

### ***Articles of Association***

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 coming into force in October 2009.

### ***EU Shareholder Rights Directive***

A consultation document on the EU Shareholder Rights Directive has recently been issued by BERR. The consultation does not close until 30 January 2009 and the Directive is required to be implemented by 3 August 2009. In line with the note issued by BERR in December 2008, this circular proposes an enabling resolution to reflect one aspect of the Directive. Apart from this one issue, this circular does not address changes to articles or to procedures relating to meetings and voting likely to be required to reflect implementation of the Directive. This is because the final form of the regulations to implement the Directive will not be available before most companies have to issue their AGM notices. It is not expected that companies will take any further measures to implement the Directive until the 2010 AGM season.

### ***Auditor liability limitation agreements***

This circular provides suggested drafting to cater for auditor liability limitation agreements. If a company proposes to enter into such an agreement, shareholder approval is required under section 536 of the Companies Act 2006. The wording in this circular is largely based on the Financial Reporting Council Guidance note (June 2008). This drafting is intended to be a guide to the issues that should be addressed. The particular circumstances of the company should be considered and appropriate amendments made to the proposed drafting.

### ***UKLA***

The UKLA has confirmed that the changes to the articles of association and the proposals regarding the EU Shareholder Rights Directive described in this circular can be regarded as not containing unusual features. We are still discussing with the UKLA the correct treatment of auditor liability limitation agreements in light of the issues raised by the ABI. In the meantime, companies proposing to enter into auditor liability limitation agreements should either submit an early draft circular to the help desk to confirm whether or not it needs vetting or submit the circular to the UKLA in accordance with Chapter 13 of the Listing Rules.

### ***ABI***

ABI has also reviewed this proforma circular. **ABI has asked that it be made clear that auditor liability limitation agreements are not compulsory, and as such are not to be regarded as standard. Many shareholders continue to have significant concerns over companies proposing to enter into such agreements. Before any agreements are proposed it is recommended that companies engage in extensive consultation with their shareholders.**

### ***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)

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**Company plc**

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

**NOTICE OF ANNUAL GENERAL MEETING**

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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 holders 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 [•].

[Other relevant business]

**Auditor Liability Limitation Agreement**

Under the Companies Act 2006, companies can agree to limit their auditors’ liability to the company. Such arrangements must be agreed annually and must be approved by shareholders. The Company is seeking shareholders’ approval to enter into such an agreement for the financial year ending [•]. Details of the principal terms of the proposed agreement [(which follow the form proposed in Appendix B to the guidance published by the Financial Reporting Council in June 2008)<sup>1</sup>] and the reasons why the Company is proposing to enter into

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<sup>1</sup> If changes are made to the form set out in Appendix B to the guidance published by the Financial Reporting Council in June 2008, this should be flagged here and further details set out in the Explanatory Notes. Furthermore, if the

the agreement are set out on page [•] of this document. [The principal terms of the proposed agreement are set out in Part III on page [•] of this document.]<sup>2</sup>

### **[New Articles of Association**

We are also asking shareholders to approve a number of amendments to our articles of association primarily to reflect the implementation of the remaining provisions of the Companies Act 2006 in October 2009. An explanation of the main changes between the proposed and the existing articles of association is set out in Part IV on page [•] of this document.]<sup>3</sup>

### **Notice of General Meetings<sup>4</sup>**

The Shareholder Rights Directive is intended to be implemented in the UK in August this year. One of the requirements of the Directive is that all general meetings must be held on 21 days' notice unless shareholders agree to a shorter notice period. We are currently able to call general meetings (other than annual general meetings) on 14 days' notice.<sup>5</sup> We are proposing a resolution at the AGM so that we can continue to be able to do so after the Directive is implemented.

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*

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changes result in a less favourable position for the Company, early consultation with institutional shareholders is recommended.

13.8.10(2)

<sup>2</sup> If the principal terms are not to be set out verbatim, consider whether additional description of the terms is required in the Explanatory Notes.

<sup>3</sup> Given that the implementation of the Shareholder Rights Directive is likely to require changes to articles of association, companies may consider whether it is better to postpone amending articles of association for the final Companies Act 2006 changes until AGMs in 2010 as none of the changes to reflect the final implementation phase of the Companies Act 2006 need to be made in 2009.

<sup>4</sup> This section is only applicable to companies whose shares are admitted to trading on a regulated market (so for example, AIM-listed companies are not caught).

<sup>5</sup> 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.

*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:*

- *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 [•]*
- *A copy of the principal terms of the auditor liability limitation agreement proposed to be entered into between the Company and [name of auditor].*

## 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**

- [•] That the principal terms (as defined in section 536(4) Companies Act 2006), produced to the meeting and initialled by the chairman of the meeting for the purpose of identification, of a liability limitation agreement (as defined in section 534 Companies Act 2006) for the financial year ending [date] proposed to be entered into by the Company and [name of auditor] be and are hereby approved.

**Special resolutions**

- [•] That with effect from 00.01 a.m. on 1 October 2009:
- (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

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) - the description in this paragraph 1 only discharges the obligation to describe the statutory rights.]*
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. *[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.
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. 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 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. *[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.]*  
 [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](http://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.

**Resolution [•]: Approval of auditor liability limitation agreement** [ *N.B. the explanation may need to be amended to reflect the proposal being put to shareholders.*]

It is proposed in resolution [•] to approve the principal terms of a proposed liability limitation agreement to be entered into between the Company and [*name of auditor*]. The principal terms are [summarised below/set out in Part III].

### *Background*

Under sections 532 to 538 of the Companies Act 2006, which came into force on 6 April 2008, auditors can agree with a company whose accounts they are auditing to a contractual limit on their liability to the company of an amount that is not less than such amount as is fair and reasonable in all the circumstances. A separate agreement is required for each year's audit and each such agreement must be approved by the company's shareholders.

The Company's auditors, [*name of auditor*], [have proposed]<sup>6</sup> to limit their liability to the Company for negligence, default[, ] [or] breach of duty [or breach of trust] [(other than deliberate breach of fiduciary duty [or deliberate breach of trust])]<sup>7</sup> occurring in the course of the audit of the Company's accounts for the current financial year. The limit proposed would be based on the auditor's proportionate share of responsibility for any loss.

### *Principal terms of the auditor liability limitation agreement*

Under the proposed terms of the auditor liability limitation agreement, the Company would agree that:

- if there is someone other than [*name of auditor*] who is also liable to the Company for all or part of the same loss or, whether or not liable to the Company, has caused or contributed to that loss, or

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<sup>6</sup> This wording is included for guidance only, it should be tailored to reflect the circumstances under which the liability limitation agreement has been requested by the auditors.

<sup>7</sup> The FRC notes that companies and their auditors may wish to specify circumstances, such as deliberate breach of fiduciary duty or deliberate breach of trust, to which the limitation will not apply.

- the Company itself has contributed to the loss (for example through systemic failures or weaknesses in procedure, resources or other matters)

[*name of auditor*]'s liability would be limited to such amount as is just and equitable having regard to the extent to which each of the auditor, such other person and the Company is liable for, or has caused or contributed to, that loss. The limitation would apply to liability for negligence, default[,] [or] breach of duty [(but not deliberate breach of fiduciary duty)] [or breach of trust] [(but not deliberate breach of trust)]. The limitation would not apply to liability based on fraud or dishonesty of the auditor.

This means, in effect, that where the limitation applies, the auditor would be responsible for its proportionate share of the loss suffered by the Company. The Company would not be able to recover damages from [*name of auditor*] for any loss caused by its own acts or the acts of any other party (this could include a director or employee of the Company, an adviser to the Company or a governmental authority or regulator), even if these others were not able to compensate the Company. The acts of governmental authorities and regulators are only taken into account if the relevant entity has breached a duty [to the Company] [but applies whether or not that entity has immunity from liability] [and has no immunity from liability<sup>8</sup>]. However, in accordance with the requirements of the Companies Act 2006, [*name of auditor*]'s liability will not be reduced to less than such amount as is fair and reasonable in all the circumstances.

The question of what is “just and equitable” would ultimately be a matter to be determined by a court and in making its determination the court would be required to disregard the fact that any of the other parties with responsibility for the loss did not have the ability to pay any compensation. A loss caused by a director or employee may be arithmetically wholly, or almost wholly, attributable to the act of that director or employee, who is likely not to have the means to pay compensation for the loss he has caused. In proposing specimen terms for auditor liability limitation agreements the FRC has suggested that:

*“Where there is a fraudulent employee of the Company or someone outside the Company who has been fraudulent and for whom no one (including the Company) is vicariously liable, the Company may have little prospect of recovering the loss caused by such fraudulent persons. The impecuniosity of the fraudster and the difficulty of recovering compensation from him are matters which are to be ignored. However, the “just and equitable” wording would allow the Court to depart from a strictly arithmetical approach when determining the amount of the Auditor’s liability where that approach would not give a fair result. For example, it might be thought unfair for the Auditor to be required to pay only a very small fraction of the loss where it had failed to detect fraud on the part of a Company’s book keeper, in circumstances where the Auditor had failed to detect something which would have been obvious on a proper audit. In such circumstances, the just and equitable test would permit the Court to take account of such matters as:*

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<sup>8</sup> See para 3 of Explanatory Note 3 to the Specimen Principal Terms

- (a) *the opportunities reasonably available to the Auditor to discover the fraud or dishonesty of the employee;*
- (b) *the opportunities reasonably available to the Company to discover such fraud or dishonesty, as well as any fault on the part of the Company and its other employees or directors”.*

[[*name of auditor*] has confirmed to the Company that it agrees that this approach is appropriate.]<sup>9</sup> [*Companies and their advisers should consider what formalities are appropriate to record the agreement of the auditor (including whether that agreement should be included in the audit engagement letter or liability limitation agreement).*]

The Company's [audit committee] has considered this proposal and has concluded that, although by adopting it there is an increased risk that the Company may suffer a loss for which it cannot recover full compensation, it is appropriate for the Company to enter into the proposed liability limitation agreement for the following reasons:

- [The proposed agreement is [an essential] [a necessary] element of the arrangements under which the Company is able to secure the appointment of [*name of auditor*] who the Company believes are well suited to audit its affairs by virtue of their [specialist industry expertise/ geographic coverage] [and who have proposed fees that are competitive and represent good value for money].
- The pressure in the UK for companies to be allowed to agree limitations of auditors' liability has arisen as a result of increasing numbers and value of claims against auditors. This was perceived to lead to a number of risks:
  - that one or more leading audit firms might cease to offer audit services to UK companies;
  - that audit fees might increase;
  - that auditors might be encouraged to adopt a defensive, risk-adverse approach to auditing.

In its Recommendation concerning the limitation of the civil liability of statutory auditors and audit firms, the European Commission specifically drew attention to the risk that unlimited liability might deter audit firms from providing audit services. The FRC has stated that it has identified that the significant uncertainty and cost that would occur in the event of one or more major accounting firms leaving the market is a major threat to confidence in corporate reporting in the UK. The [audit committee] shares these concerns and believes it would be detrimental to the interests of the Company if the concerns are not addressed. It is,

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<sup>9</sup> If the auditor does not agree with this approach and the company accepts that position, consider whether that should be stated.

therefore, appropriate that the Company should be prepared to accept the principle that the auditors' liability should be limited.

- In its discussions with [*name of auditor*], the audit committee has received assurances that the quality of the audit will be [preserved and] enhanced as a result of the agreement that liability should be limited. Specifically, [*state steps taken/assurances received*]. [*Name of auditor*] has also agreed [*describe other benefits obtained*].

*Note: The above are examples of why it may be appropriate to propose entering into an auditor liability limitation agreement. They may not be applicable to all cases. Other justifications may be relevant for particular companies. Further examples are set out in the FRC guidance. ISC guidance states that investors will welcome disclosure from audit committees as to the ways in which they have used their discussions with auditors on liability limitation to assure themselves that audit quality will be preserved and enhanced and to secure other benefits for the company.*

The Company's UK subsidiaries are also proposing to enter into substantially the same form of agreement to limit the liability of [*name of auditor*] on a proportionate basis subject to the Company passing resolution [•]. [*Note: This assumes the UK group has the same auditor.*] [*Overseas company arrangements to be disclosed.*]

The principal terms of the proposed liability limitation agreement are [set out in Part III and] available for inspection, as noted on page [•] of this document.

#### **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 implementation on 1 October 2009 of the last parts of the Companies Act 2006. 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 IV. 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 conform the language of the New Articles with that used in the model articles for public companies produced by the Department for Business, Enterprise and Regulatory Reform have not been noted in Part IV. 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 meetings**

This resolution is required to reflect the proposed implementation in August 2009 of the Shareholder Rights Directive. The regulation implementing this Directive will increase the notice period for general meetings of the Company to 21 days. The Company is currently able to call

general meetings (other than an AGM) on 14 clear days' notice<sup>10</sup> and would like to preserve this ability. In order to be able to do so after August 2009, shareholders must have approved the calling of meetings on 14 days' notice. 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. The Company will also need to meet the requirements for electronic voting under the Directive before it can call a general meeting on 14 days' notice.

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<sup>10</sup> This assumes that the Company does not have any provisions in its articles which would conflict with the position under the Companies Act regarding notice periods for general meetings.

**[PART III**

**PRINCIPAL TERMS OF THE AUDITOR  
LIABILITY LIMITATION AGREEMENT]**

## **PART IV**

### **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 currently contained in a company's memorandum, for existing companies at 1 October 2009, will be deemed to be contained in a 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 to be 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 the 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**

Currently, a company can 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.<sup>11</sup> 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**

At present if a company wishes to issue redeemable shares, it must 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 law currently in force a company requires 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.

#### **8. Use of seals**

A company currently requires authority in its articles to have an official seal for use abroad. After 1 October 2009 such authority will no longer be required. Accordingly the relevant authorisation has been removed in the New Articles.

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<sup>11</sup> 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.

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, Enterprise and Regulatory Reform.

#### **11. 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, Enterprise and Regulatory Reform.