)(a) applies to accounts for financial years beginning on or after 6 April 2008; section 527(1)(b) applies to auditors appointed for financial years beginning on or after that date.]* [Under section 527 of the Companies Act 2006 members meeting the threshold requirements set out in that section have the right to require the company 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.]
14. Any member attending the meeting has the right to ask questions. The company must cause to be answered any such question relating to the business being dealt with at the meeting but no such answer need be given if (a) to do

so would interfere unduly with the preparation for the meeting or involve the disclosure of confidential information, (b) the answer has already been given on a website in the form of an answer to a question, or (c) it is undesirable in the interests of the company or the good order of the meeting that the question be answered.

15. A copy of this notice, and other information required by s311A of the Companies Act 2006, can be found at [website address]. *[NOTE: s311A requires certain information to be made available on the Company's website in advance of the general meeting and maintained on the website for a two-year period.]*

16. *[NOTE: Include if notice given more than six clear weeks before the meeting.]* [Under section 338 and section 338A of the Companies Act 2006, members meeting the threshold requirements in those sections have the right to require the company (i) to give, to members of the company entitled to receive notice of the meeting, notice of a resolution which may properly be moved and is intended to be moved at the meeting and/or (ii) to include in the business to be dealt with at the meeting any matter (other than a proposed resolution) which may be properly included in the business. A resolution may properly be moved or a matter may properly be included in the business unless (a) (in the case of a resolution only) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise), (b) it is defamatory of any person, or (c) it is frivolous or vexatious. Such a request may be in hard copy form or in electronic form, must identify the resolution of which notice is to be given or the matter to be included in the business, must be authorised by the person or persons making it, must be received by the company not later than [●], being the date 6 clear weeks before the meeting, and (in the case of a matter to be included in the business only) must be accompanied by a statement setting out the grounds for the request.]

17. *[NOTE: Under s311(3)(e), where the company is offering the facility to members to vote by electronic means, the notice must include a statement of the procedure for doing so. This refers to where the company is holding and conducting a meeting in such a way that persons who are not present together at the same place may be electronic means attend and speak and vote at it, e.g. satellite meetings held in various locations linked electronically: see s360A. Where this is the case, the following note should be included]* [Members may attend speak and vote at the meeting by [description of procedures including details required by s311(3)(e)]]

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.

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 the coming into force of the Companies (Shareholders’ Rights) Regulations 2009 (the “**Shareholders’ Rights Regulations**”) [and][,] the implementation of the last parts of the Companies Act 2006 [and amendments to the Uncertificated Securities Regulations 2001]. [The resolution adopting the New Articles will only become effective on 1 October 2009.]

The principal changes introduced in the New Articles are summarised in Part III. 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 [or][,] the Shareholders’ Rights Regulations [or the Uncertificated Securities Regulations 2001], or conform the language of the New Articles with that used in the model articles for public companies produced by the Department for Business, Innovation and Skills have not been noted in Part III. The New Articles showing all the changes to the Current Articles are available for inspection, as noted on page [•] of this document.

Resolution [•]: Notice of general meetings³

Changes made to the Companies Act 2006 by the Shareholders’ Rights Regulations increase the notice period required for general meetings of the Company to 21 days unless shareholders approve a shorter notice period, which cannot however be less than 14 clear days. (AGMs will continue to be held on at least 21 clear days’ notice.)

[Before][Until] the coming into force of the Shareholders’ Rights Regulations on 3 August 2009, the Company [was][will be] able to call general meetings other than an AGM on 14 clear days’ notice without obtaining such shareholder approval. In order to preserve this ability, Resolution [•] seeks such approval. The approval will be effective until the Company’s next annual general meeting, when it is intended that a similar resolution will be proposed.

³ This assumes that the Company does not have any provisions in its articles which would conflict with the position under the Companies Act 2006 regarding notice periods for general meetings.

Note that the changes to the Companies Act 2006 mean that, in order to be able to call a general meeting on less than 21 clear days' notice, the Company must make a means of electronic voting available to all shareholders for that meeting.

PART III

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

1. The Company's objects

The provisions regulating the operations of the Company are currently set out in the Company's memorandum and articles of association. The Company's memorandum contains, among other things, the objects clause which sets out the scope of the activities the Company is authorised to undertake. This is drafted to give a wide scope.

The Companies Act 2006 significantly reduces the constitutional significance of a company's memorandum. The Companies Act 2006 provides that a memorandum will record only the names of subscribers and the number of shares each subscriber has agreed to take in the company. Under the Companies Act 2006 the objects clause and all other provisions which are contained in a company's memorandum, for existing companies at 1 October 2009, are deemed to be contained in the company's articles of association but the company can remove these provisions by special resolution.

Further the Companies Act 2006 states that unless a company's articles provide otherwise, a company's objects are unrestricted. This abolishes the need for companies to have objects clauses. For this reason the Company is proposing to remove its objects clause together with all other provisions of its memorandum which, by virtue of the Companies Act 2006, are treated as forming part of the Company's articles of association as of 1 October 2009. Resolution [●] (A) confirms the removal of these provisions for the Company. As the effect of this resolution will be to remove the statement currently in the Company's memorandum of association regarding limited liability, the New Articles also contain an express statement regarding the limited liability of shareholders.

2. 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.]

3. Change of name

Under the Companies Act 1985, a company could only change its name by special resolution. Under the Companies Act 2006 a company will be able to change its name by other means provided for by its articles. To take advantage of this provision, the New Articles enable the directors to pass a resolution to change the Company's name.

4. Authorised share capital and unissued shares

The Companies Act 2006 abolishes the requirement for a company to have an authorised share capital and the New Articles reflect this.⁴ Directors will still be limited as to the number of shares they can at any time allot because allotment authority continues to be required under the Companies Act 2006, save in respect of employee share schemes.

5. Redeemable shares

Under the Companies Act 1985, if a company wished to issue redeemable shares, it had to include in its articles the terms and manner of redemption. The Companies Act 2006 enables directors to determine such matters instead provided they are so authorised by the articles. The New Articles contain such an authorisation. The Company has no plans to issue redeemable shares but if it did so the directors would need shareholders' authority to issue new shares in the usual way.

6. Authority to purchase own shares, consolidate and sub-divide shares, and reduce share capital

Under the Companies Act 1985, a company required specific enabling provisions in its articles to purchase its own shares, to consolidate or sub-divide its shares and to reduce its share capital or other undistributable reserves as well as shareholder authority to undertake the relevant action. The Current Articles include these enabling provisions. Under the Companies Act 2006 a company will only require shareholder authority to do any of these things and it will no longer be necessary for articles to contain enabling provisions. Accordingly the relevant enabling provisions have been removed in the New Articles.

7. Provision for employees on cessation of business

The Companies Act 2006 provides that the powers of the directors of a company to make provision for a person employed or formerly employed by the company or any of its subsidiaries in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary, may only be exercised by the directors if they are so authorised by the company's articles or by the company in general meeting. The New Articles provide that the directors may exercise this power.

⁴ It is likely that the Current Articles will contain a number of provisions referring to authorised share capital. If New Articles are not being adopted, the Current Articles should be amended to remove these provisions. Typically these provisions will include the statement of authorised share capital, power to increase authorised share capital, words relating to authorised share capital in the power to issue unissued shares and power to cancel unissued shares.

8. Use of seals

Under the Companies Act 1985, a company required authority in its articles to have an official seal for use abroad. Under the Companies Act 2006, such authority will no longer be required. Accordingly, the relevant authorisation has been removed in the New Articles.

The New Articles provide an alternative option for execution of documents (other than share certificates). Under the New Articles, when the seal is affixed to a document it may be signed by one authorised person in the presence of a witness, whereas previously the requirement was for signature by either a director and the secretary or two directors or such other person or persons as the directors may approve.

9. Suspension of registration of share transfers

The Current Articles permit the directors to suspend the registration of transfers. Under the Companies Act 2006 share transfers must be registered as soon as practicable. The power in the Current Articles to suspend the registration of transfers is inconsistent with this requirement. Accordingly, this power has been removed in the New Articles.

10. Vacation of office by directors

The Current Articles specify the circumstances in which a director must vacate office. The New Articles update these provisions to [reflect the approach taken on mental and physical incapacity in the model articles for public companies produced by the Department for Business, Innovation and Skills] [treat physical illness in the same manner as mental illness].

[NOTE: Items 11-13 below are applicable to all companies. Items 14-17 are only applicable to traded companies, i.e. where voting shares are admitted to trading on a regulated market (e.g. LSE main market and listed segment of PLUS, but not AIM.)

11. Voting by proxies on a show of hands

The Shareholders' Rights Regulations have amended the Companies Act 2006 so that it now provides that each proxy appointed by a member has one vote on a show of hands unless the proxy is appointed by more than one member in which case the proxy has one vote for and one vote against if the proxy has been instructed by one or more members to vote for the resolution and by one or more members to vote against the resolution. [The New Articles remove provisions in the Current Articles dealing with proxy voting on the basis that these are dealt with in the Companies Act 2006 and contain a provision clarifying how the provision of the Companies Act 2006 giving a proxy a second vote on a show of hands should apply to discretionary authorities.] [The Current Articles have been amended to reflect these changes.]

12. Voting by corporate representatives

The Shareholders' Rights Regulations have amended the Companies Act 2006 in order to enable multiple representatives appointed by the same corporate member to vote in different ways on a show of hands and a poll. [The New Articles contain provisions which reflect these

amendments.] [The New Articles remove provisions in the Current Articles dealing with voting by corporate representatives on the basis that there are dealt with in the Companies Act 2006.]

13. Electronic conduct of meetings

Amendments made to the Companies Act 2006 by the Shareholders' Rights Regulations specifically provide for the holding and conducting of electronic meetings. The Current Articles have been amended to reflect more closely the relevant provisions.

14. Chairman's casting vote

The New Articles remove the provision giving the chairman a casting vote in the event of an equality of votes as this is no longer permitted under the Companies Act 2006.

15. Notice of general meetings

The Shareholders' Rights Regulations amend the Companies Act 2006 to require the company to give 21 clear days' notice of general meetings unless the company offers members an electronic voting facility and a special resolution reducing the period of notice to not less than 14 days has been passed. Annual general meetings must be held on 21 clear days' notice. [The New Articles amend the provisions of the Current Articles to be consistent with the new requirements.] [The New Articles remove provisions in the Current Articles dealing with notice of general meetings on the basis that this is dealt with in the Companies Act 2006.]

16. Adjournments for lack of quorum

Under the Companies Act 2006 as amended by the Shareholders' Rights Regulations, general meetings adjourned for lack of quorum must be held at least 10 clear days after the original meeting. The Current Articles have been changed to reflect this requirement.

17. Voting record date

Under the Companies Act 2006 as amended by the Shareholders' Rights Regulations the company must determine the right of members to vote at a general meeting by reference to the register not more than 48 hours before the time for the holding of the meeting, not taking account of days which are not working days. [The Current Articles have been amended to reflect this requirement.] [The New Articles remove provisions in the Current Articles dealing with the voting record date on the basis that this is dealt with in the Companies Act 2006.]

18. General

Generally the opportunity has been taken to bring clearer language into the New Articles and in some areas to conform the language of the New Articles with that used in the model articles for public companies produced by the Department for Business, Innovation and Skills.