

# Pensions CIV Sectoral Joint Committee

Item no: 8

## Heads of Terms for Amending the Articles of Association and Drafting a Shareholder Agreement

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<b>Summary</b>	This report presents the committee with a draft Heads of Terms document that sets out the specific matters that need to be addressed in amending the current 'model' Articles of Association that have been adopted for London LGPS CIV Ltd. It also presents proposals for a shareholder agreement which would contain matters to be agreed by the participating boroughs but which would not normally go into the articles.
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<b>Recommendations</b>	The committee is recommended to: <ul style="list-style-type: none"><li>i. Consider and discuss the issues raised in this report;</li><li>ii. Agree the proposed next steps and timetable.</li></ul>
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# Heads of Terms for Amending the Articles of Association and Drafting a Shareholder Agreement

## Introduction

2. The committee will be aware that London LGPS CIV Ltd. was incorporated in the summer of 2014 as the company that will become the regulated operator of the CIV. The constitution of the company is set out in its articles of association and the committee will recall that for expediency the company was incorporated using 'model' articles with only minor amendment (attached at Annex A<sup>1</sup>). At its meeting of 17 December 2014 the committee was informed that the articles would be amended so that they reflect the purpose of the company being the operator of an Authorised Contractual Scheme (ACS) fund.

## Discussion

3. The process of considering what changes might be needed has been underway since the autumn and this report presents the committee with a draft Heads of Terms (HoT) for consideration (Annex B). The HoT has been drafted by our advising lawyers and its purpose is to reach consensus on a number of points so as to be able to give final instructions to the lawyers in order that they can draft amended articles of association for the company and a separate shareholders' agreement. The Technical Sub-group have assisted in the drafting of this document and it was approved for circulation to participating boroughs by the interim Board of Directors at their 10 February 2015 meeting.
4. The articles of association contain a number of provisions which reflect the purpose of the company as well as the duties and responsibilities of its members, they must be filed at Companies House and hence be available for public inspection. Conversely, the shareholders' agreement will contain whatever arrangement is agreed between shareholders in relation to the operation of the company. It is a private agreement between the shareholders and need not be submitted to Companies House.
5. It is intended that all shareholders (each participating borough) will need to sign the shareholders' agreement. The agreement will be signed by an officer with the delegated authority to sign the agreement on behalf of the Council. This is likely to be the Monitoring Officer. In addition, approval will be required to amend the articles. Both these will need to be done within a tight timeframe to allow the CIV to be operational by the middle of 2015.

## Next Steps

6. Members are asked to consider the HoT, taking such advice as is necessary from borough officers. While any initial feedback to today's meeting would be welcome, it is proposed that substantive comments should be brought to the committee's next meeting

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<sup>1</sup> It should be noted that this version of the articles only lists the original 23 shareholders, seven more boroughs have since become shareholders and this has been notified to Companies House.

(25 March 2015) or emailed ahead of that date to the Programme Director London LGPS CIV. It is necessary that any discussion resulting from comments on or before 25 March will result in agreement about the final content of the HoT so that the lawyers can begin the process of drafting the revised articles and shareholder agreement, in order that the programme can keep to its timetable.

7. It is intended that the interim company directors will approve both documents by at their 12 May 2015 Board meeting after which they will come to the committee's 27 May 2015 meeting for final agreement/adoption. The shareholder agreement will then be circulated for signature by an authorised officer in each borough and the articles of association will be filed with Companies House.

### **Recommendations**

8. The committee is recommended to:
  - i. Consider and discuss the issues raised in this report;
  - ii. Agree the proposed next steps and timetable.

### **Financial implications**

9. There are no financial implications for London Councils.

### **Legal implications**

10. The directors will act in accordance with the powers provided to them under the articles and must not act outside of these powers. The shareholders will be subject to the provisions of the shareholders agreement. It is anticipated that this will be signed by each shareholder in accordance with its own approval process.

### **Equalities implications**

11. There are no equalities implications for London Councils.

### **Annexes**

- |         |   |
|---------|---|
| Annex A | Current 'model' articles of association |
| Annex B | Draft Heads of Terms                    |

**THE COMPANIES ACT 2006****PRIVATE COMPANY LIMITED BY SHARES****ARTICLES OF ASSOCIATION****OF****LONDON LGPS CIV LIMITED****1. PRELIMINARY**

The model articles of association for private companies limited by shares contained in Schedule 1 to The Companies (Model Articles) Regulations 2008 in force on the date when these Articles become binding on the Company ("Model Articles") apply to the Company except in so far as they are excluded or varied by these Articles.

**2. INTERPRETATION**

2.1 In these Articles the following expressions have the following meanings unless inconsistent with the context:

<b>"2006 Act"</b>	the Companies Act 2006 (as amended from time to time)
<b>"these Articles"</b>	these Articles of Association as amended from time to time
<b>"electronic means"</b>	has the meaning given in section 1168 of the 2006 Act
<b>"eligible directors"</b>	has the meaning given in Model Article 8(3)
<b>"Majority Shareholder"</b>	a shareholder or shareholders together holding a majority of the voting rights in the Company (within the meaning of section 1159(1) of and paragraph (2) of Schedule 6 to the 2006 Act)
<b>"Statutes"</b>	the Companies Acts as defined in section 2 of the 2006 Act and every other statute, order, regulation or other subordinate legislation for the time being in force relating to companies and affecting the Company

2.2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Statutes but excluding any statutory modification of the same not in force when these Articles become binding on the Company.

2.3 References to any statute or statutory provision include, unless the context otherwise requires, a reference to that statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time and any subordinate legislation made under the relevant statute or statutory provision.

3. **UNANIMOUS DECISIONS OF DIRECTORS**

A decision of the directors may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing. Model Article 8(2) shall not apply to the Company.

4. **NUMBER OF DIRECTORS**

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be the subject to any maximum but shall not be less than one.

5. **PARTICIPATION IN DIRECTORS' MEETINGS**

5.1 Model Article 9(2)(c) shall be amended by the insertion of the word "simultaneously" after the words "how it is proposed that they should" and before the words "communicate with each other during the meeting".

6. **QUORUM FOR DIRECTORS' MEETINGS**

The following shall be added as paragraph (4) to Model Article 11:-

"(4) If, as a consequence of section 175(6) of the 2006 Act, a director cannot vote or be counted in the quorum at a directors' meeting then the following shall apply:-

(a) if the eligible directors participating in the meeting do not constitute a quorum then the quorum for the purposes of the meeting shall be reduced by one for each director who cannot vote or be counted in the quorum; and

6.1.1 (b) if despite sub-paragraph (a) the eligible directors participating in the meeting still do not constitute a quorum or there are no eligible directors then the meeting must be adjourned to enable the shareholders to

authorise any situation in which a director has a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company."

## **7. DIRECTORS' INTERESTS**

7.1 Subject to these Articles and the 2006 Act, and provided that he has disclosed to the directors the nature and extent of any interest of his, a director:

7.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

7.1.2 may hold any other office or employment with the Company (other than the office of auditor);

7.1.3 may be a director or other officer of, or employed by, or be a party to any transaction or arrangement with or otherwise interested in any body corporate in which the Company is in any way interested;

7.1.4 may, or any firm or company of which he is a member or director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested (other than as auditor);

7.1.5 shall not be accountable to the Company for any benefit which he receives or profits made as a result of anything permitted by Articles 7.1.1 to 7.1.4 and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

7.2 Except for a vote under section 175(4) of the 2006 Act authorising any conflict of interest which a director or any other interested director may have or where the terms of authorisation of such conflict provide that a director may not vote in situations prescribed by the directors when granting such authorisation, a director will be entitled to participate in the decision making process for voting and quorum purposes on any of the matters referred to in Articles 7.1.1 to 7.1.4 and in any of the circumstances set out in Model Articles 14(3) and 14(4).

7.3 For the purposes of these Articles references to decision making process includes any directors' meeting or part of a directors meeting.

7.4 For the purposes of Article 7.1:

7.4.1 a general notice given in accordance with the 2006 Act is to be treated as a sufficient declaration of interest;

7.4.2 a director is not required to declare an interest either where he is not aware of such interest or is not aware of the transaction or arrangement in question; and

7.4.3 an interest of a director who appoints an alternate director shall be treated as an interest of the alternate director.

7.5 Model Articles 14(1), 14(2) and 14(5) shall not apply to the Company.

## 8. **APPOINTMENT AND REMOVAL OF DIRECTORS**

8.1 In addition to the powers granted by Model Article 17(1), the Majority Shareholder may at any time, and from time to time, appoint any person to be a director, either as an additional director or to fill a vacancy and may remove from office any director however appointed. Any such appointment or removal shall be effected by notice in writing to the Company signed by the Majority Shareholder or, if the Majority Shareholder is a body corporate, signed by one of its directors or duly authorised officers or by its duly authorised attorney.

## 9. **TERMINATION OF DIRECTOR'S APPOINTMENT**

In addition to the circumstances set out in Model Article 18 (a) to (f) (inclusive) a person ceases to be a director as soon as that person is removed from office as a director pursuant to Article 8.1.

## 10. **DIRECTORS' PENSIONS AND GRATUITIES**

In addition to the provisions of Model Article 19(3)(b), the directors may exercise all the powers of the Company to give and provide pensions, annuities, gratuities or any other benefits whatsoever to or for present or former directors or employees (or their dependants) of the Company or any subsidiary undertaking (as defined in section 1162 of the 2006 Act) or associated undertaking (as defined in section 479(4) of the 2006 Act) of the Company and the directors shall be entitled to retain any benefits received by them or any of them by reason of the exercise of any such powers.

## 11. **ALTERNATE DIRECTORS**

### 11.1 **Appointment and removal of alternates**

11.1.1 Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by the directors, to

11.1.1.1 exercise that director's powers, and

11.1.1.2 carry out that director's responsibilities,

in relation to participation in directors' meetings and the taking of decisions by the directors in the absence of the alternate's appointor.



11.1.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

11.1.3 The notice must:-

11.1.3.1 identify the proposed alternate; and

11.1.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

## 11.2 **Rights and responsibilities of alternate directors**

11.2.1 An alternate director has the same rights, in relation to participation in directors' meetings and the taking of decisions by the directors and in relation to directors' written resolutions, as the alternate's appointor.

11.2.2 An alternate director may act as an alternate director for more than one appointor.

11.2.3 Except as these Articles specify otherwise, alternate directors:-

11.2.3.1 are deemed for all purposes to be directors;

11.2.3.2 are liable for their own acts and omissions;

11.2.3.3 are subject to the same restrictions as their appointors; and

11.2.3.4 are not deemed to be agents of or for their appointors.

and, each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

11.2.4 A person who is an alternate director but not a director:-

11.2.4.1 may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and

11.2.4.2 may participate in a unanimous decision of the directors (but only if his appointor is an eligible director in relation to that decision, but does not participate).

No alternate may be counted as more than one director for such purposes.

11.2.5 A director who is also an alternate director is entitled, in his absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an eligible director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

11.2.6 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

### **11.3 Termination of alternate directorship**

11.3.1 An alternate director's appointment as alternate terminates:-

11.3.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;

11.3.1.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

11.3.1.3 on the death of the alternate's appointor; or

11.3.1.4 when the alternate's appointor's appointment as a director terminates.

### **12. ALTERNATE DIRECTORS' EXPENSES**

Model Article 20 shall be amended by the insertion of the words "(including alternate directors)" before the words "properly incur".

### **13. SHARES**

In accordance with section 567(1) and (2) of the 2006 Act, sections 561(1) and 562 (1) to (5) (inclusive) of that Act shall not apply to the Company.

### **14. TRANSFER OF SHARES**

Model Article 26(5) shall be amended by the addition of the following words:  
"The directors may not refuse to register the transfer of a share made with the

prior written approval of the Majority Shareholder. In any other case" before the words "the directors may refuse to register".

**15. TRANSMITTEES BOUND BY PRIOR NOTICES**

Model Article 29 shall be amended by the insertion of the words ", or the name of any person nominated under Model Article 27(2)," after the words "the transmittee's name".

**16. NOTICE OF GENERAL MEETINGS**

Every notice convening a general meeting shall:

- 16.1 comply with section 325(1) of the 2006 Act as to giving information to shareholders relating to their right to appoint proxies; and
- 16.2 be given in accordance with section 308 of the 2006 Act, that is in hard copy form, electronic form or by means of a website.

**17. PROCEEDINGS AT GENERAL MEETINGS**

- 17.1 If a quorum is not present within half an hour of the time at which a general meeting is due to start or if, during a general meeting, a quorum ceases to be present the chairman of the meeting must adjourn it.
- 17.2 When adjourning the general meeting the chairman of the meeting must specify that the meeting is adjourned either:
  - 17.2.1 to the same day, place and time the following week; or
  - 17.2.2 to another day, place and time to be decided by the directors.
- 17.3 If a quorum is not present within half an hour of the time at which the adjourned meeting is due to start the shareholder or shareholders present in person or by proxy or by corporate representative and who are entitled to vote shall:
  - 17.3.1 constitute a quorum; and
  - 17.3.2 have power to decide on all matters which could have been transacted at the meeting which was adjourned.
- 17.4 Model Article 41 shall not apply to the Company.

**18. WRITTEN RESOLUTIONS**

- 18.1 A written resolution, proposed in accordance with section 288(3) of the 2006 Act, will lapse if it is not passed before the end of the period of 28 days beginning with the circulation date.

- 18.2 For the purposes of this Article "circulation date" is the date on which copies of the written resolution are sent or submitted to shareholders or, if copies are sent or submitted on different days, to the first of those days.

## 19. **COMPANY COMMUNICATION PROVISIONS**

### 19.1 Where:-

19.1.1 a document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom and

19.1.2 the Company is able to show that it was properly addressed, prepaid and posted.

it is deemed to have been received by the intended recipient 24 hours after it was posted.

### 19.2 Where:-

19.2.1 a document or information is sent or supplied by electronic means, and

19.2.2 the Company is able to show that it was properly addressed,

it is deemed to have been received by the intended recipient immediately after it was sent.

### 19.3 Where a document or information is sent or supplied by means of a website, it is deemed to have been received by the intended recipient -

19.3.1 when the material was first made available on the website, or

19.3.2 if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.

### 19.4 Pursuant to section 1147(6) of the 2006 Act, subsections (2) (3) and (4) of that section shall be deemed modified by Articles 19.1, 19.2 and 19.3.

### 19.5 Subject to any requirements of the 2006 Act, documents and notices may be sent to the Company in electronic form to the address specified by the Company for that purpose and such documents or notices sent to the Company are sufficiently authenticated if the identity of the sender is confirmed in the way the Company has specified.

## 20. **DIRECTORS' INDEMNITY AND INSURANCE**

### 20.1 Subject to, and so far as may be permitted by, the 2006 Act and without prejudice to any indemnity to which the person concerned may be otherwise entitled, the Company may indemnify every director, former director, alternate

director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liabilities incurred by him in the execution and discharge of his duties or the exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, including any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust in relation to anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or of any such associated company and against any such liability incurred by him in connection with the Company's activities as trustee of an occupational pension scheme as defined in section 235(6) of the 2006 Act.

20.2 Subject to the 2006 Act the directors may purchase and maintain at the cost of the Company insurance cover for or for the benefit of every director, former director, alternate director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust by him in relation to the Company (or such associated company), including anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or associated company.

20.3 Subject to, and so far as may be permitted by, the 2006 Act, the Company shall be entitled to fund the expenditure of every director, former director, alternate director, secretary, or other officer of the Company incurred or to be incurred:

20.3.1 in defending any criminal or civil proceedings; or

20.3.2 in connection with any application under sections 661(3), 661(4) or section 1157 of the 2006 Act.

## 21. **REGISTERED OFFICE**

The situation of the registered office is in England and Wales.

## 22. **LIMITED LIABILITY**

The liability of the members is limited.

<b>Name, address and description of Subscriber</b>	<b>No. of issued Ordinary shares of £1.00 each</b>
City of London Corporation Guildhall PO Box 270 London EC2P 2EJ	1
London Borough of Barking and Dagenham Civic Centre Dagenham RM10 7BN	1
London Borough of Barnet North London Business Park Oakleigh Road South London N11 1NP	1
London Borough of Bexley Civic Offices 2 Watling Street Bexleyheath Kent DA6 7AT	1
London Borough of Brent Civic Offices Engineers Way Wembley HA9 9FJ	1
London Borough of Camden Camden Town Hall Judd Street London WC1H 9JE	1
London Borough of Croydon Bernard Weatherill House 8 Mint Walk Croydon CR0 1EA	1
London Borough of Enfield Civic Centre PO Box 54 Silver Street	1

Enfield EN1 3XF	
London Borough of Hackney Hackney Town Hall Mare Street London E8 1EA	1
London Borough of Hammersmith and Fulham Town Hall King Street London W6 9JU	1
London Borough of Haringey Haringey Council Civic Centre High Road Wood Green N22 8LE	1
London Borough of Hounslow Civic Centre Lampton Road TW3 4DN	1
London Borough of Islington Town Hall Upper Street Islington N1 2UD	1
London Borough of Merton Gifford House 67c St Helier Avenue Morden SM4 6HY	1
London Borough of Newham Newham Dockside 1000 Dockside Road London E16 2QU	1
London Borough of Redbridge Town Hall 128-142 High Road Ilford	1

IG1 1DD	
London Borough of Richmond upon Thames Civic Centre York Street Twickenham TW1 3BZ	1
London Borough of Sutton Civic Offices St Nicholas Way Sutton SM1 1EA	1
Royal Borough of Greenwich Wellington Street Woolwich London SW18 6PW	1
Royal Borough of Kensington and Chelsea Town Hall Hornton Street London W8 7NX	1
Royal Borough of Kingston upon Thames Guildhall High Street Kingston Surrey KT1 1EU	1
Wandsworth London Borough Council Town Hall Wandsworth High Street London SW18 2PU	1
Westminster City Council City Hall 64 Victoria Street London SW1E 6QP	1

Dated: 17 July 2014



# MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED BY SHARES

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PART 1  
INTERPRETATION AND LIMITATION OF LIABILITY

**Defined terms**

**1.** In the articles, unless the context requires otherwise—

“articles” means the company’s articles of association;

“bankruptcy” includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

“chairman” has the meaning given in article 12;

“chairman of the meeting” has the meaning given in article 39;

“Companies Acts” means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“distribution recipient” has the meaning given in article 31;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“electronic form” has the meaning given in section 1168 of the Companies Act 2006;

“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

“hard copy form” has the meaning given in section 1168 of the Companies Act 2006;

“holder” in relation to shares means the person whose name is entered in the register of

members as the holder of the shares;

“instrument” means a document in hard copy form;

“ordinary resolution” has the meaning given in section 282 of the Companies Act 2006;

“paid” means paid or credited as paid;

“participate”, in relation to a directors’ meeting, has the meaning given in article 10;

“proxy notice” has the meaning given in article 45;

“shareholder” means a person who is the holder of a share;

“shares” means shares in the company;

“special resolution” has the meaning given in section 283 of the Companies Act 2006;

“subsidiary” has the meaning given in section 1159 of the Companies Act 2006;

“transmittee” means a person entitled to a share by reason of the death or bankruptcy of a

shareholder or otherwise by operation of law; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

## **Liability of members**

- 2.** The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## **PART 2**

### **DIRECTORS**

#### **DIRECTORS’ POWERS AND RESPONSIBILITIES**

### **Directors’ general authority**

- 3.** Subject to the articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company.

### **Shareholders’ reserve power**

- 4.—**(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.  
(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

### **Directors may delegate**

- 5.—**(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—
  - (a) to such person or committee;
  - (b) by such means (including by power of attorney);
  - (c) to such an extent;
  - (d) in relation to such matters or territories; and
  - (e) on such terms and conditions;as they think fit.  
(2) If the directors so specify, any such delegation may authorise further delegation of the directors’ powers by any person to whom they are delegated.  
(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **Committees**

- 6.—**(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.  
(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

## DECISION-MAKING BY DIRECTORS

### **Directors to take decisions collectively**

**7.—**(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

(a) the company only has one director, and

(b) no provision of the articles requires it to have more than one director,  
the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

### **Unanimous decisions**

**8.—**(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

### **Calling a directors' meeting**

**9.—**(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time;

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### **Participation in directors' meetings**

**10.—**(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles,  
and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- (3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **Quorum for directors' meetings**

- 11.**—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.
- (3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—
- (a) to appoint further directors, or
  - (b) to call a general meeting so as to enable the shareholders to appoint further directors.

### **Chairing of directors' meetings**

- 12.**—(1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairman.
- (3) The directors may terminate the chairman's appointment at any time.
- (4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### **Casting vote**

- 13.**—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### **Conflicts of interest**

- 14.**—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- (2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.
- (3) This paragraph applies when—
- (a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;
  - (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (c) the director's conflict of interest arises from a permitted cause.
- (4) For the purposes of this article, the following are permitted causes—
- (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### **Records of decisions to be kept**

**15.** The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### **Directors' discretion to make further rules**

**16.** Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## **APPOINTMENT OF DIRECTORS**

### **Methods of appointing directors**

**17.—**(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution, or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances

rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

### **Termination of director's appointment**

**18.** A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

(b) a bankruptcy order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### **Directors' remuneration**

- 19.**—(1) Directors may undertake any services for the company that the directors decide.
- (2) Directors are entitled to such remuneration as the directors determine—
- (a) for their services to the company as directors, and
  - (b) for any other service which they undertake for the company.
- (3) Subject to the articles, a director's remuneration may—
- (a) take any form, and
  - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- (5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### **Directors' expenses**

- 20.** The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—
- (a) meetings of directors or committees of directors,
  - (b) general meetings, or
  - (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## **PART 3**

### **SHARES AND DISTRIBUTIONS**

#### **SHARES**

### **All shares to be fully paid up**

- 21.**—(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- (2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

### **Powers to issue different classes of share**



**22.**—(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

### **Company not bound by less than absolute interests**

**23.** Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

### **Share certificates**

**24.**—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

- (a) have affixed to them the company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts.

### **Replacement share certificates**

**25.**—(1) If a certificate issued in respect of a shareholder's shares is—

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
- (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

### **Share transfers**

**26.**—(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### **Transmission of shares**

**27.**—(1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

### **Exercise of transmittees' rights**

**28.**—(1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

### **Transmittees bound by prior notices**

**29.** If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **Procedure for declaring dividends**

**30.**—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### **Payment of dividends and other distributions**

**31.**—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

### **No interest on distributions**

**32.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company.

### **Unclaimed distributions**

**33.**—(1) All dividends or other sums which are—

(a) payable in respect of shares, and

(b) unclaimed after having been declared or become payable, may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment, and

(b) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

### **Non-cash distributions**

**34.**—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

- (a) fixing the value of any assets;
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

#### **Waiver of distributions**

**35.** Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

- (a) the share has more than one holder, or
- (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### **CAPITALISATION OF PROFITS**

#### **Authority to capitalise and appropriation of capitalised sums**

**36.**—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

- (a) on behalf of the persons entitled, and
- (b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

- (a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
- (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
- (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART 4  
DECISION-MAKING BY SHAREHOLDERS  
ORGANISATION OF GENERAL MEETINGS

**Attendance and speaking at general meetings**

**37.**—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—  
(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and  
(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

**Quorum for general meetings**

**38.** No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

**Chairing general meetings**

**39.**—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

- (a) the directors present, or
- (b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

**Attendance and speaking by directors and non-shareholders**

**40.**—(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

- (a) shareholders of the company, or
- (b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

**Adjournment**

- 41.**—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- (2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—
- (a) the meeting consents to an adjournment, or
  - (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- (4) When adjourning a general meeting, the chairman of the meeting must—
- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
  - (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—
- (a) to the same persons to whom notice of the company's general meetings is required to be given, and
  - (b) containing the same information which such notice is required to contain.
- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## VOTING AT GENERAL MEETINGS

### **Voting: general**

**42.** A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

### **Errors and disputes**

- 43.**—(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- (2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

### **Poll votes**

- 44.**—(1) A poll on a resolution may be demanded—
- (a) in advance of the general meeting where it is to be put to the vote, or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
- (a) the chairman of the meeting;
  - (b) the directors;
  - (c) two or more persons having the right to vote on the resolution; or
  - (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—

- (a) the poll has not yet been taken, and
  - (b) the chairman of the meeting consents to the withdrawal.
- (4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **Content of proxy notices**

**45.**—(1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—

- (a) states the name and address of the shareholder appointing the proxy;
  - (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
  - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **Delivery of proxy notices**

- 46.**—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

### **Amendments to resolutions**

**47.**—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

- (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## PART 5

### ADMINISTRATIVE ARRANGEMENTS

#### **Means of communication to be used**

**48.**—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Company seals**

**49.**—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is

affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

#### **No right to inspect accounts and other records**

**50.** Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

#### **Provision for employees on cessation of business**

**51.** The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

## DIRECTORS' INDEMNITY AND INSURANCE

#### **Indemnity**

**52.**—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—



- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
  - (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),
  - (c) any other liability incurred by that director as an officer of the company or an associated company.
- (2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.
- (3) In this article—
- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
  - (b) a “relevant director” means any director or former director of the company or an associated company.

## **Insurance**

**53.**—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

- (2) In this article—
- (a) a “relevant director” means any director or former director of the company or an associated company,
  - (b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’s duties or powers in relation to the company, any associated company or any pension fund or employees’ share scheme of the company or associated company, and
  - (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.



Draft 30 January 2015

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Summary of terms for London LGPS CIV Ltd. (ACS Operator)  
for the purposes of drafting shareholders' agreement and  
amended articles of association

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## 1. INTRODUCTION

- 1.1 The purpose of this document is to reach consensus on a number of points so as to be able to give instructions to the Company's lawyers in order that they can draft amended articles of association for the Company and a shareholders' agreement.
- 1.2 The constitution of the Company is set out in its articles of association and when the Company was incorporated it was set up with model articles. These need to be amended so that the articles reflect the purpose of the Company being the operator of an Authorised Contractual Scheme (ACS) fund. The articles contain a number of provisions which reflect company law and they must be registered at Companies House and hence be available for public inspection. Conversely the shareholders' agreement will contain whatever arrangement is agreed between shareholders in relation to the operation of the Company. It is a private agreement between the shareholders and need not be made available for public inspection.
- 1.3 29 London boroughs and the City of London Corporation (potentially three other boroughs may join at a later date) have agreed to be shareholders of the Company and also to participate in the Pensions CIV Sectoral Joint Committee (PCSJC). The members of the PCSJC, which has been set up under the well established governance arrangements for London Councils, will meet in two different capacities, (1) at formal shareholder meetings; in their capacity as representing their appointing Council as a shareholder of the Company; and (2) at general committee meetings of the PSJC as an interested party (i.e., to discuss non-shareholder matters in relation to the Company and the ACS, to partake in training etc); in their capacity as representing their appointing Council as a member of the PSJC. For the avoidance of doubt, when meeting under (2) above, such meetings are not formal shareholder meetings of the Company. Each of the participating Councils will appoint a representative to be a member of the PCSJC and to act on their behalf in both contexts.
- 1.4 The members of the PCSJC are expected to have delegated authority to act on behalf of their Council in taking decisions of both the shareholder meetings and the committee meetings that will in each case be binding. It is recognised that members may need to take advice from their borough officers in making those decisions.
- 1.5 It is intended that all shareholders will need to sign the shareholders' agreement. The agreement will be signed by an officer with the delegated authority to sign the agreement on behalf of the Council. This is likely to be the Monitoring Officer. In addition, approval will be required to amend the articles. Both these will need to be done within a tight timeframe to allow the CIV to be operational by the middle of 2015.

- 1.6 This document details some initial considerations in relation to the setting up and operating of the Company and then goes on to raise some specific points in the context of each of the articles and the shareholders' agreement.

## 2. **PRELIMINARY ISSUES**

### 2.1 CHOICE OF VEHICLE

The Company has been set up as a limited liability company. It is not intended to be a subsidiary or subsidiary undertaking of any of the parties. Each participating Council will hold one ordinary share in the Company and the rights attaching to each share will be the same. It is not intended that the Company will be listed on any stock exchange.

### 2.2 ASSETS TRANSFERRED

It is not intended that any shareholder will transfer any property or other assets to the Company.

### 2.3 THE BUSINESS OF THE ACS OPERATOR

2.3.1 The business of the Company will be the operator of an ACS (authorised contractual scheme) which is to be set up to provide a collaborative platform through which Administering Authorities of Local Government Pension Scheme (LGPS) funds can aggregate their pension monies to provide scale economies and efficiencies.

2.3.2 Initially the ACS Operator and ACS Scheme will only be available to the London boroughs and the City of London Corporation (i.e. those participating authorities out of the 32 London boroughs and the City of London). It is thought that other LGPS funds that are not London local authority funds but who might want to participate later may be able to do so in respect of the scheme and if they also become shareholders then they will have restricted share rights.

2.3.3 FCA approval is required for the Company to operate, but neither the articles of association nor the shareholders' agreement need to be conditional on this being obtained.

2.3.4 It is expected that the Company will enter into various agreements relating to the management of the funds (such as the appointment of a fund auditor, fund accountant, investment managers, depositary, custodian etc), licensing of premises and employment of staff. It is not intended that any existing investment contracts will be novated to the Company, as it is considered likely that fund managers will insist on new investment mandates to be entered into with the Company.

2.3.5 It is also not intended that any ancillary contracts between the Company and the shareholders will be required (e.g. lease arrangements, know-how licences, supply agreements etc). However, it is possible that, subject to the agreement of member authorities, from time to time staff from the members may be seconded to the Company as full time or part time employees. In this case, a secondment agreement would be entered into between the relevant member and the Company. However, once seconded, they would act independently from any seconding London borough as if they were an employee of the Company. It is not anticipated that, apart from the secondment arrangements referred to above, any staff or any members will transfer to the Company, unless through a fair and open recruitment process for a permanent position.

2.3.6 The Company will use the facilities at 59½ Southwark Street pursuant to a licence to occupy granted by London Councils.

## 2.4 INTELLECTUAL PROPERTY AND COMPETITION

2.4.1 No licences of intellectual property or other similar rights are required from any of the shareholders .

2.4.2 There will be no minimum obligation on members to transfer funds to the scheme.

2.4.3 The name of the Company at present is London LGPS CIV Limited, but it is intended that this will be changed in the future. Secretary of State permission may be required in connection with the selected name.

## 2.5 FUNDING OF THE ACS OPERATOR

2.5.1 As noted above, each shareholder will have one share in the Company and funding is not intended to be dealt with by way of share subscriptions.

2.5.2 Initially each participating borough has contributed £25,000 and a further request has now been made for an additional £25,000 from each participating borough. A final £25,000 contribution is expected to be requested on 1 April 2015. The second contribution, which will be invoiced by London Councils, and the third contribution, which will be invoiced by the Company, will relate to services in connection with the establishment of the Company. It is proposed that an initial budget for the first year will be approved by all shareholders and attached as an annex to the shareholders' agreement. Thereafter, it is proposed that the budget will be reviewed annually and approved by the board and the shareholders. It is not intended that the Company generates any

profit or carries forward any reserves but, if it does so, this may be used to reduce the budget in future years. If either the board or the shareholders do not approve the proposed revised budget, the default position will be that the budget will be the same as in the previous year, increased by ***[September RPI from the previous year (to be confirmed)]***.

- 2.5.3 It is currently proposed that each year the shareholders will be asked to make an annual payment to the Company to reflect a proportion of the running costs that will need to be covered by the Company, as set out in the approved budget. This payment request will be invoiced by the Company as a service charge but will take the form of a contractual payment under the shareholders' agreement.
- 2.5.4 The fee structure for the ACS operator and ACS fund(s) have not yet been finalised but it is likely that the fees of the ACS operator (as the manager of the Fund), the depositary, the registrar, the investment managers, the fund accountant and the fund auditor will be paid out of the property of the ACS fund(s) not out of the proposed annual payment detailed above.
- 2.5.5 If, in the unlikely event, the directors decide to take out a loan facility, the Company may be eligible to do this from the PWLB or the LGA's Municipal Bonds Agency. However, if a loan is taken in the commercial market, there is a possibility that a cheaper facility may be available if shareholder guarantees are provided. The shareholders' agreement will state that if any guarantees are to be provided, they will be provided equally by all shareholders, but no shareholder is required to give a guarantee unless this has been approved by unanimous consent of shareholders.

## 2.6 CONFIDENTIALITY

It is not considered necessary to enter into a confidentiality agreement between the participating Councils in connection with the negotiation and drafting of the shareholders' agreement and the amended articles of association. However, the shareholders' agreement will make it clear that each party shall, subject to any requirements of law, such as the Freedom of Information Act, respect obligations of confidentiality towards each other's confidential information.

## 2.7 APPLICABLE LAW AND DISPUTES.

- 2.7.1 The governing law of the shareholders' agreement will be English law and English courts will have exclusive jurisdiction.



- 2.7.2 If a dispute arises between the parties (such as non-payment of service charge), the shareholders' agreement will provide that the matter is to be dealt with either through an arbitration process or through the courts. There are benefits to either route and these will depend, to a certain extent, on the nature of the issue. Factors to consider include: it is generally felt that a better quality of decisions are made by High Court judges which can give a greater degree of confidence; under the Civil Procedure Rules judges now drive proceedings and are generally robust on procedural matters whereas arbitrators procedurally are, within the confines of their appointment/procedural constraints, more of "law unto themselves"; the parties to court proceedings do not need to pay for the judge or any hearing venue whereas the parties to arbitration proceedings need to pay for the arbitrator and any hearing venue; arbitration can be a quicker method of resolving a dispute and this route may also be preferable if the subject matter of the contract is highly sensitive as arbitration is a private forum of dispute resolution. This dispute process is still to be determined.

### 3. **ARTICLES OF ASSOCIATION**

- 3.1 The revised articles will incorporate and amend the model articles with which the Company was incorporated.
- 3.2 The objects of the Company will in practice be restricted by FCA regulation and this should be reflected in the articles of association.
- 3.3 Share capital:
- 3.3.1 The share capital will initially be limited to 33 ordinary shares (if all boroughs are to become members). Any increase in the amount of shares that can be issued will be put to shareholders to be decided by simple majority.
- 3.3.2 The initial share capital will be £1 per participating borough.
- 3.3.3 There will be two classes of shares – ordinary shares and preference shares. The preference shares are being created to allow flexibility to issue shares with restricted rights (for example as mentioned in paragraph 2.3.2 above).
- 3.3.4 The articles will retain the flexibility for redeemable shares to be issued and for the Company to purchase its own shares.
- 3.3.5 Any new issue of shares will require shareholder approval (simple majority).

3.4 Provisions relating to the conduct of general meetings of the shareholders of the Company ("General Meeting(s)");

- 3.4.1 As noted above, General Meetings will be distinct meetings compared to committee meetings of the PCSJC although it is expected that those authorised to attend the committee meetings of the PCSJC will be the same as those authorised to attend General Meetings but in each case they will be attending in a different capacity (the former as committee member and the latter as shareholder).
- 3.4.2 The quorum for General Meetings should be one third of all members.
- 3.4.3 If a meeting is not quorate within half an hour of the scheduled start of the General Meeting, it will be dissolved. The remaining business will be considered at a time and date fixed by the chair. If the chair does not fix a date, the remaining business will be considered at the next General Meeting.
- 3.4.4 A chair will be appointed at the first General Meeting (it is proposed that this chair will be the same person already appointed as the chair of the PCSJC).
- 3.4.5 There should be provisions to allow for General Meetings to be held at short notice, by electronic means and for resolutions to be passed by written resolution of the members.

3.5 Specific provisions relating to directors:

- 3.5.1 In relation to the appointment of directors, it is proposed that the chair of the PCSJC will also be a non-executive director of the Company and will sit on any recruitment panel of the Company when other directors are being appointed. If the chair of the PCSJC does not want to be, or cannot be, a director of the Company then another member of the PCSJC will be appointed a director of the Company in his place. Before any new executive or non-executive director is appointed, it is expected that the board will take soundings from shareholders. Any potential candidates will also need to be approved by the FCA before any appointment can become effective. Although the board can appoint an additional director to fill a vacancy, any appointment will need to be approved by the shareholders at the next General Meeting of the Company.
- 3.5.2 Subject to FCA restrictions/conflicts regime, directors should be entitled to vote upon a contract in which they are interested.
- 3.5.3 The quorum for the board should be three directors.

- 3.5.4 Board meetings should be held at least quarterly.
- 3.5.5 The directors should have general borrowing powers but any decision to be made in respect of any such borrowing (including any decision regarding guarantees as detailed above) will require unanimous shareholder consent.
- 3.5.6 Certain decisions should be reserved to shareholders (see appendix).
- 3.5.7 The Company will appoint its own Chief Executive Officer who will also be a director of the Company.
- 3.5.8 The board of directors will appoint a chair of the board. The chair will have a casting vote at meetings of the board of directors.
- 3.5.9 At least 5 business days notice of a board meeting should be given except in the case of an emergency.
- 3.5.10 Directors can appoint an alternate director, but they can only appoint as an alternate director someone who is already a member of the board.
- 3.5.11 The Company will have a company secretary.
- 3.6 The board should receive management accounts at least quarterly. Subject to FCA requirements, shareholders should receive accounts at least annually.
- 3.7 The company auditors are to be appointed/removed by simple majority of shareholders.

#### 4. **SHAREHOLDERS' AGREEMENT**

- 4.1 There will be no minimum term for the agreement.
- 4.2 If a shareholder decides to withdraw, they must give at least 12 months notice, expiring on 31 March, and forfeit their share on expiry of the notice (this means that their share will be cancelled and they will not have any rights to the assets of the Company). If such number of members decide to withdraw so that the remaining shareholders are not able or willing to maintain the Company's FCA required regulatory capital the scheme is to be terminated unless the remaining members agree otherwise.
- 4.3 Registered office and appointments:
  - 4.3.1 The registered office of the Company will be located at Eversheds Manchester office, but this may change in due course.

- 4.3.2 Appointments of third party service providers are subject to the public procurement regulations. The shareholders' agreement will therefore be silent as to any appointments.
- 4.3.3 The initial (interim) directors of the Company have already been appointed – as filed with Companies House.
- 4.3.4 The accounting reference date of the Company is 31 March.
- 4.4 If the ACS terminates and there are no plans to launch any other funds, the Company will be wound up and assets distributed to shareholders in accordance with the proportion of shares held by them.
- 4.5 Management and operations of the company:
  - 4.5.1 The make-up of the board is still to be determined and will depend on FCA approval but it is likely to include executive and non-executive appointments. One possibility is for there to be two executive directors (CEO & COO/CFO), four non-executive directors (recruited for their knowledge and expertise) and a further non-executive director being the chair of the PCSJC.
  - 4.5.2 If directors are drawn from member boroughs, they will need to act independently from their borough in the interests of the members as a whole in line with the general duties of directors.
  - 4.5.3 It is likely that all executive directors will be required to enter into service contracts and all non-executive directors will be required to enter into letters of appointment.
- 4.6 No restrictive covenants are required in the documentation.
- 4.7 Shares will be non-transferrable without the unanimous consent of all other shareholders. In the case of a merger of two boroughs, one of the two shares should be forfeited, so that after the merger they only have one share.
- 4.8 In the event of material breach of the shareholders' agreement by a shareholder, they must forfeit their share.
- 4.9 At the time of drafting, the position regarding whether the Company will pay a dividend is still to be confirmed.
- 4.10 Some other standard provisions:
  - 4.10.1 The shareholders' agreement can only be amended in writing by all the parties.

- 4.10.2 The rights/obligations granted under the agreement will not be assignable.

There will be a covenant by the Company to provide the shareholders with operating information, eg: the right to inspect books of account and records of the Company and any subsidiary; the right to management and financial information; monthly/quarterly reports and progress meetings.

- 4.10.3 Save as required by law, shareholders may only make announcements about the Company with the consent of all other shareholders.

- 4.11 It is intended that there will be both "shareholder" meetings and "investor" meetings. Investor meetings will be dealt with in the fund documentation, not in the shareholders' agreement. The investor meetings may very well receive additional documentation e.g. information relating to the performance of the fund in their capacity as investors, rather than as shareholders. Again, this will be dealt with in the fund documentation rather than the shareholders' agreement.

## Appendix

### Matters reserved to shareholders

***[Note – Here is a list of matters that are typically reserved to shareholders. The matters in the A list often require unanimity, whereas matters in the B list often require a simple or enhanced majority, but not unanimity. The list will be developed as part of the on-going drafting of Articles of Association and Shareholder Agreement to determine which are appropriate for this transaction and what the consent requirements should be.]***

#### **[The A List]**

1. subject to FCA rules, extend the activities of the Company outside the scope of the business or close down any business operation;
2. subject to FCA rules, give any guarantee or indemnity outside the ordinary course of business to secure the liabilities of any person or assume the obligations of any person (other than a wholly-owned subsidiary) (eg guaranteeing a lease that does not relate to the business of the Company);
3. enter into or vary any contracts or arrangements with any of the shareholders or directors or any person with whom any shareholder or director is connected (whether as director, consultant, shareholder or otherwise) (eg any contract which could give preferential rights to a specific shareholder);
4. enter into any agreement not in the ordinary course of the business and/or which is not on an arm's length basis;
5. enter into or vary any agreement for the provision of consultancy, management or other services by any person which will, or is likely to result in, the Company being managed otherwise than by its directors;
6. appoint or remove the auditors of the Company;
7. alter the Company's accounting reference date;
8. make any significant change to any of the Company's accounting or reporting practices;
9. pay any fees, remuneration or other sums to or in respect of the services of any director or vary any such fees or remuneration. For the avoidance of doubt this **paragraph 13** shall not apply to the payment of any agreed salary or to the payment or reimbursement of expenses properly incurred by any director in the course of carrying out his duties in relation to the Company nor to any payment under any indemnity by the Company to which the director is entitled pursuant to the Articles or under any relevant law;

10. change the name of the Company;
11. pass a resolution or present a petition to wind up the Company or apply for an administration order or any order having similar effect in a different jurisdiction in relation to the Company unless in any case the Company is at the relevant time unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
12. apply for admission to listing or admission to trading on a stock exchange or on any other investment exchange;
13. reduce or cancel any share capital of the Company, purchase its own shares, hold any shares in treasury, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company;
14. make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company or pay or declare any dividend or other distribution to the shareholders or redeem or buy any shares or otherwise reorganise the share capital of the Company;
15. admit any person whether by subscription or transfer as a member of the Company;
16. enter into any partnership, joint venture or profit sharing arrangement with any person;
17. alter any of the provisions of the Articles or any of the rights attaching to the shares;
18. appoint or remove any director of the Company [otherwise than in accordance with the shareholders' agreement and the Articles];
19. amalgamate or merge with any other company or business undertaking.

#### **The B List**

20. sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its material assets otherwise than in the ordinary course of the business;
21. enter into or vary any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of business;
22. approve the annual accounts of the Company;

23. establish or amend any pension scheme (i.e. for employees of the Company);
24. change the names or the scope of the authority of the persons authorised to sign cheques or other financial instruments on behalf of the Company;
25. subject to FCA rules, enter into any agency, distribution or similar agreement which confers or is expressed to confer any element of exclusivity as regards any goods or services the subject of such agreement or as to the area of the agreement or vary such an agreement to include any such exclusivity.

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