

**The Companies (Northern Ireland) 1986**

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**Company Limited by Shares<sup>1</sup>**

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**Memorandum**

**and**

**Articles of Association**

**of**

*[insert name of company]*

**Community Interest Company<sup>2</sup>**

Model constitution for a private company limited by shares with a small membership  
and the ability to pay dividends to private investors<sup>3</sup>

## **The Companies (Northern Ireland) 1986**

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### **Company Limited by Shares**

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#### **Memorandum of Association<sup>4</sup>**

**of**

**[insert name] Community Interest Company**

#### **1 COMMUNITY INTEREST COMPANY**

The Company is to be a community interest company.

#### **2 NAME**

The Company's name is "[insert name] Community Interest Company".

#### **3 REGISTERED OFFICE**

The Company's registered office will be in Northern Ireland<sup>5</sup>.

#### **4 OBJECTS**

The Company's object is to carry on activities which benefit the community and in particular (without limitation) to [insert further specification of objects].<sup>6</sup>

#### **5 POWERS**

The Company has the power to do anything which is incidental or conducive to the furtherance of its object.

#### **6 LIMITED LIABILITY**

The liability of the Members is limited.<sup>7</sup>

#### **7 SHARE CAPITAL**

The Company's share capital is [£100] divided into [100] Ordinary Shares of [£1] each.<sup>8</sup>

We, the subscribers to this Memorandum, wish to form a Company pursuant to this Memorandum; and we agree to take the number of shares shown opposite our respective names.<sup>9</sup>

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**Names, Addresses and Signatures of Subscribers**

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	Number of Shares subscribed for
1. Signature:	[1]
Name:	
Address:	
Date:	
Witness to the above signature:	
Signature:	
Name:	
Address:	
2. Signature:	[1]
Name:	
Address:	
Date:	
Witness to the above signature:	
Signature:	
Name:	

Address:

**The Companies (Northern Ireland) 1986**

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**Company Limited by Shares**

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**Articles of Association<sup>10</sup>**

**of**

**[insert name] Community Interest Company**

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## PART ONE: DEFINITIONS AND INTERPRETATION

### 1 DEFINITIONS

In these Articles the following terms shall have the following meanings.

<b>Term</b>	<b>Meaning</b>
<b>“1986 Order”</b>	the Companies (Northern Ireland) Order 1986
<b>“2004 Act”</b>	the Companies (Audit, Investigations and Community Enterprise) Act 2004
<b>“address”</b>	in relation to electronic communications, includes any number or address used for the purposes of such communications
<b>“Articles”</b>	the Company’s Articles of Association
<b>“Asset Locked Body”</b>	a community interest company, Charity or Scottish Charity or a body established outside Great Britain that is equivalent to any of those persons <sup>11</sup>
<b>“Chair”</b>	the meaning given in article 16 <sup>12</sup>
<b>“Charity”</b>	(except in the phrase, “Scottish Charity” and “Northern Ireland Charity”) the meaning given by Section 96 of the Charities Act 1993 <sup>13</sup>
<b>“clear days”</b>	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect
<b>“Company”</b>	[ <i>insert name</i> ] Community Interest Company
<b>“Director”</b>	a Director of the Company, including any person occupying the position of Director, by whatever name called
<b>“Directors’ functions”</b>	the meaning given in article 5(1)
<b>“electronic”</b>	the meaning given in the Electronic Communications Act

<b>“communication”</b>	(Northern Ireland) 2001 <sup>14</sup>
<b>“holder”</b>	in relation to any shares, the Member whose name is entered in the Company’s register of Members as the holder of those shares
<b>“in writing”</b>	written printed or transmitted writing including by electronic communication
<b>“majority decision”</b>	the meaning given in article 11
<b>“Members”</b>	the members of the Company as defined in the 1986 Order <sup>15</sup>
<b>“Memorandum”</b>	the Company’s Memorandum of Association
<b>“Northern Ireland Charity”</b>	as defined in section 35 of Charities Act (Northern Ireland 1964 (1964 C33)).
<b>“Regulations”</b>	the Community Interest Company Regulations 2005
<b>“Regulator”</b>	the Regulator of Community Interest Companies
<b>“relevant quorum”</b>	the meaning given in article 15(1)
<b>“remuneration”</b>	any reasonable payment or benefit received, or to be received, by a Director or employee of the Company in consideration for that Director’s or employee’s services to the Company, and any arrangement in connection with the payment of a pension, allowance or gratuity to or in respect of any person who is to be, is, or has been a Director or employee of the Company or any of its predecessors in business
<b>“Scottish Charity”</b>	A body entered in the Scottish Charity Register <sup>16</sup>
<b>“Secretary”</b>	the individual appointed as Company Secretary under article 40
<b>“shares”</b>	shares in the Company
<b>“subsidiary”</b>	the meaning given in Article 4 of the Companies (Northern Ireland) Order 1986 <sup>17</sup>





**Registered Office / Principal office address:** [            ]

*[Insert above the relevant details of any Asset Locked Body to which you may wish the Company to be able to transfer assets other than for full consideration and to which you would wish any remaining residual assets of the Company to be transferred if it is wound up.]*

### **PART THREE: DIRECTORS' FUNCTIONS**

#### **5 DIRECTORS' GENERAL AUTHORITY TO MANAGE THE COMPANY**

- (1) The Directors' functions are:
- (a) to manage the Company's business; and
  - (b) to exercise all the powers of the Company for any purpose connected with the Company's business.<sup>22</sup>
- (2) The Directors may delegate their functions in accordance with the Articles.<sup>23</sup>

#### **6 DIRECTORS' GENERAL AUTHORITY TO DELEGATE FUNCTIONS**

- (1) Subject to the Articles, the Directors may delegate any of their functions to any person they think fit.
- (2) The Directors must not delegate to any person who is not a Director any decision connected with:
- (a) the taking of decisions by Directors;
  - (b) the appointment of a Director or the termination of a Director's appointment; or
  - (c) the declaration of a dividend.
- (3) Any delegation under paragraph (1) may authorise further delegation of the Directors' functions by any person to whom they are delegated.

#### **7 COMMITTEES OF DIRECTORS**

- (1) Two or more Directors are a "committee" if the Directors have:
- (a) delegated any of the Directors' functions to them; and
  - (b) indicated that they should act together in relation to that function.

- (2) The provisions of the Articles about how the Directors take decisions shall apply, as far as possible, to the taking of decisions by committees.

## **PART FOUR: DECISION-MAKING BY DIRECTORS**

### **8 SCOPE OF RULES**

- (1) References in the Articles to decisions of Directors are to decisions of Directors which are connected with their functions.
- (2) Except where the Articles expressly provide otherwise, provisions of the Articles about how the Directors take decisions do not apply:
- (a) when the Company only has one Director;<sup>24</sup> or
  - (b) to decisions delegated to a single Director.

### **9 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

Any decision which the Directors take:

- (a) must be either a unanimous decision or a majority decision; and
- (b) may, but need not, be taken at a meeting of Directors.

### **10 UNANIMOUS DECISIONS**

- (1) The Directors take a unanimous decision when they all indicate to each other that they share a common view on a matter.
- (2) A unanimous decision need not involve any discussion between Directors.<sup>25</sup>

### **11 MAJORITY DECISIONS**

- (1) The Directors take a majority decision if:
- (a) every Director has been made aware of a matter to be decided by the Directors;
  - (b) all the Directors who indicate that they wish to discuss the matter have had a reasonable opportunity to communicate their views on it to each other; and



- (b) any duty which a Director owes to a person other than the Company in respect of, an actual or proposed transaction or arrangement with the Company.
- (2) For the purposes of paragraph (1)(a), a Director shall be deemed to have an interest in a transaction or arrangement if:
- (a) the Director or any partner or other close relative of the Director has an actual or potential financial interest in that transaction or arrangement;
  - (b) any person specified in paragraph (2)(a) is a partner in a firm or limited partnership, or a director of or a substantial shareholder in any Company, which has an actual or potential commercial interest in that transaction or arrangement; or
  - (c) any other person who is deemed to be connected with that Director for the purposes of Article 325 of the 1986 Order has a personal interest in that transaction or arrangement.
- (3) Subject to paragraph (8)(b), a Director who has a relevant interest must disclose the nature and extent of that interest to the other Directors.
- (4) Subject to paragraphs (5) and (6), when the Directors take a majority decision on any matter relating to a transaction or arrangement in which a Director has a relevant interest:
- (a) no Director who has such a relevant interest may vote on that matter; and
  - (b) for the purposes of determining whether a relevant quorum is present, or whether a majority decision has been taken in relation to that matter, such a Director's participation in the decision-making process shall be ignored.
- (5) Paragraph (4) does not apply:
- (a) if the Director's interest cannot reasonably be regarded as giving rise to any real possibility of a conflict between the interests of the Director and the Company; or
  - (b) if the Director's interest only arises because the Director has given, or has been given, a guarantee, security or indemnity in respect of an obligation incurred by or on behalf of the Company or any of its subsidiaries.
- (6) The Members may by ordinary resolution<sup>29</sup> decide to disapply paragraph (4), either in relation to majority decisions generally or in relation to a particular decision.
- (7) Subject to the 1986 Order, if a Director complies with paragraph (3):
- (a) that Director:

- (i) may be a party to, or otherwise interested in, the transaction or arrangement in which that Director has a relevant interest; and
  - (ii) shall not, by reason of being a Director, be accountable to the Company for any benefit derived from that transaction or arrangement; and
- (b) the transaction or arrangement in which that Director has a relevant interest shall not be liable to be treated as void as a result of that interest.
- (8) For the purposes of paragraph (3):
- (a) a general notice given to the Directors that a Director is to be regarded as having a specified interest in any transaction or arrangement shall be deemed to be a disclosure that the Director has an interest in any such transaction or arrangement of the nature and extent so specified; and
  - (b) any interest of which a Director has no knowledge, and could not reasonably be expected to have knowledge, shall be disregarded.

#### **14 RECORDS TO BE KEPT**

- (1) The Directors are responsible for ensuring that the Company keeps a record in writing of:
- (a) every unanimous or majority decision taken by the Directors; and
  - (b) every declaration by a Director of an interest in an actual or proposed transaction with the Company.
- (2) Any record kept under paragraph (1) must be kept:
- (a) for at least ten years from the date of the decision or declaration recorded in it;
  - (b) together with other such records; and
  - (c) in such a way that it is easy to distinguish such records from the Company's other records.

#### **15 SPECIFIED NUMBER OF DIRECTORS FOR MAJORITY DECISIONS**

- (1) Subject to paragraph (2), no majority decision shall be taken by the Directors unless [*insert quorum*]<sup>30</sup> (the "relevant quorum") participate in the process by which the decision is taken and are entitled to vote on the matter on which the decision is to be taken.
- (2) If the Company has one or more Directors, but the total number of Directors is less than the relevant quorum, the Directors may take a majority decision:
- (a) to appoint further Directors; or

- (b) that will enable the Members to appoint further Directors.<sup>31</sup>

## **16 CHAIRING OF MAJORITY DECISION MAKING PROCESSES**

- (1) The Directors shall appoint a Director to chair the taking of all majority decisions by them.
- (2) If the person appointed under paragraph (1) is for any reason unable or unwilling to chair a particular majority decision making process, the Directors shall appoint another Director to chair that process.
- (3) The Directors may terminate an appointment made under paragraph (1) or paragraph (2) at any time.
- (4) A Director appointed under this article shall be known as the Chair for as long as such appointment lasts.

## **17 DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

- (1) Subject to the Articles, the Directors may make any rule which they think fit about how they take decisions.
- (2) The Directors must ensure that any rule which they make about how they take decisions is communicated to all persons who are Directors while that rule remains in force.

## **18 DEFECT IN APPOINTMENT**

- (1) This article applies if:
  - (a) a decision is taken by the Directors, or a committee of the Directors, or a person acting as a Director; and
  - (b) it is subsequently discovered that a person who, acting as a Director, took, or participated in taking, that decision:
    - (i) was not validly appointed as a Director;
    - (ii) had ceased to hold office as a Director at the time of the decision;
    - (iii) was not entitled to take that decision; or
    - (iv) should, in consequence of a conflict of interest, not have voted in the process by which that decision was taken.
- (2) Where this article applies:







## **27 TRANSMISSION OF SHARES**

- (1) If a Member dies, or ceases to be a Director, the Company shall purchase that Member's shares in accordance with the Articles and that Member's personal representatives (or, in Scotland, executors), or that Member, shall sell such shares to the Company at their nominal value.
- (2) Each Member and each Member's personal representatives (or, in Scotland, executors) irrevocably appoint the Company to be his, her, its or their attorney or agent in his, her, its or their name and on his, her, its or their behalf to do all such things and to sign all such documents as may be necessary in order to give the Company the full benefit of the provisions of this article (and in particular but without limitation, in respect of any third party a certificate signed by any duly authorised officer of the Company that any thing or document falls within the authority hereby conferred shall be conclusive evidence that this is the case).

## **28 PURCHASE OF OWN SHARES**

Subject to the Articles<sup>37</sup> the Company may purchase its own shares (including any redeemable shares) and may make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares. Any share so purchased shall be purchased at its nominal value.

## **29 ALTERATION OF CAPITAL**

- (1) Subject to the 1986 Order and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Members by special resolution determine.
- (2) The Members may by special resolution:
  - (a) increase the Company's share capital by new shares of such amount as the resolution prescribes;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (c) subject to the 1986 Order, sub-divide its shares, or any of them, into shares of smaller amount, and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have preference or advantage as compared with others;
  - (d) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.



## **PART EIGHT: GENERAL MEETINGS (MEETINGS OF MEMBERS)**

### **33 ANNUAL GENERAL MEETING**

The Company shall hold an annual general meeting:

- (a) within 18 months of the Company's date of incorporation and afterwards once in each calendar year (provided that not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next); and
- (b) at such date, time and place as the Directors shall determine.

### **34 OTHER GENERAL MEETINGS**

The Directors may decide to call a general meeting at any time.

### **35 NOTICE**

- (1) Notice of general meetings shall be given to every Member, the Directors and the Company's auditors (if any).
- (2) All general meetings shall be called by at least 21 clear days' notice in writing.
- (3) Every notice calling a general meeting shall specify:
  - (a) the place, date and time of the meeting; and
  - (b) the general nature of the business to be transacted.
- (4) In the case of an annual general meeting, the notice shall specify that the meeting is an annual general meeting.
- (5) If a special resolution<sup>40</sup> is to be proposed, the notice shall contain a statement to that effect and set out the text of the special resolution.

### **36 QUORUM**

- (1) No business shall be transacted at any meeting unless a quorum is present.
- (2) The quorum for a general meeting shall be [*insert quorum*]<sup>41</sup> Members present in person (or, in the case of a corporate Member, by its duly appointed representative) and entitled to vote on the business to be transacted.
- (3) If a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Directors determine.



(6) Unless a poll is held:

(a) a declaration by the chair that a resolution has been:

(i) carried;

(ii) carried unanimously, or by a particular majority;

(iii) lost; or

(iv) not carried by a particular majority, and

an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(7) A poll shall be taken at the general meeting as the chair directs and the chair may appoint scrutineers (who need not be Members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(8) In the case of an equality of votes, whether on a show of hands or on a poll, the chair shall be entitled to a casting vote in addition to any other vote he or she may have as a Member.

(9) The proceedings at any general meeting or on the taking of any poll shall not be invalidated by reason of any accidental informality or irregularity (including with regard to the giving of notice) or any want of qualification in any of the persons present or voting.

(10) No objection shall be raised to the qualification of any voter except at the general meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chair whose decision shall be final and binding.

### **39 MINUTES**

(1) The Directors shall cause minutes to be made and kept, in writing, of all proceedings at general meetings of the Company.

(2) Any such minute, if purported to be signed by the chair of the meeting, or by the chair of the next succeeding general meeting, shall be sufficient evidence of the proceedings.

## **PART NINE: MISCELLANEOUS**

### **40 COMPANY SECRETARY**

- (1) Subject to the provisions of the 1986 Order, the Directors shall decide to appoint an individual to act as Company Secretary for such term and at such remuneration and upon such other conditions as they may think fit.
- (2) The Directors may decide to remove a person from the office of Secretary at any time.

### **41 ACCOUNTS AND REPORTS**

- (1) The Directors shall comply with the requirements of the 1986 Order and any other applicable law as to keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies of annual reports and accounts.<sup>44</sup>
- (2) Subject to paragraph (3), the Company's statutory books and accounting records shall be open to inspection by the Members during usual business hours.
- (3) The Company may in general meeting impose reasonable restrictions as to the time at which and the manner in which the statutory books and accounting records of the Company may be inspected by Members.

### **42 NOTICES**

- (1) Except where the Articles provide otherwise, any notice to be given to or by any person under the Articles shall be in writing to an address for the time being notified for that purpose to the person giving the notice.
- (2) The Company may give any notice to any person under the Articles:
  - (a) in person;
  - (b) by sending it by post in a prepaid envelope addressed to that person at that person's registered address, or by leaving it at that address;
  - (c) by fax or by electronic communication to an address provided for that purpose; or
  - (d) by posting it on a website, where the recipient has been notified of such posting in a manner agreed by that person.
- (3) A person present at any meeting shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.
- (4) Proof that:

- (a) an envelope containing a notice was properly addressed, prepaid and posted; or
- (b) that an electronic communication or fax has been transmitted to the correct address or number,

shall be conclusive evidence that the notice was given.

(5) A notice shall, unless the contrary is proved, be deemed to be given:

- (a) at the expiration of 48 hours after the envelope containing it was posted; or
- (b) in the case of a notice contained in an electronic communication or fax, at the expiration of 48 hours after the time it was transmitted.

### **43 INDEMNITY**

(1) Subject to the 1986 Order, a Director shall be indemnified out of the Company's assets against any expenses which that Director incurs:

- (a) in defending civil proceedings in relation to the affairs of the Company (unless judgement is given against the Director and the judgement is final);
- (b) in defending criminal proceedings in relation to the affairs of the Company (unless the Director is convicted and the conviction is final);
- (c) in connection with any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company (unless the Court refused to grant the Director relief, and the refusal is final).

(2) Judgement, conviction or refusal of relief becomes final if the period for bringing an appeal or any further appeal has ended and any appeal brought is determined, abandoned or otherwise ceases to have effect.

(3) This article is without prejudice to any other indemnity to which a Director may be entitled.

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**Names, Addresses and Signatures of Subscribers**

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1. Signature:

Name:

Address:

Date:

Witness to the above signature:

Signature:

Name:

Address:

2. Signature:

Name:

Address:

Date:

Witness to the above signature:

Signature:

Name:

Address:

## **EXPLANATORY NOTES**

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<sup>1</sup> On the different types of limited company forms available to CICs, see Part 3 of the Regulator’s information and guidance notes.

<sup>2</sup> Section 33 of the 2004 Act provides that the name of any community interest company which is not a public company must end with either the words “community interest company” or the letters “c.i.c.” (or, if the memorandum states that the company’s registered office is to be situated in Wales, with the words “cwmni buddiant cymunedol” or the initials “c.b.c.”).

<sup>3</sup> This model constitution is designed for use by private companies limited by shares, all of whose directors are members of the company and all of whose members are directors of the company. It assumes that the directors will take most important decisions as directors rather than as members, and that directors may hold office continuously for long periods of time without offering themselves for re-election. It also allows, subject to certain procedural safeguards, for relatively informal decision-making by directors (including by exchanges of e-mail). On payment of dividends, see the note on Part Two below. **Before deciding to adopt this model constitution for your company, you should (i) read the whole document, and these notes, carefully; and (ii) fill in the spaces left for company specific details (marked by square brackets). If you are in any doubt at all about your requirements, or the meaning of any part of the model constitution, you should take independent legal or other professional advice. No liability for any loss or damage arising from the use of this model constitution will be accepted by the Regulator, his staff or his legal advisors.**

<sup>4</sup> For general guidance on the memorandum of association, see Part 5 of the Regulator’s information and guidance notes. If you are an existing company wishing to become a community interest company, you will need to amend your memorandum as appropriate, rather than substituting a completely new memorandum.

<sup>5</sup> Depending on the actual location of the company’s registered office, the memorandum must state that the company’s registered office is in England and Wales, Wales or Scotland.

<sup>6</sup> On the specification of the company’s objects, see Part 5 of the Regulator’s information and guidance notes.

<sup>7</sup> On limited liability, see Part 3 of the Regulator’s information and guidance notes.

<sup>8</sup> On share capital generally, see Part 3 of the Regulator’s information and guidance notes. The figures in square brackets in this paragraph are for illustration only. The share capital figures you insert in your company’s memorandum should reflect (i) (in the case of existing companies) its current share capital; (ii) any initial investment in the company by its founding members (or, in the case of an existing company, any new investment associated with its becoming a community interest company); and (iii) your estimate of any likely future investment in the short to medium term (it is not necessary that the whole of the company’s share capital should be issued). It is not necessary for all of the company’s share capital to be subscribed for at the outset. Any modifications to share capital will require the approval of the Members and legal or other professional advice.

<sup>9</sup> For illustration, space for two subscribers (the usual minimum number) has been supplied here. There is no upper limit to the number of subscribers and further entries may be added as appropriate. There is no need for all those who wish to become Members to subscribe to the memorandum (they can purchase their shares and be entered in the register of members after the company has been formed), but it may be simpler to do so. However, since this model constitution assumes that all Members are also Directors, all Members will also have to be validly appointed as Directors in one of the ways specified in article 20.

<sup>10</sup> On articles of association generally, see Part 5 of the Regulator’s information and guidance notes. If you are an existing company wishing to become a community interest company, there is no need to adopt completely new articles, but you must comply with the requirements of the Regulations by including (in the case of a company limited by shares) either the provisions set out in Schedule 2 or those set out in Schedule 3 to the Regulations in the memorandum or the articles of your company.

<sup>11</sup> This definition, like the definitions of “community” (see article 2(2)), “Charity”, “Regulator”, “Scottish charity” and “transfer” (see article 2(2)), is taken from paragraph 1(4) of Schedules 2 and 3 to the Regulations.

<sup>12</sup> In general, the model articles have been drafted without cross-references, so as to reduce the potential for false cross-references which may arise when companies wish to adopt them in modified form or with different

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numbering. **Where there are cross-references, you will need to check whether they need to be amended when modifying or re-numbering the model articles.**

<sup>13</sup> Section 96 of the Charities Act defines “charity” as meaning “any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court’s jurisdiction with respect to charities”.

<sup>14</sup> See section 15 of the Electronic Communications Act (Northern Ireland) 2001, which essentially defines an electronic communication as a communication transmitted (a) by means of an electronic communications network (e.g. by e-mail); or (b) by other means but while in an electronic form (e.g. a floppy disk sent by post).

<sup>15</sup> See Article 32 of the Companies (Northern Ireland) Order 1986. A company’s members are (i) the subscribers to its memorandum; and (ii) every other person who agrees to become a member of the company and whose name is entered in its register of members.

<sup>16</sup> Before the coming into force of the Charities and Trustee Investment (Scotland) Act 2005, there was no regulation of charities in Scotland equivalent to the system administered by the Charity Commission in England and Wales. In previous versions of this model constitution, the term “Scottish charity” was therefore defined by reference to section 1(7) of the Law Reform (Miscellaneous Provisions) Scotland Act 1990. However, that provision has now been repealed, and all Scottish charities will in future be entered in the Scottish Charity Register, which the 2005 Act requires the Office of the Scottish Charity Regulator to keep. The definition given here reflects the requirements of paragraph 1(4)(e) of Schedules 2 and 3 to the Regulations, as amended by paragraph 12 of the Schedule to the Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (SI 2006/242).

<sup>17</sup> In essence, Article 4 of the Companies(Northern Ireland) Order 1986 states that a company is a subsidiary of another company if that other company (a) holds or controls a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors. However, see further Article 4 itself and Articles 4A and 4B, all as substituted or inserted by Article 62 of the Companies (No. 2) (Northern Ireland) Order 1990.

<sup>18</sup> On the meaning of “community”, see Chapters 2.3 and 4.4 of the Regulator’s information and guidance notes.

<sup>19</sup> See Part 5 of the Regulator’s information and guidance notes.

<sup>20</sup> See Part 6 of the Regulator’s information and guidance notes. Inclusion of the provisions contained in paragraphs (1) to (3) of article 4 (reflecting paragraphs 1 to 3 of Schedule 3 to the Regulations) is mandatory for all community interest companies limited by shares which wish to be able to pay dividends to private shareholders. Those community interest companies which do not wish to have this flexibility, and prefer to include in their memoranda or articles the provisions of Schedule 2 to the Regulations, rather than those of Schedule 3, should omit sub-paragraphs (2)(c)-(g) and (3)(b) of article 4.

<sup>21</sup> See regulation 23 of the Regulations and Parts 6 and 11 of the Regulator’s information and guidance notes. If the company does not specify that the remaining residual assets are to be transferred to a particular Asset Locked Body, an appropriate recipient will be chosen by the Regulator, in consultation with the company’s directors and members.

<sup>22</sup> Note that although this model constitution gives the Directors wide powers, under the Articles (and company law more generally) there are still some decisions which Members must make as Members (either in general meeting under Part Eight of the Articles or by using the written resolution procedure under the 1986 Order). See in general the Companies House guidance booklet, “Resolutions” (available online at <http://www.companies-house.gov.uk/about/gbhtml/gba7.shtml>).

<sup>23</sup> See further articles 6 and 7. Delegation may take the form of, for instance, the Directors giving a managing director general authority to run the company’s day to day business, or responsibility for specific matters being delegated to particular directors (e.g. financial matters to a finance director). However, it may be equally appropriate to delegate matters to persons other than Directors (see article 6). In all cases, it is important to remember that delegation does not absolve Directors of their general duties towards the company and their overall responsibility for its management. This means, amongst other things, that Directors must be satisfied that those to whom responsibilities are delegated are competent to carry them out.

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<sup>24</sup> Under the 1986 Order private companies are only obliged to have one director. However, article 22 provides that the Company shall not have fewer than two directors. The Company will therefore only ever have one director in exceptional circumstances (e.g. where there are two directors and one has died or resigned without being replaced).

<sup>25</sup> For the purposes of taking unanimous decisions, directors may indicate their agreement by any means they choose, so long as their views are clear to each other. **Note the requirement to keep a distinct written record of all Directors' decisions (article 14).**

<sup>26</sup> Paragraphs (1)(c) and (2)-(4) of article 11 reflect sub-paragraphs (1) to (4) of paragraph 4 of Schedules 2 and 3 to the Regulations, which are required to be included in the memoranda or articles of all community interest companies. Sub-paragraph (5) of paragraph 4 of Schedules 2 and 3 to the Regulations is covered by articles 2(1)(a) and 2(2)(b).

<sup>27</sup> Paragraphs (1) and (5) of article 11 are designed to facilitate the taking of decisions by directors following discussions in the form of, for example, e-mail exchanges copied to all the directors or telephone conference calls in which they all participate: the essential requirement is that expressed in article 11(1)(b), that all the directors who indicate that they wish to discuss the matter in question have had a reasonable opportunity to communicate their views on it to each other before a majority view is reached. **However, note the requirement to keep a distinct written record of all Directors' decisions (article 14).**

<sup>28</sup> When the directors hold a meeting, they can use e.g. telephone or video conferencing facilities.

<sup>29</sup> In essence, an ordinary resolution is passed when a simple majority of the members present and entitled to vote at a general meeting vote in favour of a proposal. For further details, see the Companies House guidance booklet, "Resolutions" (available online at <http://www.companies-house.gov.uk/about/gbhtml/gba7.shtml>)

<sup>30</sup> You must specify the minimum number of Directors required to take a valid majority decision. The quorum may be fixed in absolute terms (e.g. "three Directors") or as a proportion of the total number of Directors (e.g. "two-thirds of the Directors from time to time"). You may even wish to stipulate that particular named Directors, or Directors representing particular stakeholder interests, must be present to constitute a quorum. In any event, it is recommended that the quorum should never be less than half of the total number of Directors.

<sup>31</sup> Directors could facilitate the appointment of directors by Members by calling a general meeting.

<sup>32</sup> A larger minimum number may be inserted if appropriate.

<sup>33</sup> Paragraph (4) of article 20 must be included under the Regulations (it reflects paragraph 3(2) of Schedules 2 and 3 to the Regulations).

<sup>34</sup> Paragraph (2) of article 21 is a mandatory requirement, reflecting paragraphs 3(3)-(4) of Schedules 2 and 3 to Regulations. However, the model articles do not provide for the appointment of alternate directors.

<sup>35</sup> See the guidance on directors' remuneration in Part 10 of the Regulator's information and guidance notes.

<sup>36</sup> Article 26 is a mandatory requirement, reflecting paragraph 2 of Schedules 2 and 3 to the Regulations. However, the model constitution does not contain any other restrictions on the transfer of shares.

<sup>37</sup> A company which adopts the provision of Schedule 2 to the Regulations rather than Schedule 3 to the Regulations (i.e. a company which only intends to pay dividends to asset locked bodies) should not make use of this provision to pay dividends on any share which is held by a private investor, as the payment of any such dividends will amount to a breach of the asset lock provisions (see paragraph 1 of Schedule 2 and article 4 above).

This article in itself does not provide sufficient authority for the company to purchase its own shares. The company must also comply with relevant statutory requirements, in particular Articles 174 and 175 of the Companies (Northern Ireland) Order 1986. We recommend that you take legal advice before taking any steps towards the company purchasing its own shares.

<sup>38</sup> See Part 6 of the Regulator's information and guidance notes.

<sup>39</sup> A company which does not intend to pay dividends or make other distributions to private investors (i.e. a company which adopts the provisions of Schedule 2 to the Regulations rather than those of Schedule 3) should

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not make use of this provision to pay dividends on any share held by a private investor, as the payment of any such dividends will amount to a breach of the asset lock provisions set out in paragraph 1 of Schedule 2 and article 4.

<sup>40</sup> In essence a special resolution is passed when three quarters of the Members present and entitled to vote at a general meeting vote in favour of a proposal. See the Companies House Guidance Booklet, “Resolutions” (available online at <http://www.companieshouse.gov.uk/about/gbhtml/gba7.shtml>).

<sup>41</sup> You must specify how many Members are required to be present to hold a valid general meeting. The quorum may be fixed in absolute terms (e.g. “four Members”) or as a proportion of the total number of Members (e.g. “three quarters of the Members from time to time”). You may even wish to stipulate that particular named Members, or Members representing particular stakeholder interests, must be present to constitute a quorum. In any event, it is recommended that the quorum should never be less than half of the total number of Members.

<sup>42</sup> For example, a special resolution is required to alter a company’s articles.

<sup>43</sup> Inclusion of the provisions of paragraphs (4) and (5) (reflecting paragraph 3(1) of Schedules 2 and 3 to the Regulations) is mandatory.

<sup>44</sup> See the Companies House guidance booklet, “Accounts and Accounting Reference Dates” (available online at <http://www.companies-house.gov.uk/about/gbhtml/gba3.shtml>). On the annual community interest company report, see Part 9 of the Regulator’s information and guidance notes.