

**The Companies Acts 1985 and 2006**

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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 large membership and the ability to pay dividends to private investors<sup>3</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 Acts 1985 and 2006**

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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>“The Companies Acts”</b>	the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force and any provisions of the Companies Act 2006 for the time being in force;
<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, Scottish Charity or Northern Ireland Charity or a body established outside the United Kingdom that is equivalent to any of those persons
<b>“Chair”</b>	the meaning given in article 17 <sup>11</sup>
<b>“Charity”</b>	(except in the phrases “Scottish Charity” and Northern Ireland Charity) the meaning given by Section 96 of the Charities Act 1993 <sup>12</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 communication”</b>	the meaning given in the Electronic Communications Act 2000 <sup>13</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 12
<b>“Members”</b>	the members of the Company as defined in the 1985 Act <sup>14</sup>
<b>“Memorandum”</b>	the Company’s Memorandum of Association
<b>“Northern Ireland Charity”</b>	A charity within the meaning of the Charities Act (Northern Ireland) 1964
<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 16(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>15</sup>
<b>“Secretary”</b>	the individual appointed as Company Secretary under article 41
<b>“shares”</b>	shares in the Company
<b>“subsidiary”</b>	the meaning given in section 736 of the Companies Act 1985 <sup>16</sup>
<b>“unanimous decision”</b>	the meaning given in article 11.

## **2 INTERPRETATION**

- (1) Unless the context requires otherwise, words or expressions defined in:
- (a) the Companies Acts,
  - (b) the 2004 Act, or
  - (c) the Regulations,
- have the same meaning in the Articles.
- (2) Without prejudice to the generality of paragraph (1):
- (a) **“community”** is to be construed in accordance with section 35 of the 2004 Act and Part 2 of the Regulations;<sup>17</sup>
  - (b) **“financial year”** has the meaning given in section 223 of the 1985 Act; and
  - (c) **“transfer”** includes every description of disposition, payment, release or distribution and the creation or extinction of an estate or interest in, or right over, any property, or, in Scotland, a right, title or interest in or over any property.
- (3) Unless the context requires otherwise, all references to legislative provisions are to the legislation concerned as amended, repealed, re-enacted or replaced and in force from time to time.
- (4) Unless the context requires otherwise, words in the singular include the plural and words in the plural include the singular.
- (5) All headings and explanatory notes are included for convenience only: they do not form part of the Articles, and shall not be used in the interpretation of the Articles.

## **3 TABLE A**

The provisions contained in Table A of the Schedule to the Companies (Table A to F) Regulations 1985 shall not apply.<sup>18</sup>

## **PART TWO: ASSET LOCK<sup>19</sup>**

### **4 TRANSFER OF ASSETS**

- (1) The Company shall not transfer any of its assets other than for full consideration.
- (2) Provided the conditions specified in paragraph (3) are satisfied, paragraph (1) shall not apply to:

- (a) the transfer of assets to any Asset Locked Body specified in the Memorandum or Articles for the purposes of this article or (with the consent of the Regulator) to any other Asset Locked Body;
- (b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets to an Asset Locked Body;
- (c) the payment of dividends in respect of shares in the Company;
- (d) the distribution of assets on a winding up;
- (e) payments on the redemption or purchase of the Company's own shares;
- (f) payments on the reduction of share capital; and
- (g) the extinguishing or reduction of the liability of Members in respect of share capital not paid up on the reduction of share capital.

(3) The conditions are that the transfer of assets:

- (a) must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the Memorandum or the Articles; and
- (b) must not exceed any limit imposed by, or by virtue of, Part 2 of the 2004 Act.

(4) If:

- (a) the Company is wound up under the Insolvency Act 1986; and
- (b) all its liabilities have been satisfied,

then any remaining residual assets shall be given or transferred to the specified Asset Locked Body specified in the Memorandum and Articles for the purposes of this article.

(5) For the purposes of this article, the following Asset Locked Body is specified as a potential recipient of the Company's assets under paragraphs (2) and (4).<sup>20</sup>

**Name:** [ \_\_\_\_\_ ]

**Registered Charity Number [if applicable]:** [ \_\_\_\_\_ ]

**Registered Company Number [if applicable]:** [ \_\_\_\_\_ ]

**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>21</sup>
- (2) The Directors may delegate their functions in accordance with the Articles.<sup>22</sup>

#### **6 LIMITS ON DIRECTORS' FUNCTIONS**

- (1) The Members may, by special resolution:<sup>23</sup>
- (a) alter the scope of the Directors' functions; or
  - (b) require the Directors to act in a specified manner.
- (2) No special resolution passed under paragraph (2) shall have retrospective effect.

#### **7 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.

## **8 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**

### **9 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.

### **10 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.

### **11 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>

### **12 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 or vote on the matter have had a reasonable opportunity to communicate their views on it to each other; and
  - (c) a majority of those Directors vote in favour of a particular conclusion on that matter.
- (2) Paragraph (1)(a) does not require communication with any Director with whom it is not practicable to communicate, having regard to the urgency and importance of the matter to be decided.
- (3) In case of an equality of votes, the Chair shall have a second or casting vote.
- (4) A Director who is an alternate director shall be entitled in the absence of his appointer to a separate vote on behalf of his appointer in addition to his own vote.
- (5) Except as provided by paragraphs (3) and (4), in all proceedings of Directors each Director must not have more than one vote.<sup>26</sup>
- (6) Directors participating in the taking of a majority decision otherwise than at a meeting of Directors:
- (a) may be in different places, and may participate at different times; and
  - (b) may communicate with each other by any means.<sup>27</sup>

### **13 MEETINGS OF DIRECTORS**

- (1) Any Director may call a meeting of Directors.
- (2) Every Director must be given reasonable notice of a meeting of Directors.
- (3) Paragraph (2) does not require notice to be given:
- (a) in writing; or
  - (b) to Directors to whom it is not practicable to give notice, having regard to the urgency and importance of the matters to be decided, or who have waived their entitlement to notice.
- (4) Directors participating in a meeting of Directors:
- (a) must participate at the same time, but may be in different places; and
  - (b) may communicate with each other by any means.<sup>28</sup>

### **14 CONFLICTS OF INTEREST**

- (1) In this article, a “relevant interest” is:

- (a) any interest which a Director has in; or
  - (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 section 317 of the 1985 Act 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 decide to disapply paragraph (4), either in relation to majority decisions generally or in relation to a particular decision.
- (7) Subject to the Companies Acts, 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.

## **15 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.

## **16 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>29</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 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>30</sup>

## **17 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.

## **18 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.

## **19 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 interests, not have voted in the process by which that decision was taken.
- (2) Where this article applies:
  - (a) the discovery of any defect of the kinds specified in paragraph (1)(b) shall not invalidate any decision which has been taken by, or with the participation of, the person in relation to whom that defect existed; and

- (b) any such decision shall be as valid as if no such defect existed in relation to any person who took it or participated in taking it.

## **PART FIVE: DIRECTORS' APPOINTMENT AND TERMS OF SERVICE**

### **20 MINIMUM NUMBER OF DIRECTORS**

The number of Directors shall not be less than [two].<sup>31</sup>

### **21 ELIGIBILITY TO BE A DIRECTOR**

- (1) A person shall not be a Director unless that person:
  - (a) is a Member and (if that person is an individual) is willing to serve as a Director and has attained the age of 18 years; and
  - (b) is elected or appointed as a Director in accordance with the Articles.
- (2) No person shall be elected or appointed as a Director in circumstances which, if that person had already been a Director, would have resulted in that person ceasing to be a Director under the Articles.

### **22 METHODS OF APPOINTING DIRECTORS**

- (1) The first Directors shall be the persons named in the Form 10 upon incorporation.
- (2) Thereafter, Directors may be appointed:
  - (a) by decision of the Directors; or
  - (b) by ordinary resolution of the Members,provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with the Articles as the maximum number of Directors.<sup>32</sup>
- (3) No powers to appoint Directors may be given to persons who are not Members which immediately after their exercise could result in the majority of the Directors having been appointed by persons who are not Members.<sup>33</sup>

### **23 ELECTION OF DIRECTORS AT GENERAL MEETINGS**

- (1) A person who wishes to be considered for election or re-election as a Director at a general meeting shall give notice to the Secretary at least fourteen but not more than thirty-five clear days before the date appointed for the meeting.

- (2) At least seven but not more than twenty-eight clear days before the date appointed for holding a general meeting notice shall be given to all who are entitled to receive notice of the meeting of any person who is eligible for election or re-election as Director and has given notice under paragraph (1) (each such person being, for the purposes of this article, a “candidate”).
- (3) Every notice given under paragraphs (1) and (2) shall state those particulars which would be required to be included in the Company’s register of Directors if the person to which the notice relates were to be elected a Director.<sup>34</sup>
- (4) Subject to paragraph (5), the question whether each such person is to be elected as a Director shall be decided by a separate ordinary resolution of the Members at the general meeting.
- (5) If:
  - (a) a number has been fixed by or in accordance with the Articles as the maximum number of Directors (the “relevant maximum”); and
  - (b) the election of all of the candidates would cause the number of Directors to exceed the relevant maximum,then the election of Directors shall follow the procedure set out in paragraph (6) rather than that set out in paragraph (4).
- (6) Where the conditions specified in paragraph (5) are fulfilled:
  - (a) each Member shall be invited to vote on the candidates by ranking them in order of preference on ballot papers which they must sign and return to the Company at or before the general meeting in order to cast their votes on the candidates (and any ballot papers returned at the general meeting must be returned before the time appointed for the return of ballot papers by the chair of the meeting);
  - (b) the general meeting may be adjourned for the counting of votes under paragraph (6)(a) (and, if it is so adjourned, the existing Directors shall continue in office until the outcome of the vote has been determined); and
  - (c) the candidates elected as Directors shall be those who have been ranked highest in order of preference, taking account of the average of all Members’ votes, and shall be equal in number to the relevant maximum less the number of existing Directors.
- (7) If fewer than the minimum number of Directors are elected at a general meeting, the Directors shall appoint further Directors to fill any vacancy.

## **24 TERMINATION OF DIRECTORS' APPOINTMENT**

- (1) A person ceases to be a Director as soon as:
- (a) that person ceases to be a Member;
  - (b) that person ceases to be a Director by virtue of any provision of the Companies Acts or is prohibited by law from being a Director;
  - (c) any notification to the Company that that person is resigning or retiring from office as Director takes effect (except that where such resignation or retirement would otherwise lead to the Company having fewer than two Directors, it shall not take effect until sufficient replacement Directors have been appointed);
  - (d) the Members pass an ordinary resolution removing that person from office;
  - (e) a contract under which that person is appointed as a Director of, or personally performs services for, the Company or any of its subsidiaries terminates, and the Directors decide that that person should cease to be a Director;
  - (f) the Directors decide, at a meeting of Directors, that that person should be removed from office, but such a decision shall not be taken unless the person in question has been given:
    - (i) at least fourteen clear days' notice in writing of the proposal to remove that person from office, specifying the circumstances alleged to justify removal from office; and
    - (ii) a reasonable opportunity of being heard by, or of making representations in writing to, the Directors.
- (2) No powers to remove Directors may be given to persons who are not Members which immediately after their exercise could result in either:
- (a) the majority of the remaining Directors having been appointed by persons who are not Members; or
  - (b) the number of Directors removed during the financial year of the Company by persons who are not Members exceeding the number of the remaining Directors,
- but this shall not prevent a Director from appointing, or subsequently removing, an alternate director, if permitted to do so by the Articles.<sup>35</sup>

## **25 DIRECTORS' REMUNERATION AND OTHER TERMS OF SERVICE**

- (1) Subject to the Companies Acts, the Articles, the Company satisfying the community interest test, and any resolution passed under paragraph (2), the Directors may decide the terms (including as to remuneration) on which a Director is to perform Directors' functions, or otherwise perform any service for the Company or any of its subsidiaries.<sup>36</sup>

- (2) The Members may by ordinary resolution limit or otherwise specify the remuneration to which any Director may be entitled, either generally or in particular cases.

## **26 DIRECTORS' EXPENSES**

The Company may meet all reasonable expenses which the Directors properly incur in connection with:

- (a) the exercise of their functions; or
- (b) the performance of any other duty which they owe to, or service which they perform for, the Company or any of its subsidiaries.

## **PART SIX: SHARES**

### **27 ALL SHARES TO BE FULLY PAID AND ISSUED AT NOMINAL VALUE**

- (1) Upon allotment, all shares shall be fully paid-up in respect of their nominal value.
- (2) No share shall be issued at a price greater than its nominal value.

### **28 SHARE CERTIFICATES**

The Company may issue Members with one or more certificates for their respective shares in such form as the Directors decide.

### **29 TRANSFER OF SHARES**

- (1) Shares may be transferred by means of an instrument of transfer in a form permitted by law.<sup>37</sup>
- (2) The Directors may refuse to register the transfer of a share:
  - (a) to a person of whom they do not approve;
  - (b) if it is not lodged at the registered office of the Company or such other place as the Directors may appoint; or
  - (c) if it is not accompanied by:
    - (i) such evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
    - (ii) such other information as they may reasonably require.

(3) If the Directors refuse to register a transfer of a share they shall, within 2 months after the date on which the transfer was lodged with the Company, send to the transferee notice of the refusal.

(4) The provisions of this article apply in addition to any restrictions on the transfer of a share which may be set out elsewhere in the Memorandum or Articles.<sup>38</sup>

### **30 PURCHASE OF OWN SHARES**

Subject to the Articles,<sup>39</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.

### **31 ALTERATION OF CAPITAL**

(1) Subject to the Companies Acts 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 Companies Acts, 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 SEVEN: DIVIDENDS<sup>40</sup>**

### **32 PROCEDURE FOR DECLARING DIVIDENDS**

Subject to the 1985 Act, the 2004 Act, the Regulations and the Articles,<sup>41</sup> the Directors may decide to declare and pay such dividends to Members as:

- (a) appear to the Directors to be justified by the Company's profits;
- (b) are in accordance with Members' respective rights; and

(c) are authorised by an ordinary resolution of the Members.

### **33 PAYMENT OF DIVIDENDS**

- (1) Subject to paragraphs (2) and (3), the Company shall pay any dividend or other money payable by it in respect of a share by means of:
  - (a) a transfer to a bank account specified in writing by the holder; or
  - (b) a cheque sent by post to the registered address of the holder.
- (2) If two or more persons hold a share, or are jointly entitled to it by reason of the death or bankruptcy (or, in Scotland, sequestration) of the holder (or one of two or more joint holders), the Company shall pay any dividend or other money payable by it in respect of the share:
  - (a) by means of a transfer to a bank account specified in writing by the holder who is named first in the register of Members, or a cheque sent by post to that holder's registered address; or
  - (b) (if the death or bankruptcy (or, in Scotland, sequestration) of the first named holder has resulted in two or more persons becoming jointly entitled to the share) by means of a transfer to a bank account specified in writing by all the persons jointly entitled to it, or a cheque sent by post to an address specified in writing by them.
- (3) The Company may agree another means of paying such dividend or other money with any person entitled to specify a bank account for the payment of a dividend or other money under paragraph (2).

### **34 RIGHT TO DIVIDEND FORFEITED IF UNCLAIMED FOR TWELVE YEARS**

Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the Directors so decide, be forfeited and cease to remain owing by the Company.

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

### **35 GENERAL MEETINGS**

- (1) The Directors may decide to call a general meeting at any time.
- (2) The Directors shall call a general meeting on receiving a requisition to that effect in accordance with the Companies Acts.<sup>42</sup>

### **36 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 14 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) If a special resolution is to be proposed, the notice shall contain a statement to that effect and set out the text of the special resolution.

### **37 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>43</sup> persons present who are entitled to vote on the business to be transacted, each person being a Member, a proxy for a Member or a duly authorised representative of a corporate Member.
- (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.

### **38 CONDUCT OF BUSINESS – GENERAL**

- (1) The Chair shall preside as the chair of the general meeting. In the Chair's absence, the Members shall appoint some other Director, or (if no Director willing to preside is present) Member to preside.
- (2) The chair:
  - (a) may adjourn the meeting from time to time and from place to place, with the consent of a meeting at which a quorum is present; and
  - (b) shall do so if so directed by the meeting or in accordance with the Articles.
- (3) No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- (4) When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

- (5) Except as required by law, all decisions of the Members at a general meeting shall be made by ordinary resolution.<sup>44</sup>

### **39 VOTING PROCEDURES**

- (1) Subject to the Articles, a resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is duly demanded before, or on the declaration of, the show of hands.

- (2) A poll may be demanded by:

- (a) the Chair;
- (b) at least two Members; or
- (c) a Member or Members representing not less than one tenth of total voting rights of all the Members having the right to vote at the meeting.

- (3) On a poll, Members shall have one vote for each share which they own. On a show of hands every Member who is an individual present in person or by proxy, and every corporate Member present by proxy or by its duly authorised representative, shall have one vote, except that:

- (a) a Member present in person who is also the proxy or representative of another Member, and
  - (b) A person who is the proxy or representative of more than one Member,
- has only one vote.

- (4) A person who is not a Member shall not have any right to vote at a general meeting of the Company (except as the proxy or (in the case of a corporate Member) duly authorised representative of a Member).

- (5) Paragraphs (3) and (4) are without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures.<sup>45</sup>

- (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) 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.
- (9) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is 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.

#### **40 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**

#### **41 COMPANY SECRETARY**

- (1) Subject to the provisions of the Companies Acts, the Directors may 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.

#### **42 COMPANY SEAL**

- (1) This article applies if the Company has a seal (the “common seal”).
- (2) The common seal shall only be applied to a document if its use on that document has been authorised by a decision of the Directors.

### **43 ACCOUNTS AND REPORTS**

- (1) The Directors shall comply with the requirements of the Companies Acts 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>46</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.

### **44 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.

#### **45 INDEMNITY**

- (1) Subject to the Companies Acts, 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, which have more members than they have directors. It assumes that the members will delegate most the decision-making within the company to the directors, but gives members a significant role in relation to the overall governance of the company. It also allows, subject to certain procedural safeguards, for relatively informal decision-making by directors (including by exchanges of e-mail). **Before deciding to adopt it 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).

<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.

<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> 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 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>12</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>13</sup> See section 15 of the Electronic Communications Act 2000, 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>14</sup> See section 22 of the Companies Act 1985. 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>15</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.

<sup>16</sup> In essence, section 736 of the Companies Act 1985 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 section 736 itself and sections 736A and 736B, all as substituted or inserted by section 144 of the Companies Act 1989.

<sup>17</sup> On the meaning of "community", see Chapters 2.3 and 4.7 of the Regulator's information and guidance notes.

<sup>18</sup> See Part 5 of the Regulator's information and guidance notes.

<sup>19</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(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 (in other words they should follow paragraph 1(1) to (3) of Schedule 2 to the Regulations).

<sup>20</sup> See regulation 23 of the Regulations and Parts 6 and 10 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>21</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 8 of the Articles or by using the written resolution procedure under the Companies Act 1985). See in general the Companies House guidance booklet, "Resolutions" (available online at <http://www.companies-house.gov.uk/about/gbhtml/gba7.shtml>).

<sup>22</sup> See further articles 7 and 8. 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 7). 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.

<sup>23</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.companies-house.gov.uk/about/gbhtml/gba7.shtml>).

<sup>24</sup> Under the Companies Act 1985, private companies are only obliged to have one director. However, article 20 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 dies without being replaced).

<sup>25</sup> For the purposes of taking unanimous decision, directors may indicate their agreement by any means they choose, so long as their views are clear to each other. If they do not indicate their views in writing, they must in any event record their decision in writing under article 15. **Note the requirement to keep a distinct written record of all Directors' decisions (article 15).**

<sup>26</sup> Paragraphs (1)(c) and (3)-(5) of article 12 reflect paragraph 4 of Schedules 2 and 3 to the Regulations, which is required to be included in the memoranda or articles of all community interest companies.

<sup>27</sup> Paragraphs (1) and (6) of article 12 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 12(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 15).**

<sup>28</sup> When the directors hold a meeting, they can use e.g. telephone or video conferencing facilities. **Note the requirement to keep a distinct written record of all Directors' decisions (article 15).**

<sup>29</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>30</sup> Directors could facilitate the appointment of directors by Members by calling a general meeting.

<sup>31</sup> A larger minimum number may be inserted if appropriate. You may also wish to consider whether provision should also be made for a maximum number of directors (e.g. "and the total number of directors in office at any one time shall not exceed X"). While it is often important to ensure proper representation of a number of different groups on a board of directors, very large boards can become unwieldy, and a maximum number of directors provision may help to guard against this.

<sup>32</sup> The members may, of course, vote to remove a Director appointed by the Directors (see article 24(1)(d)).

<sup>33</sup> Paragraph (3) of article 22 must be included under the Regulations (it reflects paragraph 3(2) of Schedules 2 and 3 to the Regulations).

<sup>34</sup> See section 289 of the Companies Act 1985. In most cases, the items of information required are Directors' present and any former names, their usual residential addresses, their nationalities, their business occupations (if any), particulars of any other directorships which they hold or have held, and their dates of birth.

<sup>35</sup> Paragraph (2) of article 24 is a mandatory requirement, reflecting paragraphs 3(3) and (4) of Schedules 2 and 3 to the Regulations. However, the model articles do not provide for the appointment of alternate directors. Paragraph 3(5) of Schedules 2 and 3 to the Regulations is covered by article 2(2)(b).

<sup>36</sup> See the guidance on directors' remuneration in Part 9 of the Regulator's information and guidance notes.

<sup>37</sup> E.g. the standard stock transfer form prescribed under the Stock Transfer Act 1963.

<sup>38</sup> Paragraphs (2)-(4) of article 29 are mandatory, 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>39</sup> A company which adopts the provisions 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 buy back any share which is not held by an asset-locked body, as the repurchase of such shares will amount to a breach of the asset lock provisions set out in paragraph 1 of Schedule 2 and article 4.

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 sections 164 and 165 of the Companies Act 1985. We recommend that you take legal advice before taking any steps towards the company purchasing its own shares.

<sup>40</sup> See Part 6 of the Regulator's information and guidance notes.

<sup>41</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 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>42</sup> See section 368 of the Companies Act 1985.

<sup>43</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. “half of the Members from time to time”). In either case you will need to have regard to the size of the Company’s membership, their level of engagement with the Company’s business, and the likelihood of individual members attending.

<sup>44</sup> For example, a special resolution is required to alter a company’s articles.

<sup>45</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>46</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>).