

**AMENDED & RESTATED  
BYE-LAWS OF**

**PETRA DIAMONDS LIMITED**  
*(Registration Number EC23123)*

Adopted by the Company on 28 November 2011

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## INTERPRETATION

### 1. Definitions

1.1 In these Bye-laws, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	the Companies Act 1981 of Bermuda, as amended from time to time;
2006 Act	the UK Companies Act 2006, as amended from time to time;
Admission	the admission of the whole of any class of shares in the capital of the Company to (i) the Official List of the FSA becoming effective in accordance with the Listing Rules and (ii) trading on the London Stock Exchange becoming effective in accordance with the Admission and Disclosure Standards of the London Stock Exchange;
Alternate Director	an alternate director appointed in accordance with these Bye-laws;
Auditor	the auditor for the time being of the Company and includes an individual or partnership;
Board	the board of directors appointed or elected pursuant to these Bye-laws, in force from time to time and acting by resolution, in accordance with the Act and these Bye-laws, or the directors present at a duly convened meeting of directors at which there is a quorum;

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clear days	that period, in relation to a period of notice, 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;
City Code	The City Code on Takeovers and Mergers, as issued from time to time by or on behalf of the Panel or any successor to or replacement thereof from time to time issued by or on behalf of the Panel or, for the avoidance of doubt, any successor thereto or replacement body thereof;
Company	Petra Diamonds Limited, a company incorporated in Bermuda on 25 March 1997 and in respect of which these Bye-laws are approved and confirmed;
Depository	any person who is a member in the Company by virtue of holding shares in the Company as trustee for those individuals who have elected to hold shares in the Company in dematerialised form through depository interests;
Depository Interests	dematerialised interests in respect of the securities of the Company, issued or to be issued by the Depository;
Director	a director of the Company;
Employee Share Scheme	any scheme for providing incentives to current employees, former employees, and/or Directors of, or to consultants and/or contractors providing services to, the Company, or any other company which is its holding company or in which the Company or such holding company has an interest, whether direct or indirect or which is in any way

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	allied or associated with the Company or any company which is a subsidiary of the Company or the Company's holding company, or the spouses, civil partners, surviving spouses or surviving civil partners, children or step-children under the age of 18 years of such employees, former employees, Directors, consultants and/or contractors, involving share options, awards under a long term incentive plan, allocations of shares, stock appreciation rights or other similar rights involving the equity of the Company;
Financial Instrument	the instrument specified in Section C of Annex 1 of MiFID;
FSA	the UK Financial Services Authority in its capacity as the competent authority for the purposes of Part VI of FSMA and in the exercise of its functions in respect of Admission otherwise than in accordance with Part VI of FSMA;
FSMA	the UK Financial Services and Markets Act 2000 (as amended);
Group	the Company and every company and other entity which is for the time being controlled by or under ordinary control with the Company (for these purposes, "control" means the power to direct management or policies of the person in question, whether by means of an ownership interest or otherwise);
London Stock Exchange	London Stock Exchange plc;

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Listing Rules	the rules and regulations made by the FSA pursuant to section 73A(2) of FSMA, acting through the UKLA, and contained in the UKLA's publication of the same name;
Member	the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires;
MiFID	the European Parliament and Council Directive on markets in Financial Instruments (No. 2004/39/EC);
Notice	written notice as further provided in these Bye-laws unless otherwise specifically stated;
Officer	any person appointed by the Board to hold an office in the Company;
Official List	the Official List of the FSA;
Panel	the Panel on Takeovers and Mergers in the United Kingdom, and any successor thereof or replacement body thereto;
Registered Office	Clarendon House, 2 Church Street, Hamilton HM11, Bermuda;
Register of Directors and Officers	the register of directors and officers referred to in these Bye-laws;

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Register of Members	the register of members referred to in these Bye-laws;
Resident Representative	any person appointed to act as resident representative and includes any deputy or assistant resident representative;
Secretary	the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary;
Special Resolution	a resolution passed by a majority of not less than three-fourths of such Members as (being entitled to do so) vote in person or by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given;
share	any class of share in the Company;
Treasury Share	a share of the Company that was or is treated as having been acquired and held by the Company and has been held continuously by the Company since it was so acquired and has not been cancelled; and
UKLA	the UK Listing Authority, a division of the FSA acting in its capacity as competent authority for the purposes of Part VI of the FSMA.

**1.2** In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
- (b) words denoting the masculine gender include the feminine and neuter genders;



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- (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
  - (d) the words:
    - (i) "may" shall be construed as permissive; and
    - (ii) "shall" shall be construed as imperative; and
  - (e) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws, unless inconsistent with the subject or context.
- 1.3** In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.
- 1.4** Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.

## **SHARES**

### **2. Power to Issue Shares**

- 2.1** Subject to the Act, these Bye-laws and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares on such terms and conditions as it may determine.
- 2.2** Without limitation to the provisions of Bye-law 4, subject to the Act, any preference shares may be issued or converted into shares that (at a determinable date or at the option of the Company or the holder) are liable to be redeemed on such terms and in such manner as may be determined by the Board before the issue or conversion.

- 2.3 Notwithstanding the foregoing or any other provision of these Bye-laws, the Company may not issue any shares, or grant options or warrants over shares in a manner that the Board determines in its sole discretion may result in a non de minimis adverse tax, legal or regulatory consequence to the Company, any of its subsidiaries or any direct or indirect holder of shares or its affiliates.

*Authority to Allot Relevant Securities*

- 2.4 (a) The Directors shall not exercise any power to allot Relevant Securities (as defined below), unless they are, in accordance with this Bye-law 2.4, authorised to do so by a resolution of the Members in general meeting.
- (b) In this Bye-law 2.4 "**Relevant Securities**" means shares in the Company or any right to subscribe for or to convert any securities into shares in the Company, other than shares so allotted or rights so granted in pursuance of any Employee Share Scheme and a reference to the allotment of Relevant Securities includes the grant of any such right to subscribe for or to convert any securities into shares in the Company but (subject to Bye-law 2.4(f) below), not the allotment of shares pursuant to such a right, PROVIDED THAT Relevant Securities shall not include shares in the Company allotted, or any right to subscribe for or convert any security into shares in the Company granted, in any such case as part of any issue or offering of shares in the Company which culminated in Admission (including any shares so allotted or rights granted, whether before or after Admission, in accordance with any over-allotment or stabilisation arrangements entered into by the Company in connection therewith).
- (c) Authority under this Bye-law 2.4 may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (d) Any authority under this Bye-law 2.4 shall state the maximum amount of Relevant Securities that may be allotted under it and the date on which it will expire, which must

be not more than 5 years from the date on which the resolution is passed by virtue of which the authority is given; but such an authority may be previously revoked or varied by a resolution of the Members in general meeting.

- (e) Any authority under this Bye-law 2.4 may be renewed or further renewed by a resolution of the Members in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of Relevant Securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.
- (f) In relation to any authority under this Bye-law 2.4 for the grant of such rights as are mentioned in Bye-law 2.4(b), the reference in Bye-law 2.4(d) (and also the corresponding reference in Bye-law 2.4(e)) to the maximum amount of Relevant Securities that may be allotted under the authority is to the maximum amount of shares which may be allotted pursuant to the rights.
- (g) The Directors may allot Relevant Securities, notwithstanding that authority under this Bye-law 2.4 has expired, if they are allotted in pursuance of an offer or agreement made by the Company before the authority expired and the authority allowed it to make an offer or agreement which would or might require Relevant Securities to be allotted after the authority expired.
- (h) No breach of this Bye-law 2.4 shall affect the validity of any allotment of any Relevant Security.

#### *Pre-emption Rights*

- 2.5** (a) Subject to the provisions of this Bye-law 2.5 and Bye-law 2.6, the Company shall not allot any Equity Securities (defined in Bye-law 2.5(g)):-

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- (i) on any terms to a person unless it has made an offer to each person who holds Relevant Shares or Relevant Employee Shares (in each case as defined in Bye-law 2.5(g)) to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him (as the case may be) of the aggregate of Relevant Shares or Relevant Employee Shares; and
    - (ii) to a person unless the period during which any such offer as is referred to in Bye-law 2.5(a)(i) may be accepted has expired or the Company has received notice of the acceptance or refusal of every offer so made.
  - (b) Bye-law 2.5(a) does not apply to a particular allotment of Equity Securities if these are, or are to be, wholly or partly paid up otherwise than in cash; and securities which the Company has offered to allot to a holder of Relevant Shares or Relevant Employee Shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening Bye-law 2.5(a)(ii). For these purposes, "**paid up otherwise than in cash**" means paid up otherwise than by means of any of the following: cash received by the Company or a cheque received by the Company in good faith which the Directors have no reason to suspect will not be paid or a release of a liability of the Company for a liquidated sum or an undertaking to pay cash to the Company at a future date, and "**cash**" includes foreign currency.
  - (c) Bye-law 2.5(a) does not apply to the allotment of Equity Securities which would, apart from a renunciation or assignment of the right to their allotment, be held under any Employee Share Scheme.
  - (d) An offer to be made under Bye-law 2.5(a) shall be in writing and shall be made by giving a notice containing the offer to a holder of shares in accordance with Bye-law 25.

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- (e) The offer must state a period of not less than 14 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.
- (f) The foregoing provisions of this Bye-law 2.5 concerning pre-emption rights are without prejudice to any enactment by virtue of which the Company is prohibited (whether generally or in specified circumstances) from offering or allotting Equity Securities to any person and are subject to any exclusions or other arrangements which the Board may deem necessary or desirable in relation to fractional entitlements or due to legal or practical problems arising in or under the laws of, or the requirements of any regulatory body or stock exchange in, any territory. Where the Company cannot by virtue of such an enactment offer or allot Equity Securities to a holder of Relevant Shares or Relevant Employee Shares, or the Board, in the exercise of its powers under this Bye-law, determines that such an offer or allotment shall not be made, those provisions shall have effect as if the shares held by that holder were not Relevant Shares or Relevant Employee Shares.
- (g) For the purposes of this Bye-law 2.5 and Bye-law 2.6:-
- (A) "**Equity Security**" means a Relevant Share in the Company (other than a bonus share), or a right to subscribe for, or to convert securities into, Relevant Shares in the Company excluding (i) shares in the Company allotted, or any right to subscribe for or convert any security into shares in the Company granted, in any such case as part of any issue or offering of shares in the Company which culminated in Admission (including any shares so allotted or rights granted, whether before or after Admission, in accordance with any over-allotment or stabilisation arrangements entered into by the Company in connection therewith) and (ii) shares in the Company allotted pursuant to any right granted before Admission (whether or not such right was expressed to be conditional on Admission).

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- (B) A reference to the allotment of Equity Securities or of Equity Securities consisting of Relevant Shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, Relevant Shares in the Company or (as the case may be) Relevant Shares of a particular class; but such a reference does not include the allotment of any Relevant Shares pursuant to such a right.
- (C) "**Relevant Employee Shares**" means shares of the Company which would be Relevant Shares but for the fact that they are held by a person who acquired them in pursuance of any Employee Share Scheme.
- (D) "**Relevant Shares**" means shares in the Company other than:-
- (i) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
  - (ii) shares which are held by a person who acquired them in pursuance of any Employee Share Scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme.
- (h) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.
- (i) In relation to an offer to allot securities required by Bye-law 2.5(a), a reference in Bye-law 2.5 (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 clear days immediately before the date of the offer, the holder of shares of that description.

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*Disapplication of Pre-emption Rights*

2.6 (a) Where the Directors are generally authorised for purposes of Bye-law 2.4, they may be given power by a Special Resolution, to allot Equity Securities pursuant to that authority as if:-

(i) Bye-law 2.5(a) did not apply to the allotment; or

(ii) that Bye-law 2.5(a) applied to the allotment with such modifications as the Directors may determine,

and where the Directors make an allotment under this Bye-law 2.6, Bye-law 2.5 shall have effect accordingly.

(b) Where the Directors are authorised for purposes of Bye-law 2.4 (whether generally or otherwise), the Company may by Special Resolution resolve either:-

(i) that Bye-law 2.5(a) shall not apply to a specified allotment of Equity Securities to be made pursuant to that authority; or

(ii) that Bye-law 2.5(a) shall apply to the allotment with such modifications as may be specified in the resolution,

and where such a resolution is passed, Bye-law 2.5 shall have effect accordingly.

(c) The power conferred by Bye-law 2.6(a) or a Special Resolution under Bye-law 2.6(b) ceases to have effect when the authority to which it relates is revoked or would (if not renewed) expire; but if the authority is renewed, the power or (as the case may be) the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a Special Resolution.

- (d) Notwithstanding that any such power or resolution has expired, the Directors may allot Equity Securities in pursuance of an offer or agreement previously made by the Company, if the power or resolution enabled the Company to make an offer or agreement which would or might require Equity Securities to be allotted after it expired.
- (e) A Special Resolution under Bye-law 2.6(b), or a Special Resolution to renew such a resolution, shall not be proposed unless it is recommended by the Directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the Members entitled to have that notice a written statement by the Directors setting out:-
  - (i) their reasons for making the recommendation;
  - (ii) the amount to be paid to the Company in respect of the Equity Securities to be allotted; and
  - (iii) the Directors' justification of that amount.
- (f) The Company may in connection with the issue of any shares exercise all powers of paying commission or brokerage conferred or permitted by the Act. Subject to the provisions of the Act, any such commission or brokerage may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.
- (g) Except as required by law, the Company shall recognise no person as holding any share on any trust and, except as otherwise provided by these Bye-laws or by law, the Company shall not be bound by or recognise any interest in any share (or in any fractional part of the share), except the holder's absolute right to the entirety of the share (or fractional part of the share).



### 3. Power of the Company to Purchase its Shares

The Company may purchase its own shares for cancellation or to acquire them as Treasury Shares in accordance with the Act on such terms as the Board shall think fit. The Board may exercise all the powers of the Company to purchase or acquire all or any part of its own shares in accordance with the Act, provided, however, that such purchase may not be made if the Board determines in its sole discretion that it may result in a non de minimis adverse tax, legal or regulatory consequence to the Company, any of its subsidiaries or any direct or indirect holder of shares or its affiliates.

### 4. Rights Attaching to Shares

4.1 At the date these Bye-laws are adopted, the share capital of the Company shall consist of shares of a single class ("**Ordinary Shares**") the holders of which shall, subject to these Bye-laws:

- (a) be entitled to one vote per share;
- (b) be entitled to such dividends as the Board may from time to time declare;
- (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company; and
- (d) generally be entitled to enjoy all of the rights attaching to shares.

4.2 The Board is authorised to exercise the powers of the Company set out in Section 45(1)(a) of the Act from time to time and to create and issue additional shares of any existing class or shares of a new class and, without limiting the generality of the foregoing, may provide for the issuance of preference shares or preferred shares ("**Preference Shares**") in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the terms, including designation, powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series (and, for the avoidance of doubt, such matters and the issuance of such Preference Shares shall not be deemed to vary the rights attached to the

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Ordinary Shares or, subject to the terms of any other series of Preference Shares, to vary the rights attached to any other class of shares of the Company). The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- (a) the number of shares constituting that series and the distinctive designation of that series;
- (b) the dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of the payment of dividends on shares of that series;
- (c) whether that series shall have voting rights, in addition to the voting rights provided by law, and if so, the terms of such voting rights including, without limitation, any special rights to appoint or elect a Director and to determine such Director's term of office;
- (d) whether that series shall have conversion or exchange privileges (including, without limitation, conversion into Ordinary Shares), and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board shall determine;
- (e) whether or not the shares of that series shall be redeemable or repurchaseable, and, if so, the terms and conditions of such redemption or repurchase, including the manner of selecting shares for redemption or repurchase if less than all shares are to be redeemed or repurchased, the date or dates upon or after which they shall be redeemable or repurchaseable, and the amount per share payable in case of redemption or repurchase, which amount may vary under different conditions and at different redemption or repurchase dates;
- (f) whether that series shall have a sinking fund for the redemption or repurchase of shares of that series, and, if so, the terms and amount of such sinking fund;

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- (g) the right of the shares of that series to the benefit of conditions and restrictions upon the creation of indebtedness of the Company or any subsidiary, upon the issue of any additional shares (including additional shares of such series or any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Company or any subsidiary of any issued shares of the Company;
  - (h) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment in respect of shares of that series; and
  - (i) any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.

**4.3** Any Preference Shares of any series which have been redeemed (whether through the operation of a sinking fund or otherwise) or which, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorised and unissued Preference Shares of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preference Shares to be created by resolution or resolutions of the Board or as part of any other series of Preference Shares, all subject to the conditions and the restrictions on issuance set forth in the resolution or resolutions adopted by the Board providing for the issue of any series of Preference Shares.

**4.4** At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or

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percentage of the issued Ordinary Shares, other shares, option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.

## **5. Variation of Rights Attaching to Shares**

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of that class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

## **6. Calls on Shares**

**6.1** The Board may make such calls as it thinks fit upon the Members in respect of any monies (whether in respect of nominal value or premium) unpaid on the shares allotted to or held by such Members (and not made payable at fixed times by the terms and conditions of issue) and, if a call is not paid on or before the day appointed for payment thereof, the Member may at the discretion of the Board be liable to pay the Company interest on the amount of such call at such rate as the Board may determine, from the date when such call was payable up to the actual date of payment. The Board may differentiate between the holders as to the amount of calls to be paid and the times of payment of such calls, but a holder on whom a call is made shall remain liable for it notwithstanding the subsequent transfer of the share in respect of which the call is made.

- 6.2** Any amount which by the terms of allotment of a share becomes payable upon issue or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for all the purposes of these Bye-laws be deemed to be an amount on which a call has been duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these Bye-laws as to forfeiture, payment of interest, costs and expenses, forfeiture or otherwise shall apply as if such amount had become payable by virtue of a duly made and notified call.
- 6.3** The joint holders of a share shall be jointly and severally liable to pay all calls and any interest, costs and expenses in respect thereof.
- 6.4** The Company may accept from any Member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up or become payable.
- 6.5** Subject to as otherwise provided in these Bye-laws, a call is deemed to have been made at the time when the resolution of the Board authorising the call was passed.

## **7. Prohibition on Financial Assistance**

The Company shall not give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of the acquisition or proposed acquisition by any person of any shares in the Company, but nothing in this Bye-law shall prohibit transactions permitted under the Act.

## **8. Forfeiture of Shares**

- 8.1** If any Member fails to pay, on the day appointed for payment thereof, any call in respect of any share allotted to or held by such Member, the Board may, at any time thereafter during such time as the call remains unpaid, direct the Secretary to forward such Member a notice in writing in the form, or as near thereto as circumstances admit, of the following:

## Notice of Liability to Forfeiture for Non-Payment of Call

Petra Diamonds Limited

(the "Company")

You have failed to pay the call of [amount of call] made on the [ ] day of [ ], 20[ ], in respect of the [number] share(s) [number in figures] standing in your name in the Register of Members of the Company, on the [ ] day of [ ], 20[ ], the day appointed for payment of such call. You are hereby notified that unless you pay such call together with interest thereon at the rate of [ ] per annum computed from the said [ ] day of [ ], 20[ ] at the Registered Office of the Company the share(s) will be liable to be forfeited.

Dated this [ ] day of [ ], 20[ ]

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[Signature of Secretary] By Order of the Board

- 8.2** If the requirements of such notice are not complied with, any such share may at any time thereafter before the payment of such call and the interest due in respect thereof be forfeited by a resolution of the Board to that effect, and such share together with all dividends declared and other monies payable in respect of the forfeited share and not actually paid before the forfeiture, shall thereupon become the property of the Company and may be disposed of as the Board shall determine.
- 8.3** A Member whose share or shares have been so forfeited shall, notwithstanding such forfeiture, be liable to pay to the Company all calls owing on such share or shares at the time of the forfeiture together with all interest due thereon and any costs and expenses incurred by the Company in connection therewith. Such Member shall also be liable to satisfy all the claims and demands (if any) which the Company might have enforced in respect of the Share at the time of

forfeiture or surrender. No deduction or allowance should be made for the value of the share at the time of forfeiture or surrender or for any consideration received on its disposal.

- 8.4 The Board may accept the surrender of any shares which it is in a position to forfeit on such terms and conditions as may be agreed. Subject to those terms and conditions, a surrendered share shall be treated as if it had been forfeited.
- 8.5 The Board may, at any time before the forfeited or surrendered share has been sold, re-allocated or otherwise disposed of, annul the forfeiture or surrender upon payment of all calls and interest due on or incurred in respect of the share and on such further conditions (if any) as it thinks fit.

## 9. **Certificated and Uncertificated Shares**

- 9.1 Every Member shall be entitled to a certificate under the common seal of the Company or bearing the signature (or a facsimile thereof) of a Director or Secretary or a person expressly authorised to sign specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical, electric, laser or other means.
- 9.2 The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom the shares have been allotted.
- 9.3 If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid, or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.

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**9.4**

- (a) The Board may permit any class of shares to be held in uncertificated form and to be transferred by means of a relevant system and may revoke any such permission at any time.
- (b) In relation to any share which is for the time being held in uncertificated form:
  - (i) the Company may utilise the relevant system in which it is held to the fullest extent available from time to time in the exercise of any of its powers or functions under the Act or these Bye-laws or otherwise in effecting any actions and the Board may from time to time determine the manner in which such powers, functions and actions shall be so exercised or effected;
  - (ii) any provision in these Bye-laws which is inconsistent with:
    - (A) the holding or transfer of that share in the manner prescribed or permitted by the relevant regulations of the system in which that share is held or any other provisions of the Act relating to shares held in uncertificated form; or
    - (B) the exercise of any powers or functions by the Company or the effecting by the Company of any actions by means of a relevant system,shall not apply to the extent of the inconsistency;
  - (iii) the Company may, by notice to the holder of that share, require the holder to change the form of such share to certificated form within such period as may be specified in the notice;
  - (iv) the Company may require that share to be converted into certificated form in accordance with the requirements of the Depositary, the relevant regulations of the system in which that share is held or any other provisions of the Act; and
  - (v) the Company shall not issue a certificate.



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- (c) The Company may, by notice to the holder of any share in certificated form, direct that the form of such share may not be changed to uncertificated form for a period specified in such notice.
  - (d) For the purpose of effecting any action by the Company, the Board may determine that shares held by a person in uncertificated form shall be treated as a separate holding from shares held by that person in certificated form but shares of a class held by a person in uncertificated form shall not be treated as a separate class from shares of that class held by that person in certificated form.

## 10. Fractional Shares

The Company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of whole shares including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding-up.

## REGISTRATION OF SHARES

### 11. Register of Members

- 11.1 The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.
- 11.2 The Register of Members shall be open to inspection without charge at the Registered Office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty days in each year.

**12. Registered Holder Absolute Owner**

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person.

**13. Transfer of Registered Shares**

**13.1** An instrument of transfer shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares  
Petra Diamonds Limited  
(the "Company")

FOR VALUE RECEIVED.....[amount], I, [name of transferor] hereby sell, assign and transfer unto [transferee] of [address], [number] of shares of the Company.

DATED this [ ] day of [ ], 20[ ]

Signed by:  
\_\_\_\_\_

Transferor

\_\_\_\_\_

Transferee

In the presence of:  
\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

**13.2** Such instrument of transfer shall be signed by or on behalf of the transferor and transferee, provided that, in the case of a fully paid up share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been registered as having been transferred to the transferee in the Register of Members.

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- 13.3 The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.
- 13.4 The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.
- 13.5 The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share on which the Company has a lien or which is not fully paid up but, in the case of a class of shares which has been admitted to official listing by the UKLA, not so as to prevent dealings in those shares from taking place on an open and proper basis. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained. If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.
- 13.6 Shares may be transferred without a written instrument if transferred by an appointed agent or otherwise in accordance with the Act.
- 13.7 The Board shall, subject always to the Act and any other applicable laws and regulations and the facilities and requirements of any relevant system concerned and these Bye-laws, have power to implement and/or approve any arrangements they may, in their absolute discretion, think fit in relation to the evidencing of title to and transfer of interests in shares in the capital of the Company in the form of Depositary Interests or similar interests, instruments or securities, and to the extent such arrangements are so implemented, no provision of these Bye-laws shall apply or have effect to the extent that it is in any respect inconsistent with the holding or transfer thereof or the shares of the Company represented thereby. The Board may from time to

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time take such actions and do such things as they may, in their absolute discretion, think fit in relation to the operation of any such arrangements.

#### **14. Restrictions on Transfer**

If the Board refuses to register a transfer of a certificated share it shall, as soon as practicable and in any event within two months after the date on which the instrument of transfer was lodged, give to the transferee notice of the refusal. The Board shall provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request.

#### **15. Transmission of Registered Shares**

**15.1** In the case of the death of a Member, the survivor or survivors where the deceased Member was a joint holder, and the legal personal representatives of the deceased Member where the deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by such deceased Member with other persons. Subject to the provisions of the Act, for the purpose of this Bye-law, legal personal representative means the executor or administrator of a deceased Member or such other person as the Board may, in its absolute discretion, decide as being properly authorised to deal with the shares of a deceased Member.

**15.2** Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member or of any other event giving rise to a transmission by operation of law may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in writing in the form, or as near thereto as circumstances admit, of the following:

Transfer by a Person Becoming Entitled on Death/Bankruptcy of a Member

Petra Diamonds Limited (the "Company")

I/We, having become entitled in consequence of the [death/bankruptcy] of [name and address of deceased/bankrupt Member] to [number] share(s) standing in the Register of Members of the Company in the name of the said [name of deceased/bankrupt Member] instead of being registered myself/ourselves, elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee, his or her executors, administrators and assigns, subject to the conditions on which the same were held at the time of the execution hereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [ ] day of [ ], 20[ ]

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferor

Witness

\_\_\_\_\_

\_\_\_\_\_

Transferee

Witness

**15.3** On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.

**15.4** Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be

absolutely entitled to such share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

## UNTRACED SHAREHOLDERS

### 16. Untraced Shareholders

16.1 The Company shall be entitled to sell, in such manner as the Board may decide and at the best price it considers to be reasonably attainable at that time, any share of a Member or any share to which a person is entitled by virtue of transmission on death or bankruptcy or any other event giving rise to its transmission by operation of law (such Member or other person being referred to for the purposes of this Bye-law as the "**Untraced Shareholder**") if and provided that:

- (a) during the continuous period of 12 years prior to the date of the publication of the advertisements referred to in Bye-law 16.1(b) below (or, if published on different dates, the first thereof) at least three dividends in respect of the shares in question have become payable and no dividend during that period has been claimed;
- (b) the Company has, by advertisement in both a national newspaper circulating in the United Kingdom and in a newspaper circulating in the area in which the last known address of the Untraced Shareholder or the address at which service of notices upon the Untraced Shareholder may be effected in accordance with these Bye-laws is located, given notice of its intention to sell such share;
- (c) during the said period of 12 years and a further period of three months following the publication of the said advertisements (or, if published on different dates, the first thereof) the Company shall have received no indication either of the whereabouts or of the existence of the Untraced Shareholder; and

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- (d) the Company has first given notice in writing to the London Stock Exchange of its intention to sell such share or if shares of the class concerned are traded on that exchange.
- 16.2** If during any 12 year period referred to in Bye-law 16.1 further shares have been issued in respect of those held at the beginning of such period or of any previously issued during such period and all the other requirements of this Bye-law (other than the requirement that they be in issue for 12 years) have been satisfied in regard to the further shares, the Company may also sell the further shares.
- 16.3** To give effect to any such sale the Board may appoint any person to execute as transferor an instrument of transfer of the said share and such instrument of transfer shall be as effective as if it had been executed by the Untraced Shareholder and the transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating thereto. The net proceeds of sale shall belong to the Company which shall be obliged to account to the Untraced Shareholders for an amount equal to such proceeds and shall enter the name of the Untraced Shareholder in the books of the Company as a creditor of such amount. No duty shall be owed by the Company or the Directors (or any of them) to the Untraced Shareholder or its or his estate or its or his legal or personal representatives in connection with any sale pursuant to this Bye-law 16.3 (save as expressly set out in this Bye-law 16.3) and no trust shall be created in respect of the debt and no interest shall be payable in respect of the same and the Company shall not be required to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments (other than shares of the Company or its holding company if any) as the Board may from time to time think fit.

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**ALTERATION OF SHARE CAPITAL****17. Power to Alter Capital**

**17.1** The Company may if authorised by resolution of the Board and if authorised by a resolution of the Members, increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Act.

**17.2** Where, on any alteration or reduction of share capital, Members would become entitled to fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit. In particular, the Board may:

- (a) (on behalf of those Members) aggregate and sell the shares representing the fractions to any person (including, subject to the Act, the Company) and distribute the net proceeds of sale in due proportion among those Members (except that any proceeds in respect of any holding less than a sum fixed by the Board may be retained for the benefit of the Company); or
- (b) subject to the Act, first, allot to a Member credited as fully paid by way of capitalisation of any reserve account of the Company such number of shares as rounds up his holding to a number which, following consolidation and division or sub-division, leaves a whole number of shares.

For the purpose of a sale under paragraph (a) above, the Board may authorise a person to transfer the shares to, or as directed by, the purchaser, who shall not be bound to see to the application of the purchase money and the title of the new holder to the shares shall not be affected by any irregularity in or invalidity of the proceedings relating to the sale.



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## DIVIDENDS AND CAPITALISATION

### 18. Dividends

- 18.1** The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.
- 18.2** The Board may fix any date as the record date for determining the Members entitled to receive any dividend. Dividends may be declared or paid in any currency.
- 18.3** The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- 18.4** The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company and in such manner as it thinks fit. No unpaid distribution shall bear interest as against the Company.

### 19. Power to Set Aside Profits

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such amount as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

### 20. Method of Payment

- 20.1** Any dividend or other monies payable in respect of a share may be paid by cheque or warrant sent through the post directed to the address of the Member in the Register of Members (in the case of joint Members, the senior joint holder, seniority being determined by the order in which the names stand in the Register of Members), or by direct transfer to such bank account as such

Member may direct. Every such cheque shall be made payable to the order of the person to whom it is sent or to such persons as the Member may direct, and payment of the cheque or warrant or transmission of funds through a bank or other funds transfer system or by such other electronic means as is permitted by these Bye-laws shall be a good discharge to the Company. Every such cheque or warrant or transmission of funds shall be sent at the risk of the person entitled to the money represented thereby. If two or more persons are registered as joint holders of any shares any one of them can give an effectual receipt for any dividend paid in respect of such shares.

- 20.2** The Board may deduct from the dividends or distributions payable to any Member all monies due from such Member to the Company on account of calls or otherwise.
- 20.3** Any dividend and or other monies payable in respect of a share which has remained unclaimed for 12 years from the date when it became due for payment shall, if the Board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other monies payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect thereof.
- 20.4** The Company shall be entitled to cease sending dividend cheques and warrants by post or otherwise to a Member if those instruments have been returned undelivered to, or left uncashed by, that Member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the Member's new address. The entitlement conferred on the Company by this Bye-law 20.4 in respect of any Member shall cease if the Member claims a dividend or cashes a dividend cheque or warrant.

**21. Capitalisation of Reserves**

**21.1** The Board may capitalise any amount for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such amount in paying up unissued shares to be allotted as fully paid up bonus shares pro-rata (except in connection with the conversion of shares of one class to shares of another class) to the Members.

**21.2** The Board may capitalise any amount for the time being standing to the credit of a reserve account or amounts otherwise available for dividend or distribution by applying such amounts in paying up in full, partly or nil paid up shares of those Members who would have been entitled to such amounts if they were distributed by way of dividend or distribution.

(a) This Bye-law (which is without prejudice to the generality of the provisions of the immediately preceding Bye-law) applies:

(i) where a person is granted pursuant to an Employee Share Scheme a right to subscribe for shares in the Company in cash at a subscription price less than their nominal value; and

(ii) where, pursuant to an Employee Share Scheme, the terms on which any person is entitled to subscribe in cash for shares in the Company are adjusted as a result of a capitalisation issue, rights issue or other variation of capital so that the subscription price is less than their nominal value.

(b) In any such case the Board:

(i) shall transfer to a reserve account a sum equal to the deficiency between the subscription price and the nominal value of the shares (the cash deficiency) from

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the profits or reserves of the Company which are available for distribution and not required for the payment of any preferential dividend; and

- (ii) (subject to paragraph (d) below) shall not apply that reserve account for any purpose other than paying up the cash deficiency upon the allotment of those shares.
- (c) Whenever the Company is required to allot shares pursuant to such a right to subscribe, the Board shall (subject to the Act) appropriate to capital out of the reserve account an amount equal to the cash deficiency applicable to those shares, apply that amount in paying up the deficiency on the nominal value of those shares and allot those shares credited as fully paid to the person entitled to them.
- (d) If any person ceases to be entitled to subscribe for shares as described above, the restrictions on the reserve account shall cease to apply in relation to such part of the account as is equal to the amount of the cash deficiency applicable to those shares.

No right shall be granted under any Employee Share Scheme under Bye-law 21.3(a)(i) above and no adjustment shall be made as mentioned in Bye-law 21.3(a)(ii) above unless there are sufficient profits or reserves of the Company available for distribution in accordance with this Bye-law and the Act and not required for the payment of any preferential dividend to permit the transfer to a reserve account in accordance with this Bye-law of an amount sufficient to pay up the cash deficiency applicable to the shares concerned.

- 21.4** Notwithstanding any other of these Bye-laws, but without prejudice to any rights attached to any shares, the Board may fix a date as the record date by reference to which a dividend will be declared or paid or a distribution, allotment or issue made, and that date may be before, on or after the date on which the dividend, distribution, allotment or issue is declared, paid or made. In the absence of a record date being fixed, entitlement to any dividend, distribution, allotment

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or issue shall be determined by reference to the date on which the dividend is declared or the distribution, allotment or issue is made.

## MEETINGS OF MEMBERS

### 22. Annual General Meetings

The annual general meeting of the Company shall be held in each year, at such time and place as the Board shall appoint.

### 23. Special General Meetings

The Chairman or the Board may convene a special general meeting whenever in its judgment such a meeting is necessary. Subject to these Bye-laws and to any rights for the time being attached to any class of shares in the Company, the provisions of these Bye-laws relating to general meetings of the Company, including provisions relating to the proceedings at the general meetings or to any restrictions on these rights, shall apply, mutatis mutandis, in relation to every separate general meeting of the holders of any class of shares in the Company.

### 24. Requisitioned General Meetings

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up share capital of the Company as at the date of the deposit carries the right to vote at general meetings, forthwith proceed to convene a special general meeting and the provisions of the Act shall apply.

### 25. Notice

25.1 At least 21 clear days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, place and time at which the meeting is to be held, that the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

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- 25.2** At least 14 clear days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, time, place and the general nature of the business to be considered at the meeting.
- 25.3** The Board may fix any date as the record date for determining the Members entitled to receive notice of and to vote at any general meeting.
- 25.4** A general meeting shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.
- 25.5** The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **26. Giving Notice and Access to Documents**

- 26.1** A notice or document may be given by the Company to a Member:
- (a) by delivering it to such Member in person; or
  - (b) by sending it by letter mail or courier to such Member's address in the Register of Members; or
  - (c) by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by such Member to the Company for such purpose; or
  - (d) in accordance with Bye-law 26.4; or

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- (e) by advertisement in an appointed newspaper (as defined in the Act) or in newspapers published daily and circulating generally in the United Kingdom; or
- (f) to the extent permitted by the applicable laws, by placing it on the website of the London Stock Exchange, and giving to the Member a notice stating that the notice or other document is available there (a "**notice of availability**"). The notice of availability may be given to the Member by any of the means set out above.
- 26.2** Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.
- 26.3** Any notice (save for one delivered in accordance with Bye-law 26.4) shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, and the time when it was posted, delivered to the courier or transmitted by electronic means. Mail notice shall be deemed to have been served three clear days after the date on which it is deposited, with postage prepaid, in the mail of any member state of the European Union, the United States, Bermuda or Australia.
- 26.4** Where a Member indicates his consent (in a form and manner satisfactory to the Board) to receive information or documents by accessing them on a website rather than by other means, the Board may deliver such information or documents by notifying the Member of their availability and including therein the address of the website, the place on the website where the information or document may be found, and instructions as to how the information or document may be accessed on the website. The Board shall procure that information or documents provided to a Member via such a website shall be made available until the conclusion of the meeting to which they relate.

**26.5** The Company shall be under no obligation to send a notice or other document to the address shown for any particular Member in the Register of Members if the Board considers that the legal or practical problems under the laws of, or the requirements of any regulatory body or stock exchange in the territory in which that address is situated are such that it is necessary or expedient not to send the notice or document concerned to such Member at such address and may require a Member with such an address to provide the Company with an alternative acceptable address for delivery of notices by the Company. In the case of information or documents delivered in accordance with Bye-law 26.4, service shall be deemed to have occurred when (i) the Member is notified in accordance with that Bye-law; and (ii) the information or document is published on the website.

**27. Postponement or Cancellation of General Meeting**

The Chairman may, and the Secretary on instruction from the Chairman shall, postpone or cancel any general meeting called in accordance with these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement or cancellation is given to each Member before the time for such meeting. Fresh notice of the date, time and place for the postponed or cancelled meeting shall be given to the Members in accordance with these Bye-laws.

**28. Electronic Participation and Security at General Meetings**

**28.1** Members may participate in any general meeting by such electronic means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

**28.2** The Board may, and at any general meeting, the chairman of such meeting may make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property



and the restriction of items that may be taken into the meeting place. The Board and, at any general meeting, the chairman of such meeting are entitled to refuse entry to a person who refuses to comply with any such arrangements, requirements or restrictions.

## **29. Quorum at General Meetings**

**29.1** At any general meeting two or more persons (being Members or proxy holders) present in person at the start of and throughout the meeting shall form a quorum for the transaction of business.

**29.2** If within half an hour from the time appointed for the meeting a quorum is not present, then, in the case of a meeting convened on a requisition, the meeting shall be deemed cancelled and, in any other case, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Secretary may determine. Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

## **30. Chairman to Preside at General Meetings**

Unless otherwise agreed by a majority of those attending and entitled to vote thereat, the Chairman, if there be one shall act as chairman at all general meetings at which he is present. In his absence, a chairman shall be appointed by the Board.

## **31. Voting on Resolutions**

**31.1** Subject to the Act and these Bye-laws, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast, in accordance with these Bye-laws.

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- 31.2** No Member shall be entitled to vote at a general meeting unless such Member has paid all the calls on all shares held by such Member.
- 31.3** At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Bye-laws, every Member present in person and every person holding a valid proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his hand.
- 31.4** In the event that a Member participates in a general meeting by telephone or electronic means, the chairman of the meeting shall direct the manner in which such Member may cast his vote on a show of hands.
- 31.5** At any general meeting if an amendment is proposed to any resolution under consideration and the chairman of the meeting rules on whether or not the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.
- 31.6** At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to these Bye-laws, be conclusive evidence of that fact.
- 31.7** A Member in respect of whom an order has been made by any court having jurisdiction (whether in Bermuda or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person in the nature of a receiver or curator bonis appointed by that court, and the receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the Board of the authority of the person claiming the right to vote must be received at the office (or at such other address as may be specified for the receipt of proxy appointments) not later than the

last time by which a proxy appointment must be received in order to be valid for use at the meeting or adjourned meeting or on the holding of the poll at or on which that person proposes to vote and, in default, the right to vote shall not be exercisable.

**31.8** No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting or poll at which the vote objected to is or may be given or tendered, and every vote not disallowed at such meeting or poll shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

## **32. Power to Demand a Vote on a Poll**

**32.1** Notwithstanding the foregoing, a poll may be demanded by any of the following persons at any general meeting:

- (a) the chairman of such meeting; or
- (b) at least three Members present in person or represented by proxy; or
- (c) any Member or Members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or
- (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total amount paid up on all such shares conferring such right.

**32.2** Where a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares, every person present at such meeting either in person or by proxy shall have one vote for each voting share of which such person is the holder, or in the case of a general meeting at which one or more Members are present by telephone, in such

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manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

- 32.3** A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and in such manner during such meeting as the chairman (or acting chairman) of the meeting may direct. Any business other than that upon which a poll has been demanded may be conducted pending the taking of the poll.
- 32.4** A demand for a poll may be withdrawn at any time with the chairman's consent before the conclusion of the meeting or the taking up of the poll, whichever is the earlier. Unless a poll be duly demanded (and the demand be not withdrawn) a declaration by the chairman of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against such resolution.
- 32.5** If a poll is duly demanded (and the demand be not withdrawn) it shall be taken in such manner (including the use of ballot or voting papers or tickets) as the chairman of the meeting may direct. Each person present by telephone or electronic means shall cast his vote in such manner as the chairman shall direct. The result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The chairman of the meeting may (and if so directed by the meeting shall) appoint scrutineers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.

**33. Voting by Joint Holders of Shares**

In the case of joint holders, the vote of the senior who tenders a vote (whether in person or by proxy) shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

**34. Instrument of Proxy**

**34.1** A Member may appoint a proxy by (a) an instrument appointing a proxy in writing in substantially the following form or such other form as the Board may determine from time to time:

Proxy  
Petra Diamonds Limited  
(the "Company")

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on the [ ] day of [ ], 20[ ] and at any adjournment thereof. (Any restrictions on voting to be inserted here.)

Signed this [ ] day of [ ], 20[ ]

Member(s) \_\_\_\_\_

or (b) such telephonic, electronic or other means as may be approved by the Board from time to time.

**34.2** The Board must, while any of the Company's shares are listed on the Official List, and otherwise may, at the Company's expense, send to each Member entitled to be sent notice of a meeting and to vote at it, a form to appoint a proxy for use at a meeting.

- 34.3** The appointment of a proxy must be received by the Company at the registered office or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the appointment proposes to vote, and an appointment of proxy which is not received in the manner so permitted shall be invalid.
- 34.4** A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf in respect of different shares.
- 34.5** The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

**35. Representation of Corporate Member**

- 35.1** A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting and any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.
- 35.2** Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

**36. Adjournment of General Meeting**

- 36.1** The chairman of any general meeting at which a quorum is present may with the consent of Members holding a majority of the voting rights of those Members present in person or by proxy (and shall if so directed by Members holding a majority of the voting rights of those Members present in person or by proxy), adjourn the meeting.

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- 36.2** In addition, the chairman may adjourn the meeting to another time and place without such consent or direction if it appears to him that:
- (a) it is likely to be impracticable to hold or continue that meeting because of the number of Members wishing to attend who are not present; or
  - (b) the unruly conduct of persons attending the meeting prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
  - (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.
- 36.3** Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws. The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before adjournment.

## **37. Written Resolutions**

- 37.1** Subject to these Bye-laws, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may, without a meeting and without any previous notice being required, be done by written resolution in accordance with this Bye-law.
- 37.2** Notice of a written resolution shall be given, and a copy of the resolution shall be circulated to all Members who would be entitled to attend a meeting and vote thereon. The accidental omission to give notice to, or the non-receipt of a notice by, any Member does not invalidate the passing of a resolution.
- 37.3** A written resolution is passed when it is signed by, or in the case of a Member that is a corporation on behalf of, the Members who at the date that the notice is given represent such

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majority of votes as would be required if the resolution was voted on at a meeting of Members at which all Members entitled to attend and vote thereat were present and voting.

- 37.4** A resolution in writing may be signed by any number of counterparts.
- 37.5** A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be, and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly. Such resolution shall be deemed to be adopted, as an act of the Members, at the place where, and at the time when, the signature of the Member whose signature results in the necessary voting majority being achieved is affixed thereto.
- 37.6** A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of the Act.
- 37.7** This Bye-law shall not apply to:
- (a) a resolution passed to remove an Auditor from office before the expiration of his term of office; or
  - (b) a resolution passed for the purpose of removing a Director before the expiration of his term of office.
- 37.8** For the purposes of this Bye-law, the effective date of the resolution is the date when the resolution is signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member whose signature results in the necessary voting majority being achieved and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.



**38. Directors Attendance at General Meetings**

The Directors shall be entitled to receive notice of, attend and be heard at any general meeting.

**DIRECTORS AND OFFICERS****39. Election of Directors**

**39.1** Subject to any contrary determination by a resolution of the Board of Directors from time to time, the Board shall consist of not less than 4 and not more than 12 Directors. If at any time the number of Directors in office is less than the maximum number of Directors permitted by this Bye-law 39.1 or pursuant to a resolution of the Board of Directors (as the case may be), each officer post which makes up such shortfall shall be deemed a vacancy and may be filled in accordance with Bye-law 44.2 hereof.

**39.2** Any Director appointed by the Board to fill a vacancy pursuant to Bye-laws 44.2 shall hold office only until the next annual general meeting and shall then be eligible for re-election provided that any Director so appointed at any time after the date of the notice convening any annual general meeting but before such meeting is held shall hold office until the next succeeding annual general meeting and shall be eligible for re-election at such annual general meeting. If not re-appointed at such annual general meeting, he shall vacate office at the conclusion thereof.

**39.3** The Members may at any general meeting appoint any person to be a Director to fill a vacancy Director and may authorise the Board to fill any vacancy in their number left unfilled at a general meeting.

**39.4** Only persons who are proposed or nominated in accordance with this Bye-law shall be eligible for election as Directors. Any Member or the Board may propose any person for election as a Director. Where any person, other than a Director retiring at the meeting or a person proposed for re-election or election as a Director by the Board, is to be proposed for election as a Director,

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notice must be given to the Company of the intention to propose him and of his willingness to serve as a Director. Where a Director is to be elected at any general meeting, such notice must be given not less than 14 days nor more than 42 days (inclusive of the date on which the notice is given) before the day appointed for the meeting and there shall have been left at the Company's registered office such notice addressed to the Secretary duly signed by some Member (other than the person to be proposed) duly qualified to attend and vote at the meeting for which such notice is given of his intention to propose such person for election and also notice in writing signed by the person to be proposed of his willingness to be elected.

**39.5** Every resolution of a general meeting for the election of a Director shall relate to one named person and a single resolution for the election of two or more persons shall be void, unless a resolution that it shall be so proposed has been first agreed to by the meeting without any vote being cast against it.

**39.6** Where the number of persons validly proposed for re-election or election as a Director by a single resolution pursuant to Bye-law 39.5 is greater than the number of Directors to be elected, the persons receiving the most votes (up to the number of Directors to be elected) shall be elected as Directors, and an absolute majority of the votes cast shall not be a prerequisite to the election of such Directors.

**39.7** Notwithstanding the foregoing provisions of this Bye-law 39, a Director may also be appointed or elected pursuant to the special rights that may be designated by the Board in respect of a class or series of shares pursuant to Bye-law 4.2(c).

#### **40. No Share Qualification**

A Director shall not be required to hold any shares in the capital of the Company by way of qualification. A Director who is not a Member shall nevertheless be entitled to attend and speak at general meetings and at any separate meeting of the holders of any class of shares or debentures in the capital of the Company.

**41. Term of Office of Directors**

**41.1** Subject to Bye-law 39.2, at each annual general meeting in every year, all of the Directors shall retire. A retiring director shall be eligible for re-election.

**41.2** The Company at the meeting at which a Director retires under any provision of these Bye-laws may (subject to Bye-law 39.4) by a resolution of its Members fill up the office being vacated by electing thereto the retiring Director or some other person eligible for appointment. In default of such action by the Members, the retiring Director shall continue in office as though he was re-elected at such meeting except in any of the following cases:

- (c) where at such meeting it is expressly resolved not to fill up each such office or a resolution for the re-election of such Director is put to the meeting and lost; or
- (d) where such Director has given notice in writing to the Company that he is unwilling to be re-elected.

The retirement shall not have effect until the conclusion of the meeting except where a resolution is passed to elect some other person in the place of the retiring Director or a resolution for his re-election is put to the meeting and lost in which case the retirement will take place forthwith, and accordingly a retiring Director who is re-elected or whose term of office otherwise continues as though he was re-elected at such meeting will continue in office without break.

**42. Alternate Directors**

**42.1** At any general meeting of the Company, the Members may elect a person or persons to act as a Director in the alternative to any one or more Directors or may authorise the Board to appoint such Alternate Directors.

**42.2** Unless the Members otherwise resolve, any Director may appoint a person or persons to act as a Director in the alternative to himself by notice in writing deposited with the Secretary. The

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appointment of an Alternate Director who is not already a Director is not operative until his appointment has been approved by a majority consisting of the Directors. Any person so elected or appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present.

- 42.3** An Alternate Director shall be entitled to receive notice of all meetings of the Board and all committees of the Board of which the Director appointing him is a member, to attend and vote at any such meeting at which a Director for whom such Alternate Director was appointed is not personally present and generally to perform at such meeting all the functions of such Director for whom such Alternate Director was appointed.
- 42.4** An Alternate Director shall cease to be such, if the Director for whom he was appointed to act as a Director in the alternative ceases for any reason to be a Director, but he may be re-appointed by the Board as an alternate to the person appointed to fill the vacancy in accordance with these Bye-laws.
- 42.5** The Directors may at any time, by a unanimous vote of all the Directors (except the Alternate Director who is the subject of the vote and the Director who appointed him), revoke the appointment of an Alternate Director. A Director may at any time, by notice in writing, deposited with the Secretary revoke the appointment of his Alternate Director and may appoint another person in his place in accordance with this Bye-law 42. If a Director retires but is re-appointed, a valid appointment of an Alternate Director which was in force immediately before his retirement continues to operate after his re-appointment as if he had not retired.
- 42.6** Every person acting as an Alternate Director shall (except as regards power to appoint an alternate and remuneration) be subject in all respects to these Bye-laws relating to Director and shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of the Director appointing him. An Alternate Director may be paid expenses and shall be entitled to be indemnified by the Company to the same extent as if he were a director

but shall not be entitled to receive from the Company any fee in his capacity as an Alternate Director.

#### **43. Removal of Directors**

**43.1** A Director may be removed either by:

- (a) the Members entitled to vote for the election of Directors, at any special general meeting convened and held in accordance with these Bye-laws, provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 clear days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal; or
- (b) (with or without cause) by notice in writing signed by all of his co-directors, delivered to the Secretary and such Director.

**43.2** Any removal of a Director under the provisions of this Bye-law shall be without prejudice to any claim which such Director may have for damages for breach of any agreement between him and the Company.

#### **44. Vacancy in the Office of Director**

**44.1** The office of Director shall be vacated if the Director:

- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law or dies;
- (b) is or becomes bankrupt, or makes any arrangement or composition with his creditors generally;
- (c) is examined by a registered medical practitioner who gives a written opinion to the Company stating that the Director has become physically or mentally incapable of acting

as a Director and may remain so for more than three months; or by reason of the Director's mental health a court makes an order which wholly or partly prevents him from personally exercising any powers or rights which he would otherwise have and, in either case, the Board resolves that his office be vacated;

- (d) for more than twelve months both he and any Alternate Director appointed by him are absent, without special leave of absence from the Board, from board meetings held during that period and the Board resolves that his office be vacated;
- (e) resigns his office by notice to the Company, in which event he shall vacate that office on the receipt of that notice by the Company or at such later time as is specified in the notice; or
- (f) upon his term of office expiring pursuant to the special rights of any class or series of shares.

**44.2** The Members in general meeting or the Board at any time shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, removal, disqualification or resignation of any Director or as a result of an increase in the size of the Board pursuant to Bye-law 39.1 and to appoint an Alternate Director to any Director so appointed.

## **45. Remuneration of Directors**

### **45.1 Directors' Fees**

The Directors shall be paid out of the funds of the Company by way of remuneration for their services as Directors such fees as the Board may from time to time determine provided that the aggregate of all such fees so paid to the Directors, excluding amounts payable under any other provision of these Bye-laws, shall not exceed £750,000 per annum or such greater amount as the Company may from time to time determine in general meeting and shall be divisible among the

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Directors as they may by resolution agree or, failing agreement, equally except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of the remuneration related to the period during which he has held office. The provisions of this Bye-law shall not apply to the remuneration of any Director who holds executive office (whether part time or full time) which shall be established pursuant to the provisions of Bye-law 45.2.

#### **45.2 Remuneration of Executive Directors**

Any Director who holds any executive office (including for this purpose the office of chairman whether or not such office is held in an executive capacity), or who serves on any committee, or who, at the request of the Directors, goes or resides abroad, makes any special journey or otherwise performs services which in the opinion of the Directors, determined in a resolution of the Directors, are outside the scope of the ordinary duties of a Director, may be paid such remuneration by way of salary, commission or otherwise as the Directors may determine in addition to or in lieu of any fee payable to him for his services as Director pursuant to these Bye-laws.

#### **45.3 Expenses**

The Company shall repay to any Director all such reasonable expenses as he may properly incur in the performance of his duties including attending meetings of the Directors or of any committee of the Directors or general meetings or separate meetings of the holders of any class of shares or debentures of the Company or otherwise in or about the business of the Company.

#### **45.4 Directors' Pensions and Other Benefits**

Without limiting the generality of the power and authority delegated to the Directors in Bye-law 45.1, the Directors may exercise all the powers of the Company to establish and maintain or procure the establishment and maintenance of an Employee Share Scheme or any non-contributory or contributory pension, superannuation or death, disability or other benefit funds,

for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, any persons who are or were at any time in the employment or service of or who are or were at any time Directors or officers of and holding any salaried employment or office in the Company or any other company which is its holding company or in which the Company or such holding company has any interest whether direct or indirect or which is in any way allied to or associated with the Company or any company which is a subsidiary undertaking of the Company or of any such other company and the families and dependants of any such persons, and also establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or of any such other company or of any such persons as aforesaid, and, subject to the Act, make payments for or towards the insurance of any such persons as aforesaid, and do any of the matters aforesaid either alone or in conjunction with any such other company.

#### **46. Defect in Appointment**

All acts done in good faith by the Board, any Director, a member of a committee appointed by the Board, any person to whom the Board may have delegated any of its powers shall, or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that he was or any of them were, disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or act in the relevant capacity.

#### **47. Directors to Manage Business**

**47.1** The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by the Act or by these Bye-laws, required to be exercised by the Company in general meeting subject to these Bye-laws and the provisions of any statute.



47.2 Subject to these Bye-laws, the Board may delegate to any company, firm, person, or body of persons any power of the Board (including the power to sub-delegate).

#### 48. General Powers of the Board of Directors

48.1 The Board may:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
- (b) appoint one or more Directors to the office of managing director or chief executive officer of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
- (c) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
- (d) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney;
- (e) procure that the Company pays all expenses incurred in promoting and incorporating the Company and listing the shares of the Company;
- (f) delegate any of its powers (including the power to sub-delegate) to a committee appointed by the Board which may consist partly or entirely of non-Directors, provided

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that every such committee shall conform to such directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;

- (g) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;
- (h) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (i) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law; and
- (j) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any agreement, document or instrument on behalf of the Company.

### *Borrowing Powers*

**48.2** Subject as herein provided, the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge or otherwise grant a security interest in its undertaking, property and assets (both present and future) and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Unless otherwise sanctioned by a resolution of the Members, the Directors shall restrict the borrowings of the Company and exercise all voting and other rights or powers of control exercisable by the Company in relation to Subsidiaries to ensure (as regards Subsidiaries so far as by such exercise they can ensure) that the aggregate principal amount for the time being outstanding of all borrowings of the Group

(exclusive of intra-Group borrowings) shall not at any time exceed a sum equal to twice the adjusted total of capital and reserves (such amount being the “**Borrowing Limit**”).

48.3 For the purposes of these Bye-laws:

- (a) “**Group**” means the Company and all Subsidiaries.
- (b) “**Subsidiary**” means a subsidiary or subsidiary undertaking of the Company (as defined respectively in Section 1159, 1161 and 1162 of the 2006 Act).
- (c) The expression “**the adjusted total of capital and reserves**” means the aggregate of (i) the nominal amount of the share capital of the Company issued and paid-up or credited as paid-up and (ii) the amounts standing to the credit of any of the capital or revenue reserves (including, without limitation, any share premium account, contributed surplus, capital redemption reserve fund, foreign exchange reserve, revaluation or other reserve) of the Group and any credit balance on the profit and loss account all as shown in a consolidation of the then latest audited balance sheet of the Group but after:
  - (i) making such adjustments as may be necessary in respect of any variation in the paid-up share capital, share premium account or capital redemption reserve fund of the Group since the date of the latest audited balance sheet;
  - (ii) making such adjustments as may be necessary in respect of any distribution in cash or in specie declared, recommended or made by the Company or by any Subsidiary (otherwise than to the Company or to another Subsidiary) out of profits earned on or prior to the date of the latest audited balance sheet of the Company except insofar as provided for in such balance sheet;
  - (iii) making such adjustments as may be necessary in respect of any Subsidiary which was not a Subsidiary at the date of the latest audited balance sheet of the Company but which would be a Subsidiary if an audited balance sheet was prepared at the relevant

time (and as if such time was the end of the Company's financial year) and/or any Subsidiary which was a Subsidiary at the date of the latest audited balance sheet of the Company but would no longer be so if a balance sheet was to be prepared at such relevant time;

(iv) making such adjustments as may be necessary in respect of any variation in the interest of the Company in any company in the Group since the date of the latest audited balance sheet;

(v) excluding therefrom amounts attributable to minority interests and any provision made or which ought to be made for taxation (whether deferred or otherwise);

(vi) deducting sums equivalent to the book values of goodwill and other indefinite life intangible assets shown in the relevant balance sheet (as adjusted pursuant to the preceding provisions of this Bye-law) but adding back the amount of goodwill and other indefinite life intangible assets that would have remained on the relevant balance sheet (as adjusted) if all goodwill and indefinite life intangible assets had been carried on the balance sheet as an asset and amortised on a straight-line basis over 20 years (or such longer period, as decided by the Company, as may be in accordance with generally accepted accounting practice in the United Kingdom), this amount to be reported on by the Auditor; and

(vii) making such other adjustments as the Auditor considers appropriate.

(d) There shall be included as "**borrowings**":

(i) all amounts outstanding under any acceptance credit or similar arrangements opened on behalf of and in favour of the Company or any Subsidiary excluding acceptances of trade bills relating to goods purchased in the ordinary course of trading;

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- (ii) all amounts outstanding in respect of any debenture (however issued) of the Company or any Subsidiary which are not beneficially owned within the Group;
  - (iii) all amounts outstanding under or in respect of any instrument creating or evidencing indebtedness in the nature of borrowing;
  - (iv) the nominal amount of any share capital and all amounts of any borrowings, the beneficial interest wherein is not for the time being owned by the Group and the redemption or repayment whereof is for the time being guaranteed or underwritten by the Company or by a Subsidiary, except to the extent that the amount guaranteed or underwritten otherwise falls to be included as borrowings together in either case with any fixed or minimum premium payable on final redemption or repayment (or, in the case of an index-linked stock or other index-linked obligation, the highest amount that would be repayable thereon under the provisions of the instrument constituting or regulating such stock or obligation if such stock or obligation were to be redeemed on the date on which the calculation falls to be made);
  - (v) the nominal amount of any share capital, not being equity share capital, of a Subsidiary not for the time being in the beneficial ownership of the Group;
  - (vi) the capital value of any finance lease required to be capitalised and treated as a liability in an audited balance sheet of the Company (as if the balance sheet was prepared at the relevant time and in accordance with the accounting principles used in the preparation of the latest audited balance sheet of the Company) by any applicable accounting standard (as defined in Section 464 of the 2006 Act) from time to time in force and for this purpose "finance lease" means a contract between a lessor and the Company or any Subsidiary as lessee or sub-lessee where substantially all the risks and rewards of ownership of the asset leased or sub-leased are to be borne by the lessee or sub-lessee (as determined in accordance with any then current Statement of Standard Accounting Practice or otherwise in accordance with United Kingdom generally

accepted accounting principles but excluding, for the avoidance of doubt, leaseholds of immovable property); and

(vii) any fixed or minimum premium payable on the repayment of any borrowings or deemed borrowings.

(e) Provided that borrowings of a partly-owned Subsidiary (excluding any amount for the time being owing to the Company or any Subsidiary) shall be deemed to be reduced by an amount equal to the proportion of the equity share capital of the partly-owned Subsidiary which is not attributable to the Company, and “borrowings” shall also exclude:

(i) any amounts borrowed by the Company or any Subsidiary for the purpose of repaying, within six months of the date on which such amounts were borrowed, all or part of any borrowings (other than as referred to in this paragraph (i)) by the Company or any Subsidiary, provided that such amounts borrowed are applied for that purpose within such period;

(ii) borrowings incurred by the Company or any Subsidiary to finance a contract where part of the price receivable under the contract by the Company or any Subsidiary is guaranteed or insured by the Export Credits Guarantee Department of the United Kingdom Department of Trade and Industry or any other agency fulfilling a similar function up to an amount equal to that part of the price which is guaranteed or insured;

(iii) amounts payable under any hire-purchase agreement, credit sale agreement, operating lease or similar agreement which is not a finance lease for the purposes of By-law 48.3(d)(vi) above;

(iv) the amount of monies borrowed which are for the time being deposited with a governmental authority in any part of the world in connection with import deposits or a

similar governmental scheme to the extent that the Company or the Subsidiary making the deposit retains its interest in the deposit; and

(v) a sum advanced or paid to the Company or a Subsidiary (or its agents or nominees) by a customer of the Company or a Subsidiary as an unexpended customer receipt or progress payment pursuant to a contract between the customer and the Company or Subsidiary.

- 48.4** In computing the amounts to be taken into account in terms of this Bye-law, an amount which could be counted as a borrowing by more than one company shall in no case be so counted for the purpose of the same limit.
- 48.5** For the purpose of calculating the aggregate amount of all borrowings, any amount expressed in a currency other than sterling shall be translated into sterling at the latest establishable rate of exchange ruling in London prior to the date on which the calculation falls to be made (and so that for that purpose the rate of exchange shall be taken as the spot rate of any bank (being an institution authorised under the FSMA) in London, approved by the Directors, at 11:00 a.m., London time, on the date on which such latest rate of exchange can be established) and, for the purpose of calculating the amount of the adjusted total of capital and reserves, any amount so expressed in a currency other than sterling shall be translated into sterling at the rate of exchange used for the purposes of the then latest audited balance sheet of the Company.
- 48.6** For the purposes, and notwithstanding any other provision, of this Bye-law, where, under the terms on which monies are borrowed, the amount of money that would be required to discharge the principal amount in full if it fell to be repaid (at the option of the borrower or by reason of default) on the date at which the Borrowing Limit is being calculated is less than the amount that would otherwise be taken into account in respect of such borrowing for the purpose of this Byelaw, the amount of the borrowings shall be, and be deemed to be, the lesser amount.

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- 48.7 For the purpose of this Bye-law there shall be debited against the amount of any monies borrowed by the Group an amount equal to the aggregate of all cash in hand, credit balances on current or deposit accounts with bankers, cash deposits, certificates of deposit, and debt securities of governments and companies and similar instruments owned by any member of the Group which are or represent amounts available for repayment of any monies borrowed.
- 48.8 Notwithstanding any other provision of these Bye-laws, the Borrowing Limit shall be deemed not to have been breached until the aggregate amount of borrowings has exceeded the Borrowing Limit for 30 consecutive days.
- 48.9 The report of the Auditor as to the amount of the adjusted total of capital and reserves or as to the Borrowing Limit or as to the aggregate amount of borrowings falling to be taken into account for the purposes of or as to compliance with the Borrowing Limit at any particular time shall be conclusive evidence of such amount or fact for the purposes of this Bye-law.
- 48.10 No lender or other person dealing with the Company or any Subsidiary shall be concerned to see or inquire whether the said Borrowing Limit is observed and no debt incurred or security given in excess of the Borrowing Limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the Borrowing Limit has been or would thereby be exceeded.
- 48.11 If at any time the Company has no Subsidiaries references in this Bye-law to the consolidation of the balance sheet of the Company and its Subsidiaries shall have effect as if they were references to the balance sheet of the Company itself.
- 48.12 “**Equity share capital**” means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.



**49. Register of Directors and Officers**

The Board shall cause to be kept in one or more books at the Registered Office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

**50. Appointment of Officers and Secretary**

**50.1** The Board may appoint such Officers (who may or may not be Directors) as the Board may determine.

**50.2** The Secretary shall be appointed by the Board from time to time, at such remuneration and on such conditions as it thinks fit, and the Board may remove from office any person so appointed, without prejudice to any claim for damages for breach of contract between such person and the Company.

**50.3** Any Secretary appointed pursuant to this Bye-law 50 may be located in such jurisdiction as the Board in their sole discretion consider appropriate.

**51. Duties of Officers and Secretary**

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be conferred on them by the Board from time to time.

**52. Remuneration of Officers**

The Officers shall receive such remuneration as the Board may determine.

**53. Conflicts of Interest**

*Directors' interests other than in relation to transactions or arrangements with the Company*

**53.1** If a situation (a "**Relevant Situation**") arises in which a Director has, or could have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (including, without limitation, in relation to the exploitation of any property, information or

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opportunity, (whether or not the Company could take advantage of it) but excluding any situation which cannot reasonably be regarded as likely to give rise to a conflict of interest) the following provisions shall apply if the conflict of interest does not arise in relation to a transaction or arrangement with the Company:

- (a) if a Relevant Situation arises from the appointment or proposed appointment of a person as a Director of the Company, the Directors (other than the Director and any other Director with the same interest) may resolve to authorise the appointment of the Director on such terms as they may determine;
- (b) if a Relevant Situation arises in circumstances other than in paragraph (a) above, the Directors (other than the Director and any other Director with a similar interest who shall both not be counted in the quorum at the meeting and shall not vote on the resolution) may resolve to authorise the Relevant Situation and the continuing performance by the Director of his duties on such terms as they may determine.

**53.2** Any reference in Bye-law 53.1 above to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

**53.3** Any terms determined by Directors under Bye-laws 53.1(a) or (b) above may be imposed at the time of the authorisation or subsequently and may include (without limitation):

- (a) whether the interested Director(s) may vote (or be counted in the quorum at a meeting) in relation to any resolution relating to the Relevant Situation;
- (b) the exclusion of the interested Director(s) from all information and discussion by the Company of the Relevant Situation; and
- (c) the application to the interested Director(s) of a strict duty of confidentiality to the Company for any confidential information of the Company in relation to the Relevant Situation.

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- 53.4 An interested Director must act in accordance with any terms determined by the Directors under Bye-laws 53.1(a) or (b) above.
- 53.5 Except as specified in Bye-law 53.1 above, any proposal made to the Directors and any authority given by the Directors in relation to a Relevant Situation shall be dealt with in the same way as any other matter may be proposed to and resolved upon by the Directors in accordance with the provisions of these Bye-laws.
- 53.6 Any authorisation of a Relevant Situation given by the Directors under Bye-law 53.1 above may provide that, where the interested Director obtains (other than through his position as a Director of the Company) information that is confidential to a third party, he will not be obliged to disclose it to the Company or to use it in relation to the Company's affairs in circumstances where to do so would amount to a breach of that confidence.

*Declaration of interests not in relation to transactions or arrangements with the Company*

- 53.7 A Director shall declare the nature and extent of his interest in a Relevant Situation within Bye-law 53.1 to the other Directors.

*Declaration of interests in a proposed transaction or arrangement with the Company*

- 53.8 If a Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company, he must declare the nature and extent of that interest to the other Directors.

*Declaration of interest in an existing transaction or arrangement with the Company*

- 53.9 Where a Director is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company, he must declare the nature and extent of his interest to the other Directors, unless the interest has already been declared under Bye-law 53.8 above.

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*Provisions applicable to declarations of interest*

**53.10** The declaration of interest must (in the case of Bye-law 53.9) and may, but need not (in the case of Bye-laws 53.7 or 53.8) be made in writing, in advance of a meeting of Directors or during a meeting of Directors, provided that it is recorded in the minutes thereof, and provide details of the Director's:

- (a) interest (as member, officer, employee or otherwise) in a specified body corporate or firm and is to be interested or potentially interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm; or
- (b) connection with a specified person (other than a body corporate or firm) and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.

If a declaration of interest proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

**53.11** Any declaration of interest required:

- (a) by Bye-laws 53.7 and 53.9 must be made as soon as is reasonably practicable; and
- (b) by Bye-law 53.8 must be made before the Company enters into the transaction or arrangement.

Failure to comply with this requirement does not affect the underlying duty to make the declaration of interest.

**53.12** A declaration in relation to an interest of which the Director is not aware, or where the Director is not aware of the transaction or arrangement in question, is not required. For this purpose, a Director is treated as being aware of matters of which he ought reasonably to be aware.

**53.13** A Director need not declare an interest:

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- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (b) if, or to the extent that, the other Directors are already aware of it (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered:
    - (i) by a meeting of the Directors; or
    - (ii) by a committee of the Directors appointed for the purpose under these Bye-laws.

*Directors' interests*

**53.14** Subject to the Act and to declaring his interest in accordance with Bye-laws 53.7, 53.8 and 53.9 above:

- (a) A Director shall not be disqualified by his office from entering into any transaction or arrangement with the Company, either with regard to his tenure of any office or position in the management, administration or conduct of the business of the Company or as vendor, purchaser or otherwise;
- (b) A Director shall not, by reason of his holding office as Director (or of the fiduciary relationship established by holding that office), be liable to account to the Company for any remuneration, profit or other benefit resulting from any transaction or arrangement with the Company or from a Relevant Situation authorised under Bye-law 53.1(a);
- (c) A Director may hold any other office or place of profit with the Company (except that of auditor) in conjunction with his office of Director for such period (subject to the Act) and upon such terms as the Board may decide and may be paid such extra remuneration for

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so doing (whether by way of salary, commission, participation in profits or otherwise) as the Board may decide, either in addition to or in lieu of any remuneration under any other provision of these Bye-laws;

- (d) A Director may be or become a member or director of, or hold any other office or place of profit under, or otherwise be interested in, any other company in which the Company may be interested and shall not be liable to account to the Company for any benefit received by him as a member or director of, or holder of any other office or place of profit under, or his other interest in, that company;
- (e) The Board may cause the voting rights conferred by the shares in any other company held or owned by the Company or exercisable by them as Directors of that other company to be exercised in such manner in all respects as it thinks fit (including the exercise of voting rights in favour of any resolution appointing the Directors or any of them as Directors or officers of the other company or voting or providing for the payment of any benefit to the Directors or officers of the other company);
- (f) A Director may be or become a Director of any other company in which the Company does not have an interest which cannot reasonably be regarded as giving rise to a conflict of interest at the time of his appointment as a Director of that other company;
- (g) A Director may act by himself or his firm in a professional capacity for the Company (except as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;
- (h) The Board may purchase and maintain for or for the benefit of any person who holds or has at any time held a relevant office insurance against any liability incurred by him in respect of any act or omission in the actual or purported discharge of his duties or in the exercise or purported exercise of his powers or otherwise in relation to his holding of a relevant office; and for this purpose relevant office means that of Director, officer

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(excluding an auditor) or employee in relation to the Company or any company which is or was a subsidiary undertaking of or associated with the Company or any predecessor in business of the Company or any such subsidiary undertaking or associated company, or that of trustee of any pension fund or retirement, death or disability scheme for the benefit of any employee of the Company or any such subsidiary undertaking or associated company;

- (i) A Director shall not vote (or be counted in the quorum at a meeting) in respect of any resolution concerning his own appointment (including fixing or varying its terms), or the termination of his own appointment, as the holder of any office or place of profit with the Company or any other company in which the Company is interested but, where proposals are under consideration concerning the appointment (including fixing or varying its terms), or the termination of the appointment, of two or more Directors to offices or places of profit with the Company or any other company in which the Company is interested, those proposals may be divided and a separate resolution may be put in relation to each Director and in that case each of the Directors concerned (if not otherwise debarred from voting under this Bye-law) shall be entitled to vote (and be counted in the quorum) in respect of each resolution unless it concerns his own appointment or the termination of his own appointment;
- (j) A Director shall also not vote (or be counted in the quorum at a meeting) in relation to any resolution relating to any transaction or arrangement with the Company in which he has an interest which may reasonably be regarded as likely to give rise to a conflict of interest and, if he purports to do so, his vote shall not be counted, but this prohibition shall not apply and a Director may vote (and be counted in the quorum) in respect of any resolution concerning any one or more of the following matters:

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- (i) any transaction or arrangement in which he is interested by virtue of an interest in shares, debentures or other securities of the Company or otherwise in or through the Company;
  - (ii) the giving of any guarantee, security or indemnity in respect of:
    - (A) money lent or obligations incurred by him or by any other person at the request of, or for the benefit of, the Company or any of its subsidiary undertakings; or
    - (B) a debt or obligation of the Company or any of its subsidiary undertakings for which he himself has assumed responsibility in whole or in part (either alone or jointly with others) under a guarantee or indemnity or by the giving of security;
  - (iii) indemnification (including loans made in connection with it) by the Company in relation to the performance of his duties on behalf of the Company or of any of its subsidiary undertakings;
  - (iv) any issue or offer of shares, debentures or other securities of the Company or any of its subsidiary undertakings in respect of which he is or may be entitled to participate in his capacity as a holder of any such securities or as an underwriter or sub-underwriter;
  - (v) any transaction or arrangement concerning any other company in which he does not hold, directly or indirectly as shareholder, or through his direct or indirect holdings of Financial Instruments voting rights representing 1% or more of any class of shares in the capital of that company;



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- (vi) any arrangement for the benefit of employees of the Company or any of its subsidiary undertakings which does not accord to him any privilege or benefit not generally accorded to the employees to whom the arrangement relates; and
  - (vii) the purchase or maintenance of insurance for the benefit of Directors or for the benefit of persons including Directors.
- (k) In the case of an Alternate Director, an interest of his appointor shall be treated as an interest of the alternate in addition to any interest which the alternate otherwise has;
- (l) If any question arises at any meeting as to whether an interest of a Director (other than the chairman of the meeting) may reasonably be regarded as likely to give rise to a conflict of interest or as to the entitlement of any Director (other than the chairman of the meeting) to vote in relation to the transaction or arrangement with the Company and the question is not resolved by his voluntarily agreeing to abstain from voting, the question shall be referred to the chairman of the meeting and his ruling in relation to the Director concerned shall be final and conclusive except in a case where the nature or extent of the interest of the Director concerned, so far as known to him, has not been fairly disclosed. If any question shall arise in respect of the chairman of the meeting and is not resolved by his voluntarily agreeing to abstain from voting, the question shall be decided by a resolution of the Board (for which purpose the chairman shall be counted in the quorum but shall not vote on the matter) and the resolution shall be final and conclusive except in a case where the nature or extent of the interest of the chairman, so far as known to him, has not been fairly disclosed.
- (m) Subject to the Act, the Company may by resolution of the Members, suspend or relax the provisions of this Bye-law to any extent or ratify any transaction or arrangement not duly authorised by reason of a contravention of this Bye-law.

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**54. Indemnification and Exculpation of Directors and Officers**

**54.1** Subject to the proviso that the following indemnity shall not extend to any matter which would render it void or unenforceable pursuant to the Act, the Directors, Secretary and other Officers (such term to include any person appointed to any committee by the Board) for the time being acting in relation to any of the affairs of the Company, any subsidiary thereof, and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof, and every one of them, and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, liabilities, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act alleged or done, concurred in or omitted in or about the execution or alleged execution of the Company's business, or their duty, or supposed duty, or in their respective offices or trusts, including but not limited to liabilities under contract, tort and statute or any applicable foreign law or regulation and all reasonable legal and other costs and expenses properly payable, and without limiting the foregoing generality, the persons to which it applies shall be indemnified out of the funds of the Company against all liabilities incurred by them by or by reason of any act alleged or done, concurred in or omitted in the conduct of the Company's business or in the discharge of his duties in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in connection with any application under the Act in which relief from liability is granted to him by the court, and none of them shall be liable to the Company for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any monies or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any monies of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, PROVIDED THAT this indemnity shall not extend to any matter in respect of any fraud or dishonesty which may attach to any of the said persons. Each

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Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company or any subsidiary thereof, PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director or Officer. The indemnity provided to the persons specified in this Bye-law 54.1 shall apply if those persons are acting in the reasonable belief that they have been appointed or elected to any office or trust of the Company, or any subsidiary thereof, notwithstanding any defect in such appointment or election.

- 54.2** To the extent that any person is entitled to claim an indemnity pursuant to these Bye-laws in respect of amounts paid or discharged by him, the indemnity shall take effect as an obligation of the Company to reimburse the person making such payment or effecting such discharge. Subject to the Act, expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to these Bye-laws shall be paid by the Company in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the person so entitled to repay such amount if it shall be ultimately determined that they are not entitled to be indemnified, provided that no monies shall be paid hereunder unless payment of the same is authorised in the specific case by a determination that such indemnification would be proper in the circumstances because they have met the standard of conduct which would entitle them to the indemnification thereby provided, and such determination shall be made, by either the Board, by a majority vote at a meeting duly constituted by a quorum of Directors not party to the proceedings or matter with regard to which the indemnification is, or would be claimed, or if such meeting cannot be constituted because of a lack of disinterested quorum, by independent legal counsel in a written opinion, or by a resolution of the Members.
- 54.3** The Company may purchase and maintain insurance for the benefit of any Director or Officer against any liability incurred by him under the Act in his capacity as a Director or Officer or

indemnifying such Director or Officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the Director or Officer may be guilty in relation to the Company or any subsidiary thereof.

**54.4** This Bye-law 54 shall provide the broadest indemnity allowable under applicable law, and to the extent any indemnification hereunder is prohibited, unenforceable or not authorised under applicable law, this Bye-law 54 shall be interpreted as broadly as possible without invalidating the remaining provisions hereof.

**54.5** No amendment or repeal of any provision of this Bye-law 54 shall alter detrimentally the rights to the advancement of expenses or indemnification related to a claim based on an act or failure to act which took place prior to such amendment, repeal or termination.

#### **MEETINGS OF THE BOARD OF DIRECTORS**

##### **55. Board Meetings**

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit. Subject to these Bye-laws, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast (each Director having one vote) and in the case of an equality of votes the chairman of the meeting shall have a second or casting vote.

##### **56. Notice of Board Meetings**

A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Board. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is communicated to such Director personally or by word of mouth or in writing by post, electronic means or other mode of representing words in a visible form agreed by the Board from time to time at such Director's last known address or in accordance with any other instructions given by such Director to the Company for this purpose and detailing the business to be conducted at the meeting.

**57. Electronic Participation in Meetings**

Directors may participate in any meeting by such electronic means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting. Such a meeting shall be deemed to take place where the largest group of those Directors participating in the meeting is physically assembled, or, if there is no such group, where the chairman of the meeting then is.

**58. Quorum at Board Meetings**

The quorum necessary for the transaction of business at a meeting of the Board may be fixed by the Board and, unless fixed at any other number shall be two Directors (but shall not be less than two). Subject to these Bye-laws, any Director who ceases to be a Director at a Board meeting may continue to be present and to act as a Director and be counted in the quorum until the end of the Board meeting if no other Director objects and if otherwise a quorum of Directors would not be present.

**59. Board to Continue in the Event of Vacancy**

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting; or (ii) preserving the assets of the Company.

**60. Chairman to Preside**

Unless otherwise agreed by a majority of the Directors attending, the Chairman, if there be one shall act as chairman at all meetings of the Board at which he is present. In his absence a chairman shall be appointed or elected by the Directors present at the meeting.

**61. Written Resolutions**

A resolution signed by all the Directors, which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution. For the purposes of this Bye-law only “the Directors” shall not include an Alternate Director. Such resolution shall be deemed to be adopted, as an act of the Board, at the place where, and at the time when, the signature of the last Director to sign is affixed thereto. The terms of this Bye-law shall be subject to the requirement that any Director signing a written resolution shall be physically outside the United Kingdom when signing such written resolution.

**62. Validity of Prior Acts of the Board**

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board, in good faith, which would have been valid if that regulation or alteration had not been made.

**CORPORATE RECORDS****63. Minutes**

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, and meetings of committees appointed by the Board, including the declaration of interests of the Directors in the proceedings of such meetings.

**64. Place Where Corporate Records Kept**

Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the Registered Office of the Company, or at such other place as the Board may determine.

**65. Form and Use of Seal**

**65.1** The Company may adopt a seal in such form as the Board may determine. The Board may adopt one or more duplicate seals for use in or outside Bermuda.

**65.2** A seal may, but need not be affixed to any deed, instrument, share certificate or document, and if the seal is to be affixed thereto, it shall be attested by the signature of (i) any Director; or (ii) any Officer; or (iii) the Secretary; or (iv) any person authorized by the Board for that purpose.

**65.3** A Resident Representative may, but need not, affix the seal of the Company to certify the authenticity of any copies of documents.

**ACCOUNTS****66. Books of Account**

**66.1** The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.

**66.2** Such records of account shall be kept at the Registered Office of the Company, or subject to the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

**66.3** No member shall have any right of inspecting any account, book or document of the Company, except as conferred by law or authorised by the Board or any resolution of the Members.

**67. Financial Year End**

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 30 June in each year.

### AUDITS

**68. Annual Audit**

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act, the accounts of the Company shall be audited at least once in every year.

**69. Appointment of Auditor**

**69.1** Subject to the Act, at the annual general meeting or at a subsequent special general meeting in each year, an independent representative of the Members shall be appointed by them as Auditor of the accounts of the Company.

**69.2** The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

**70. Remuneration of Auditor**

The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine. In the case of an Auditor appointed pursuant to Bye-law 69, the remuneration of the Auditor shall be fixed by the Board.



**71. Duties of Auditor**

**71.1** The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.

**71.2** The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

**72. Access to Records**

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers of the Company for any information in their possession relating to the books or affairs of the Company.

**73. Financial Statements**

Subject to any rights to waive laying of accounts pursuant to the Act, financial statements as required by the Act shall be laid before the Members in general meeting. A resolution in writing made in accordance with Bye-law 37 receiving, accepting, adopting, approving or otherwise acknowledging financial statements shall be deemed to be the laying of such statements before the Members in general meeting.

**74. Distribution of Auditor's report**

The report of the Auditor shall be submitted to the Members in general meeting.

**75. Vacancy in the Office of Auditor**

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the vacancy thereby created shall be filled in accordance with the Act.

**SHARE CERTIFICATES****76. Issue of Share Certificates**

**76.1** A person whose name is entered in the register of Members as the holder of any certificated shares shall be entitled (unless the conditions of issue otherwise provide) to receive one certificate for those shares, or one certificate for each class of those shares and, if he transfers part of the shares represented by a certificate in his name, or elects to hold part in uncertificated form, to receive a new certificate for the balance of those shares.

**76.2** In the case of joint holders, the Company shall not be bound to issue more than one certificate for all the shares in any particular class registered in their joint names, and delivery of a certificate for a share to any one of the joint holders shall be sufficient delivery to all.

**76.3** A share certificate shall be issued under seal or signed by at least one director and the secretary or by at least two Directors (which may include any signature being applied mechanically or electronically). A share certificate shall specify the number and class of the shares to which it relates and the amount or respective amounts paid up on the shares. Any certificate so issued shall, as against the Company, be prima facie evidence of title of the person named in that certificate to the shares comprised in it.

**76.4** A share certificate may be given to a Member in accordance with the provisions of these Bye-laws on notices.

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- 76.5** Except as expressly provided to the contrary in these Bye-laws, no fee shall be charged for the issue of a share certificate.
- 76.6** Any two or more certificates representing shares of any one class held by any Member may at his request be cancelled and a single new certificate issued.
- 76.7** If any Member surrenders for cancellation a certificate representing shares held by him and requests the Company to issue two or more certificates representing those shares in such proportions as he may specify, the Board may, if it thinks fit, comply with the request on payment of such fee (if any) as the Board may decide.
- 76.8** If a certificate is damaged or defaced or alleged to have been lost, stolen or destroyed, a new certificate representing the same shares may be issued on compliance with such conditions as to evidence, indemnity and security for such indemnity as the board may think fit and on payment of any exceptional expenses of the Company incidental to its investigation of the evidence and preparation of the indemnity and security and, if damaged or defaced, on delivery up of the old certificate.
- 76.9** In the case of joint holders of a share a request for a new certificate under any of the preceding paragraphs of this Bye-law 76 may be made by any one of the joint holders unless the certificate is alleged to have been lost, stolen or destroyed.

## **DESTRUCTION OF DOCUMENTS**

### **77. Destruction of Documents**

- 77.1** The Board may authorise or arrange the destruction of documents held by the Company as follows:
- (a) at any time after the expiration of six years from the date of registration, all instruments of transfer of shares and all other documents transferring or purporting to transfer

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shares or representing or purporting to represent the right to be registered as the holder of shares on the faith of which entries have been made in the register of Members;

- (b) at any time after the expiration of one year from the date of cancellation, all registered share certificates which have been cancelled;
- (c) at any time after the expiration of two years from the date of recording them, all dividend mandates and notifications of change of address; and
- (d) at any time after the expiration of one year from the date of actual payment, all paid dividend warrants and cheques.

**77.2** It shall conclusively be presumed in favour of the Company that:

- (a) every entry in the register of Members purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made;
- (b) every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered;
- (c) every share certificate so destroyed was a valid certificate duly and properly cancelled;
- (d) every other document mentioned in Bye-law 77.1 above so destroyed was a valid and effective document in accordance with the particulars of it recorded in the books and records of the Company; and
- (e) every paid dividend warrant and cheque so destroyed was duly paid.

**77.3** The provisions of Bye-law 77.2 above shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties to it) to which the document might be relevant.

- 77.4 Nothing in this Bye-law 77 shall be construed as imposing on the Company or the Board any liability in respect of the destruction of any document earlier than as stated in Bye-law 77.1 above or in any other circumstances in which liability would not attach to the Company or the Board in the absence of this Bye-law.
- 77.5 References in this Bye-law to the destruction of any document include references to its disposal in any manner.

### VOLUNTARY WINDING-UP AND DISSOLUTION

#### 78. Winding-Up

If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

### CHANGES TO CONSTITUTION

#### 79. Changes to Bye-laws

No Bye-law may be rescinded, altered or amended and no new Bye-law may be made until the same has been approved by a resolution of the Board and by a resolution of the Members.

**80. Discontinuance**

The Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

**DISCLOSURE OF INTERESTS IN SHARES AND COMPANY INVESTIGATIONS****81.A. Definitions applicable to Bye-laws 81.B and 81.C**

(1) For the purposes of Bye-law 81.B:-

(a) **“DTR”** means the Disclosure Rules and Transparency Rules sourcebook from time to time published by the FSA;

(b) **“management company”** means a company as defined in article 2(1)(b) of Council Directive 2009/65/EC of 13 July 2009 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(c) **“shareholder”** means any natural person or legal entity governed by private or public law, who holds directly, as a Member, or indirectly:

(i) shares of the Company in its own name and on its own account;

(ii) shares of the Company in its own name, but on behalf of another natural person or legal entity;

(iii) depository receipts or interests, in which case the holder of the depository receipt or interest shall be considered as the shareholder of the underlying shares represented by the depository receipts;

(f) “**shares**” means shares (including preference shares and convertible shares) which are:

(i) already issued and carry rights to vote which are exercisable in all circumstances at general meetings of the Company including shares (such as preference shares) which, following the exercise of an option for their conversion, event of default or otherwise, have become fully enfranchised for voting purposes; and

(ii) admitted to trading on a regulated market (such as the London Stock Exchange’s Main Market for listed securities or prescribed market (such as AIM, a market operated by the London Stock Exchange)).

(g) “**trading day**” means a day included in the calendar of trading days published by FSA at [www.fsa.gov.uk](http://www.fsa.gov.uk);

(h) an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction;

(i) a stock-lending agreement which provides for the outright transfer of securities and which provides the lender with a right to call for re-delivery of the lent stock (or its equivalent) is not (as respects the lender) to be taken as involving a disposal of any shares which may be the subject of the stock loan;

(j) for the purposes of calculating whether any percentage threshold is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held shall if necessary be rounded down to the next whole number;

(k) a person is an indirect holder of shares for the purpose of the applicable definition of shareholder in this Bye-law to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

(i) voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the Company;

(ii) voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;

(iii) voting rights attaching to shares which are lodged as collateral with that person provided that person controls the voting rights and declares its intention of exercising them;

(iv) voting rights attaching to shares in which that person has the life interest;

(v) voting rights which are held, or may be exercised within the meaning of cases (i) to (iv) or, in cases (vi) and (viii) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;

(vi) voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;

(vii) voting rights held by a third party in his own name on behalf of that person;

(viii) voting rights which that person may exercise as a proxy where that person can exercise the voting rights at his discretion in the absence of specific instructions from the shareholders;



(l) financial instruments should be taken into account in the context of notifying major holdings of shares pursuant to Bye-law 81.B(1) to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, financial instruments should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying shares reaching a certain level at a certain moment in time, nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

(2) For the purposes of Bye-law 81.C:-

(a) "**Relevant Share Capital**" means the Company's issued share capital of any class carrying rights to vote in all circumstances at general meetings of the Company (including any shares held as treasury shares); and for the avoidance of doubt (a) where the Company's share capital is divided into different classes of shares, references to Relevant Share Capital are to the issued share capital of each such class taken separately and (b) the temporary suspension of voting rights in respect of any shares comprised in issued share capital of the Company of any such class does not affect the application of this Bye-law in relation to interests in those or any other shares comprised in that class;

(b) "**interest**" means, in relation to the Relevant Share Capital, an interest of any kind whatsoever in any shares comprised therein (disregarding any restraints or restrictions to which the exercise of any right attached to the interest in the share is, or may be, subject) and without limiting the meaning of "interest" a person shall be taken to have an interest in a share if:

(i) he enters into a contract to acquire the share; or

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- (ii) not being the registered holder, he is entitled to exercise any right conferred by the holding of the share or is entitled to control the exercise of any such right, and for the purposes of this Bye-law 81.A(2)(b)(ii) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled; or
  - (iii) he is a beneficiary of a trust where the property held on trust includes an interest in the share save that in the case of an employee benefit trust operated in conjunction with an Employee Share Scheme, he will only be considered to have an interest in a share held in such trust to the extent that the share has been specifically allocated to him; or
  - (iv) otherwise than by virtue of having an interest under a trust, he has a right (whether conditional or absolute) to call for delivery of the share to himself or to his order; or
  - (v) otherwise than by virtue of having an interest under a trust, he has a right (whether conditional or absolute) to acquire an interest in the share or is under an obligation (whether conditional or absolute) to take an interest in the share; or
  - (vi) he has a right to subscribe for the share;
- (c) a person is taken to be interested in any shares in which his spouse or civil partner or any infant child or step-child of his is interested; and "infant" means a person under the age of 18 years;
- (d) a person is taken to be interested in shares if a body corporate is interested in them and:-

- (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
- (ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate,

PROVIDED THAT (a) where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a company and that company is entitled to exercise or control the exercise of any of the voting power at general meetings of another company ("**the effective voting power**") then, for purposes of paragraph (d)(ii) above, the effective voting power is taken as exercisable by that person and (b) for purposes of this Bye-law 81.A(2)(d), a person is entitled to exercise or control the exercise of voting power if he has a right (whether subject to conditions or not) the exercise of which would make him so entitled or he is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.

- (3) The provisions of Bye-law 81.B and 81.C are in addition to any and separate from other rights or obligations arising at law or otherwise.

#### **81.B. Notification of Interests in Shares**

- (1) A Member must notify the Company of the percentage of its voting rights he holds directly as a Member or on account of another person who is a shareholder or through his direct or indirect holding of financial instruments falling within Bye-law 81.B(2) (or a combination of such holdings) if the percentage of those voting rights:
  - (a) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% as a result of an acquisition or disposal of shares or financial instruments falling within Bye-law 81.B(2); or

(b) reaches, exceeds or falls below an applicable threshold in Bye-law 81.B(1)(a) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the Company in accordance with DTR 5.6.1R,

and when a Member is required to make such notification on account of another person who is shareholder, the Member shall procure that such other person complies with this Bye-law 81.B(1) as though such other person were a Member. A Member who holds, directly or indirectly, qualifying financial instruments is required to aggregate and, if necessary, notify all such instruments as relate to the Company.

(2) A Member must make a notification in accordance with the applicable thresholds in Bye-law 81.B(1) in respect of any qualifying financial instruments which he holds, directly or indirectly, which result in an entitlement to acquire, on such Member's own initiative alone, under an agreement which is binding under applicable law, shares to which voting rights are attached, already issued, of the Company.

(3) In any consideration of the application of this Bye-law 81.B, the voting rights referred to in Chapter 5 of the DTR shall be disregarded for the purposes of this Bye-law if, but only to the extent that, such interests would be disregarded for the purposes of DTR 5.1.3R to 5.1.5R (inclusive) were the Company an "issuer" as defined in DTR 5.1.1R(1).

(4) Any notification required to be made to the Company pursuant to this Bye-law 81.B shall be effected as soon as possible, but not later than two trading days, the first of which shall be the day after the date on which the relevant person:

(a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

(b) is informed about the event mentioned in Bye-law 81.B(1)(b).

For the purposes of Bye-law 81.B(4)(a) above a person shall, in relation to a transaction to which he is a party or which he has instructed, be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction in question and where a transaction is conditional upon the approval by public authorities of the transaction or on future uncertain event the occurrence of which is outside the control of the parties to the agreement, the parties are deemed to have knowledge of the acquisition, disposal or possibility of exercising voting rights only when the relevant approvals are obtained or when the event happens.

- (5) Voting rights must be calculated on the basis of all the shares to which voting rights are attached even if the exercise of such rights is suspended and notification shall be given in respect of all shares to which voting rights are attached.
- (6) The number of voting rights to be considered when calculating whether a threshold is reached, exceeded or fallen below is the number of voting rights in existence according to the Company's most recent disclosure made in accordance with DTR 5.6.1R, but disregarding voting rights attached to any Treasury Shares held by the Company (in accordance with the Company's most recent disclosure of such holdings).
- (7) Notifications in relation to shares admitted to trading on the London Stock Exchange's Main Market for listed securities, must be made using the form TR1 available in electronic format at the FSA's website at [www.fsa.gov.uk](http://www.fsa.gov.uk) or on such other form as prescribed by relevant legislation, but in any event must specify the share capital of the Company to which it relates and must also:

(a) state the number of shares comprised in that share capital in which the person making the notification knows he (or any other relevant person) had interests immediately after the time

when the obligation arose; or

(b) in a case where the person making the notification (or any other relevant person) no longer has a notifiable interest in shares comprised in that share capital, state that he (or that other person) no longer has that interest.

- (8) In determining whether a notification is required a person's net (direct or indirect) holding in a share (and of relevant financial instruments) may be assessed by reference to that person's holdings at a point in time up to midnight of the day for which the determination is made (taking account of acquisitions and disposals executed during that day).
- (9) A person making a notification to the Company to which this Bye-law 81.B applies must, if the notification relates to shares admitted to trading on the London Stock Exchange's Main Market for listed securities, at the same time file a copy of such notification with the FSA.

The information to be filed with the FSA must include a contact address of the person making the notification (but such details must be in a separate annex and not included on the form which is sent to the Company).

- (10) If it shall come to the notice of the Directors that any Member has not, within the requisite period, made or, as the case may be, procured the making of any notification required by Bye-law 81.B, the Company may (at the absolute discretion of the Directors) at any time thereafter by notice (a "**restriction notice**") to such Member direct that, in respect of the shares in relation to which the default has occurred (the "**default shares**" which expression shall include any further shares which are issued in respect of any default shares), the Member shall not be entitled to be present or to vote on any question, either in person or by proxy, at any general meeting of the Company or separate general meeting of the holders of any class of shares of the Company, or to be reckoned in a quorum.

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- (11) Where the default shares represent at least 0.25 per cent. (in nominal value calculated exclusive of any Treasury Shares) of the issued shares of the same class as the default shares, then the restriction notice may also direct that:
- (a) any dividend or any part thereof or other monies which would otherwise be payable on or in respect of the default shares shall be withheld by the Company; shall not bear interest against the Company; and shall be payable (when the restriction notice ceases to have effect) to the person who would but for the restriction notice have been entitled to them; and/or
  - (b) where an offer of the right to elect to receive shares of the Company instead of cash in respect of any dividend or part thereof is or has been made by the Company, any election made thereunder by such Member in respect of such default shares shall not be effective.

Upon the giving of a restriction notice its terms shall apply accordingly.

- (12) The Company shall send a copy of the restriction notice to each other person appearing to be interested in the shares the subject of such notice, but the failure or omission by the Company to do so shall not invalidate such notice.
- (13) Any restriction notice shall have effect in accordance with its terms until not more than 7 days after the Directors are satisfied that the default in respect of which the restriction notice was issued no longer continues but shall cease to have effect in relation to any shares which are transferred by such Member. The Company may (at the absolute discretion of the Directors) at any time give notice to the Member cancelling, or suspending for a stated period the operation of, a restriction notice in whole or in part.
- (14) For the purposes of this Bye-law 81.B, a person shall be treated as appearing to be interested in any shares if the Member holding such shares has given to the Company a notification whether following

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service of a notice under Bye-law 81.C or otherwise which either:

- (a) names such person as being so interested; or
- (b) (after taking into account any such notification and any other relevant information in the possession of the Company) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares.

**81.C. Power of the Company to investigate interests in shares**

- (1) The Company may by notice in writing require any person whom the Company knows or has reasonable cause to believe to be or, at any time during the 3 years immediately preceding the date on which the notice is issued to have been, interested in shares comprised in the Relevant Share Capital:-
  - (a) to confirm that fact or (as the case may be) to state whether or not it is the case; and
  - (b) if he holds or has during that time held an interest in shares so comprised, to give such further information as may be requested in accordance with Bye-law 81.C(2).
- (2) A notice under Bye-law 81.C(1) may require the person to whom it is addressed:-
  - (a) to give particulars of his own present or past interest in shares comprised in the Relevant Share Capital (held by him at any time during the 3-year period mentioned in Bye-law 81.C(1));
  - (b) where the interest is a present interest and any other interest in the shares subsists or, in any case, where another interest in the shares subsisted during that 3-year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice including the identity of persons interested in the shares in question and whether persons interested in the same shares are or



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were parties to an agreement relating to the exercise of rights conferred by the holding of such shares or an agreement (excluding any form of agreement to underwrite or sub-underwrite an offer of shares in a company) between two or more persons containing provisions for the acquisition by any one or more of them of shares;

- (c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (3) The information required by a notice under Bye-law 81.C(1) must be given in writing within such reasonable time as may be specified in the notice, being a period of not less than 14 days following service thereof.
- (4) This Bye-law applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in the Company which would on issue be comprised in Relevant Share Capital as it applies in relation to a person who is or was interested in shares so comprised; and references above in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.
- (5) Subject to the provisions of Bye-law 81.C(9), if any Member, or any other person appearing to the Directors to be interested in any shares in the capital of the Company held by such Member has been served with a notice under Bye-law 81.C and does not within the time specified therein supply to the Company the information thereby required, the Company may (at the absolute discretion of the Directors) at any time thereafter by notice (a "**restriction notice**") to such Member direct that, in respect of the shares in relation to which the default has occurred (the "**default shares**" which expression shall include any further shares which are issued in respect of any default shares), the Member shall not be entitled to be present or to vote on any question, either in person or by proxy, at any general meeting

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of the Company or separate general meeting of the holders of any class of shares of the Company, or to be reckoned in a quorum.

- (6) Where the default shares represent at least 0.25 per cent. (in nominal value calculated exclusive of any treasury shares) of the issued shares of the same class as the default shares, then the restriction notice may also direct that:
- (a) any dividend or any part thereof or other monies which would otherwise be payable on or in respect of the default shares shall be withheld by the Company; shall not bear interest against the Company; and shall be payable (when the restriction notice ceases to have effect) to the person who would but for the restriction notice have been entitled to them; and/or
  - (b) where an offer of the right to elect to receive shares of the Company instead of cash in respect of any dividend or part thereof is or has been made by the Company, any election made thereunder by such Member in respect of such default shares shall not be effective; and/or
  - (c) no transfer of any of the shares held by such Member shall be recognised or registered by the Directors unless:-
    - (i) the transfer is a permitted transfer; or
    - (ii) the Member is not himself in default as regards supplying the requisite information required under Bye-law 81.C and, when presented for registration, the transfer is accompanied by a certificate by the Member in a form satisfactory to the Directors to the effect that after due and careful enquiry the Member is satisfied that none of the shares the subject of the transfer are default shares.

Upon the giving of a restriction notice its terms shall apply accordingly.

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- (7) The Company shall send a copy of the restriction notice to each other person appearing to be interested in the shares the subject of such notice, but the failure or omission by the Company to do so shall not invalidate such notice.
- (8) Any restriction notice shall have effect in accordance with its terms until not more than seven clear days after the Directors are satisfied that the default in respect of which the restriction notice was issued no longer continues but shall cease to have effect in relation to any shares which are transferred by such Member by means of a permitted transfer or in accordance with Bye-law 81.C(6)(c) above on receipt by the Company of notice that a transfer as aforesaid has been made. The Company may (at the absolute discretion of the Directors) at any time give notice to the Member cancelling, or suspending for a stated period the operation of, a restriction notice in whole or in part.
- (9) Where a restriction notice is served on a Depositary, and the Depositary fails, through no fault of its own, to comply for any reason with the restriction notice, the provisions of Bye-laws 81.C(5) to 81.C(8) will only be implemented by the Company in relation to those shares in the Company in respect of which there has been a failure, and will not be implemented in relation to any other shares in the Company held by the Depositary. The Depositary may transfer or agree to transfer the shares in respect of which there has been a failure, or any rights in them, to the beneficial holder or holders of such shares in the Company.
- (10) For the purposes of this Bye-law 81.C:
- (a) a person shall be treated as appearing to be interested in any shares if the Member holding such shares has given to the Company a notification whether following service of a notice under Bye-law 81.C or otherwise which either:
- (i) names such person as being so interested; or

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- (ii) (after taking into account any such notification and any other relevant information in the possession of the Company) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares; and
- (b) a transfer of shares is a "**permitted transfer**" if but only if:
- (i) it is a transfer by way of, or in pursuance of, acceptance of a takeover offer for the Company meaning an offer to acquire all the shares, or all the shares of any class or classes, in the Company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class; or
  - (ii) the Directors are satisfied that the transfer is made pursuant to a bona fide sale of the whole of the beneficial ownership of the shares to a third party not connected with the transferring Member or with any other person appearing to the Directors to be interested in such shares; or
  - (iii) the transfer results from a sale made on or through the London Stock Exchange or any stock exchange outside the United Kingdom on which the Company's shares of the same class as the default shares are normally dealt in.

## TAKEOVER PROVISIONS

### 82. Takeover provisions

- 82.1 A person must not (other than solely as custodian or depositary (or nominee thereof) under any arrangements implemented and/or approved by the Directors under Bye-law 13.7):

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- (a) whether by himself, or with persons determined by the Board to be acting in concert with him, acquire after the date that this Bye-law shall come into effect (for purposes of this Bye-law 82, the "**Effective Date**") an interest in shares of the Company which, taken together with other interests in shares in the Company in which persons determined by the Board to be acting in concert with him are interested after the Effective Date, carry 30 per cent. or more of the voting rights of the Company; or
- (b) whilst he, together with persons determined by the Board to be acting in concert with him, is interested in shares, which in the aggregate carry not less than 30 per cent. but not more than 50 per cent. of the voting rights of the Company, acquire after the Effective Date, whether by himself or with persons determined by the Board to be acting in concert with him, an interest in additional shares in the Company, taken together with the interest in shares in the Company held by persons determined by the Board to be acting in concert with him, increases the percentage of shares carrying voting rights in which he is interested

(each of (a) and (b) for purposes of this Bye-law 82, a "**Limit**"), except as a result of a "**Permitted Acquisition**", as hereinafter defined; or

- (c) effect or purport to effect a "**Prohibited Acquisition**", as hereinafter defined.

**82.2** Where any person breaches any Limit, except as a result of a Permitted Acquisition, or becomes interested in any shares of the Company, as a result of a Prohibited Acquisition that person is in breach of these Bye-laws.

**82.3** The Board may do all or any of the following where it has reason to believe that any Limit is or may be breached or any Prohibited Acquisition has been or may be effected:

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- (a) require any Member or person appearing or purporting to be interested in any shares of the Company to provide such information as the Board considers appropriate to determine any of the matters under this Bye-law 82;
  - (b) have regard to such public filings as it considers appropriate to determine any of the matters under this Bye-law 82;
  - (c) make such determinations under this Bye-law 82 as it thinks fit, either after calling for submissions from affected Members or other persons or without calling for such submissions;
  - (d) determine that the voting rights attached to such number of shares in the Company held by such persons as the Board may determine to be held, or in which such persons are or may be interested, in breach of these Bye-laws (for purposes of this Bye-law 82, "**Excess Shares**") are from a particular time incapable of being exercised for a definite or indefinite period;
  - (e) determine that some or all of the Excess Shares must be sold;
  - (f) determine that some or all of the Excess Shares will not carry any right to any dividends or other distributions from a particular time for a definite or indefinite period; and
  - (g) take such other action as it thinks fit for the purposes of this Bye-law 82 including:
    - (i) prescribing rules (not inconsistent with this Bye-law 82);
    - (ii) setting deadlines for the provision of information;
    - (iii) drawing adverse inferences where information requested is not provided;

- (iv) making determinations or interim determinations;
- (v) executing documents on behalf of a Member;
- (vi) converting any Excess Shares held in uncertificated form into certificated form, or vice-versa;
- (vii) paying costs and expenses out of proceeds of sale; and
- (viii) changing any decision or determination or rule previously made.

**82.4** (a) An acquisition is a "**Permitted Acquisition**" if :

- (i) the Board consents to the acquisition (even if, in the absence of such consent, the acquisition would be a Prohibited Acquisition);
- (ii) if the acquisition arises from repayment of a stock borrowing arrangement (on arm's length commercial terms); or
- (iii) the acquisition is made in circumstances in which the City Code, if it applied to the Company, would require an offer to be made as a consequence and such offer is made, and not subsequently withdrawn, in accordance with Rule 9 of the City Code, as if it so applied.

(b) An acquisition is a "**Prohibited Acquisition**" if Rules 4, 5, 6 or 8 of the City Code would in whole or part apply to the acquisition if the Company was subject to the City Code

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and the acquisition was made (or, if not yet made, would if and when made be) in breach of or otherwise not comply with Rules 4, 5, 6 or 8 of the City Code.

**82.5** To the full extent permitted by the Act and by Bermuda law, the following General Principles of the City Code shall apply:

- (a) all holders of the securities of the Company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of the Company, the other holders of securities must be protected;
- (b) if a bid is being made for the Company, the holders of the securities of the Company must have sufficient time and information to enable them to reach a properly informed decision on the bid;
- (c) false markets must not be created in the securities of the Company, of any company making a bid for the Company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- (d) a person proposing to bid for the Company must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
- (e) the Company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.



- 82.6** The Board has full authority to determine the application of this Bye-law 82, including as to the deemed application of the whole or any part of the City Code (including of the General Principles of the City Code). Such authority shall include all discretion vested in the Panel as if the whole or any part of the City Code (including of the General Principles of the City Code) applied including, without limitation, the determination of conditions and consents, the consideration to be offered and any restrictions on the exercise of control. Any resolution or determination of, or decision or exercise of any discretion or power by, the Board or any Director or by the chairman of any meeting acting in good faith under or pursuant to the provisions of this Bye-law 82 shall be final and conclusive; and anything done by, or on behalf of, or on the authority of, the Board or any Director acting in good faith pursuant to the provisions of this Bye-law 82 shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever. The Board shall not be required to give any reasons for any decision, determination or declaration taken or made in accordance with this Bye-law 82.
- 82.7** Any one or more of the Directors may act as the attorney(s) of any Member in relation to the execution of documents and other actions to be taken for the sale of Excess Shares determined by the Board under this Bye-law 82.
- 82.8** This Bye-law 82 shall only have effect during such times as the City Code does not apply to the Company.

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## LIEN ON SHARES

### 83. Lien on Partly Paid Shares

The Company shall have a first and paramount lien on every share (not being a fully paid share) for all amounts payable (whether or not due) in respect of that share. The lien shall extend to every amount payable in respect of that share. The Board may at any time either generally or in any particular case declare any share to be wholly or partly exempt from this Bye-law. Unless otherwise agreed, the registration of a transfer of a share shall operate as a waiver of the Company's lien (if any) on that share.

### 84. Enforcement of Lien

The Company may sell any share subject to a lien in such manner as the Board may decide if an amount payable on the share is due and is not paid within 14 clear days after a notice has been given to the holder or any person entitled by transmission to the share demanding payment of that amount and giving notice of intention to sell in default. To give effect to any sale under this Bye-law, the Board may authorise some person to transfer the share sold to, or as directed by, the purchaser. The purchaser shall not be bound to see to the application of the purchase money nor shall the title of the new holder to the share be affected by any irregularity in or invalidity of the proceedings relating to the sale. The net proceeds of the sale, after payment of the costs of such sale, shall be applied in or towards satisfaction of the amount due and any residue shall (subject to a like lien for any amounts not presently due as existed on the share before the sale), on surrender, in the case of shares held in certificated form, of the certificate for the shares sold, be paid to the holder or person entitled by transmission to the share immediately before the sale.