

**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**3SFIRE LIMITED**



## **INDEX TO THE ARTICLES**

### **PART 1**

#### **INTERPRETATION AND LIMITATION OF LIABILITY**

- 1 Defined terms
- 2 Liability of members

### **PART 2**

#### **DIRECTORS**

#### **DIRECTORS' POWERS AND RESPONSIBILITIES**

- 3 Directors' general authority
- 4 Shareholders' reserve power
- 5 Directors' Powers
- 6 Committees

#### **DECISION-MAKING BY DIRECTORS**

- 7 Directors to take decisions collectively
- 8 Unanimous decisions
- 9 Validity of directors' decisions
- 10 Calling a directors' meeting
- 11 Participation in directors' meetings
- 12 Quorum for directors' meetings
- 13 Chairing of directors' meetings
- 14 Casting vote
- 15 Declaration of director's interests
- 16 Conflicts of interest
- 17 Records of decisions to be kept
- 18 Directors' Appointments

#### **APPOINTMENT OF DIRECTORS**

- 19 Methods of appointing directors
- 20 Termination of director's appointment
- 21 Directors' remuneration
- 22 Directors' expenses

## **PART 3**

### **SHARES AND DISTRIBUTIONS**

#### **SHARES**

- 23 All shares to be fully paid up
- 24 Powers to issue different classes of share
- 25 Company not bound by less than absolute interests
- 26 Share certificates
- 27 Replacement share certificates
- 28 Share transfers
- 29 Transmission of shares
- 30 Exercise of transmitters' rights
- 31 Transmitters bound by prior notices

#### **DIVIDENDS AND OTHER DISTRIBUTIONS**

- 32 Procedure for declaring dividends
- 33 Payment of dividends and other distributions
- 34 No interest on distributions
- 35 Unclaimed distributions
- 36 Non-cash distributions
- 37 Waiver of distributions

#### **CAPITALISATION OF PROFITS**

- 38 Authority to capitalise and appropriation of capitalised sums

## **PART 4**

### **DECISION-MAKING BY SHAREHOLDERS**

#### **ORGANISATION OF GENERAL MEETINGS**

- 39 Members
- 40 General Meetings
- 41 Notice of general meetings
- 42 Attendance and speaking at general meetings
- 43 Quorum for general meetings

- 44 Chairing general meetings
- 45 Attendance and speaking by directors and non-shareholders
- 46 Adjournment

#### **VOTING AT GENERAL MEETINGS**

- 47 Voting general
- 48 Votes of members
- 49 Errors and disputes
- 50 Poll votes
- 51 Content of proxy notices
- 52 Delivery of proxy notices
- 53 Resolutions

#### **PART 5**

#### **ADMINISTRATIVE ARRANGEMENTS**

- 54 Notices
- 55 Company seals
- 56 No right to inspect accounts and other records
- 57 Provision for employees on cessation of business
- 58 Secretary
- 59 Minutes
- 60 Advisory Committee
- 61 Accounts

#### **DIRECTORS' INDEMNITY AND INSURANCE**

- 62 Indemnity
- 63 Insurance

#### **MISCELLANEOUS**

- 64 Local Government Considerations
- 65 Rules
- 66 Winding Up
- 67 HFRA Controls for the Company

# ARTICLES OF ASSOCIATION

of

3SFIRE LIMITED

## REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

### 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,
“business plan”	means an annual business plan for the company which shall be produced in advance of the financial year to which it relates and shall include financial reporting and business objectives ,
“chairman”	has the meaning given in article 13,
“chairman of the meeting”	has the meaning given in article 45,
“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,
“consent”	any requirement for the consent or agreement of the shareholder or the HFRA shall be in writing and consent may also be construed from any business plan or any similar such document for the company where these have been approved by the HFRA
“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 33,
“document”	includes, unless otherwise specified, any document sent or supplied in electronic form,

“elected member”	means a member of the Hampshire Fire and Rescue Authority
“electronic form”	has the meaning given in section 1168 of the Companies Act 2006,
“equity securities”	has the same meaning as in section 560 of the Companies Act 2006,
“fire and rescue authority”	shall have the same meaning as under the Fire and Rescue Services Act 2004
“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,
“HFRA”	means Hampshire Fire and Rescue Authority
“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,
“member(s)”	the members of the company as defined in the Companies Act 2006 unless the context suggests otherwise
“ordinary resolution”	has the meaning given in section 282 of the Companies Act 2006 and includes written resolutions,
“paid”	means paid or credited as paid,
“participate”,	in relation to a directors’ meeting, has the meaning given in article 11,
“permitted value”	is a value of £1,000,000 (One Million Pounds) whether in isolation or in aggregate in any one year or such other figure as may be approved by Special Resolution at a General Meeting for the company
“proxy notice”	has the meaning given in article 52,
“secretary”	means the Company Secretary of the company or any other person appointed to perform the duties of the Company Secretary including a joint assistant or deputy Secretary
“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 and includes written resolutions,
“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. Words denoting the singular shall include the plural and vice versa as the context shall permit. References to statutes or regulations include references to any statutes or regulations amending, re-enacting or replacing the same. Subject as aforesaid words or expressions contained in these Articles shall unless the context requires otherwise bear the same meaning as in the Act.

- 1A** The company’s object is to carry on any lawful activity or function that are within the powers of a fire and rescue authority for commercial purposes

**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. (1) 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' Powers**

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, provided that if they are not consistent with the articles then the articles shall prevail

### **DECISION-MAKING BY DIRECTORS**



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

7. 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

### **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

### **Validity of directors' decisions**

9. (1) All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall be as valid notwithstanding the participation in any vote of a director
  - (a) discovered afterwards that there was a defect in the appointment of any director or
  - (b) that any of them were disqualified from holding office, or
  - (c) had vacated office, or
  - (d) were not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise,if without
  - (e) the vote of that director , and
  - (f) that director being counted in the quorum,the decision has been made by a majority of the directors at a quorate meeting
- (2) Article 9(1) does not permit a director or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the directors or of a committee of directors if, but for article 9 (1), the resolution would have been void, or if the director has not complied with article 15

- (3) A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors, shall be as valid and effective as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held. Such a resolution may consist of several documents in like form, each signed by one or more of the directors.

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

10. (1) Any director may call a directors' meeting by giving reasonable 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**

11. (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**

12. (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 three or one half of their number whichever is the greater number
- (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**

- 13 (1) HFRA shall appoint a director to chair the directors' meeting
- (2) In the event , that HFRA fail to appoint a chair then the directors may appoint a director to chair their meetings
- (3) The person so appointed for the time being is known as the chairman
- (4) The chairman's appointment may be terminated at any time by HFRA
- (5) 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**

14. (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

#### **Declaration of director's interests**

- 15 A director must declare the nature and extent of any interest, direct or indirect , which he or she has in a proposed transaction or arrangement with the company or in any transaction or arrangement entered into by the company which has not previously been declared A director must absent himself or herself from any discussions of the directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the company and any personal interest (including but not limited to any personal financial interest)

## Conflicts of interest

16. (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 or a person connected with the director other than in connection with HFRA, 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 special 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 proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the HFRA in which a director is interested,
  - (b) 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, 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

- (8) For the purposes of article 15
- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified,
  - (b) an interest in which it is unreasonable to expect a director to have knowledge shall not be treated as an interest of his/hers
  - (c) an interest of a person who is, for any purpose of the Act, connected with a director shall be treated as an interest of the director

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

17. 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

#### **APPOINTMENT OF AND REMOVAL OF DIRECTORS**

##### **Directors' Appointment**

18. (1) The company shall not have more than 7 (seven) and no less than 3 (three) directors
- (2) Subject to these Articles all directors shall be appointed by HFRA by an ordinary resolution which may be a written resolution ('notice of appointment' ) and serving this upon the company
- (3) The notice of appointment shall give such particulars of that person which would if he/she were so appointed or reappointed be required to enable their registration at Companies House
- (4) The directors may appoint a person temporarily either to make up the number of directors to be sufficiently quorate for a directors' meeting or to fill a vacancy that has unexpectedly arisen where this is reasonably required for the proper running and management of the company Such directors shall hold office only until a notice of appointment has been received from HFRA or such other

determination has been made by HFRA or until the following annual general meeting whichever is the earlier. If not reappointed at such annual general meeting he/she shall vacate office at the conclusion thereof

- (5) The directors may if not specifically dealt with by HFRA appoint any person as a managing director or such similar position, which role for the avoidance of doubt is not a director position, in relation to the management of the business of the company as they may decide either for a fixed term or without any limitation as to the period for which he or they is or are to hold such a role, and may, from time to time (subject to the provisions of any service contract between him and the company and without prejudice to any claim for damages he may have for breach of any such service contract), remove or dismiss him or them from such office and appoint another or others in his or their place or places
- (6) The directors may enter into an agreement or arrangement with any director for his/her or her employment by the company or for the provision by him or her of any services outside the scope of the ordinary duties of a director. Any such appointment agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his or her services as they think fit. Any appointment of a director to an executive office shall terminate if he/she ceases to be a director but without prejudice to any claims to damages for breach of the contract or service between the director and the company ]
- (7) No other directors shall be appointed other than as permitted by the Articles

### **Removal of Directors**

- 19 (1) A director may only be removed by HFRA or by HFRA's prior written consent except as otherwise provided for in these Articles
- (2) Subject to these Articles all directors removed by HFRA shall be by an ordinary resolution which may be a written resolution and serving this upon the company
- (3) All directors shall retire from office on the anniversary of their date of appointment or upon the next General Meeting held on or after their appointment whichever is the later date or otherwise as agreed by HFRA
- (4) All directors that retire shall be eligible for re-appointment by way of an Ordinary Resolution at a General Meeting or by written resolution of the HFRA
- (5) Any removal of a director shall be without prejudice to any claim for damages for breach of any contract of services between such director and the company

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

20. (1) 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
  - (g) he/she is absent without the permission of the directors from all their meetings held within a period of six months and the directors resolve that his/her office be vacated, or
  - (h) he/she in the circumstances of being an elected member or officer of the HFRA appointed as a director ceases to be an elected member or officer of the HFRA who appointed him/her
  - (i) no director shall be removed other than as provided for in these Articles

### **Directors' remuneration and expenses**

- 21 (1) Directors may undertake any services for the company that the directors decide
- (2) Directors shall not be entitled to receive any remuneration and or any other financial benefits in whatever form ,without the prior written consent of HFRA ,
- (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) If a decision is made pursuant to these Articles to remunerate any elected members of the HFRA acting as directors for the company then they shall not be paid any remuneration or reimbursement of expenses greater than that to which he/she would have been entitled to in comparable circumstances had they been carrying out similar duties with the HFRA ,
  - (5) Unless decided otherwise, directors' remuneration accrues from day to day
  - (6) Directors are 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
- 22 (1) Subject to the articles, 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**

23. (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**

24. (1) Subject to the articles, but without prejudice to the rights attached to any



existing share, the members may issue shares with such rights or restrictions as may be determined by special resolution

- (2) The members 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**

25. 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**

26. (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**

27. (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**

- 28.**
- (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**

**29.**

- (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 shall become the holder of those shares and subject to the articles and has the same rights as the holder had

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

- 30.**
- (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) 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**

31. 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**

32. (1) The company may by special resolution declare dividends, and the directors may decide to pay interim dividends
- (2) A dividend must not be declared unless it appears to the directors that they are justified by the profits of the company available for distribution and 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**

33. (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**

34. 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**

35. (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**

36. (1) Subject to the terms of issue of the share in question, the company may, by special 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**

- 37 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**

38. (1) Subject to the articles, the directors may, if they are so authorised by a special 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

#### **Members**

- 39 Any member that is a corporate or public body shall appoint (and may remove and replace) a duly authorised representative which shall be evidenced in writing signed by one of its officers. The person so authorised shall act at any meeting of the company and shall be entitled to exercise the same powers on behalf of the member which he/she represents as the member could exercise if it were an individual member of the

company and such member shall for the purposes of these Articles be deemed to be present in person at any such meeting if a person so authorised is present thereat

### **General meetings**

- 40
- (1) The company shall hold an annual general meeting each year in addition to any other meetings in that year
  - (2) The annual general meeting shall be held at such times and places as the directors shall appoint
  - (3) The directors may call general meetings or upon the requisition of members and they shall forthwith proceed to convene a general meeting for a date not later than eight weeks after receipt of the requisition
  - (4) The directors shall be required to publish and circulate to HFRA at least seven clear days before the date of the annual general meeting the following documents or any others notified by HFRA,
    - (a) an Agenda
    - (b) minutes of the previous meeting
    - (c ) proposed resolutions, approvals and actions
    - (d ) annual accounts
    - (e) business plan
    - (f) any supporting documentation

### **Notice of general meetings**

- 41
- (1) An annual general meeting shall be called by giving at least thirty clear days' notice to all shareholders. All other general meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is agreed by all the members entitled to attend and vote
  - (2) The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and in the case of an annual general meeting shall specify the meeting as such

- (3) Subject to the provisions of the articles and to any restrictions imposed on shares the notice shall be given to all the members and to the directors and auditors
- (4) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceeds at that meeting

#### **Attendance and speaking at general meetings**

42. (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**

43. No business shall be transacted at any meeting unless a quorum is present One person entitled to vote upon the business to be transacted being a duly authorised representative or proxies for HFRA shall constitute a quorum



### **Chairing general meetings**

44. (1) A chairman of the meeting shall be appointed by the HFRA and the chairman shall chair general meetings if present and willing to do so
- (2) If HFRA has 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 then 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**

45. (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**

46. (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**

- 47 (1) 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

### **Votes of Members**

- 48 (1) Subject to any rights or restrictions attached to any shares and subject to Articles 48 (2) below both on a show of hands and on a poll every member who is present by a duly authorised representative not being him/herself a member entitled to vote shall have one vote and on a poll every member shall have one vote for every share of which he/she is a holder
- (2) For the avoidance of doubt only HFRA shall be entitled to vote on a resolution relating to capital spending governed by Article 64(3)

### **Errors and disputes**

49. (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**

50. (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
- (5) A vote given or poll demanded by the duly authorised representative of a Member shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the office before the commencement of the meeting or adjourned meeting at which the vote was given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll
- (6) A poll shall be taken as the chairman directs and he/she may appoint scrutineers (who need not be members) and fix a time and place for declaring the results of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded

### **Content of proxy notices**

51. (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**

- 52. (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

#### **Resolutions**

- 53. (1) Subject to the provisions of the Act a resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he/she was present shall be as effectual as if it had been passed at a general meeting duly convened and held
- (2) 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
- (3) 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
- (4) 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

#### Notices

- 54.**
- (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) Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors)
    - (a) must be in writing or
    - (b) must be given in electronic form
  - (4) The company may give any notice to a member either
    - (a) personally or

- (b) by sending it by post in a prepaid envelope addressed to the member at his/her/its registered address or
  - (c) by leaving it at that address of the member or
  - (d) by giving it in electronic form to the member's address
- (5) A member who does not register an address with the company or who registers only an address that is not within the United Kingdom shall not be entitled to receive any notice from the company
- (6) A member present by a duly authorised representative at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called
- (7) (a) Proof that an envelope containing a notice was properly addressed prepaid and posted shall be conclusive evidence that the notice was given
- (b) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent in accordance with section 1147 of the Companies Act 2006
- (c) In accordance with section 1147 of the Companies Act 2006 notice shall be deemed to be given
- (i) at the expiration of 48 hours after the envelope containing it was posted, or
  - (ii) in the case of an electronic form of communication , at the expiration of 48 hours after the time it was sent
- (8) 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**

55. (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

### **Access to Information**

- 56 (1) 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
- (2) The company shall provide and instruct its auditors to provide to HFRA such information and access to the information and its premises for these purposes as it may reasonably require for the purpose of preparing and auditing the HFRA 's accounts or for investigating value for money or any other reasonable purpose,
- (3) The company shall provide any elected member or officer of a HFRA with such information about the activities of the company which it may reasonably need for the discharge of its functions,

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

- 57 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

### **Company Secretary**

- 58 Subject to the provisions of the Act a company secretary shall be appointed by the directors for such term, at such remuneration (if not a director) and upon such conditions as they may think fit, and any secretary so appointed may be removed by them

### **Minutes**

- 59 The directors shall keep minutes in books kept for the purpose
- (1) of all appointments of officers made by the directors, and

- (2) of all proceedings at meetings of the company, of the holders of any class of shares in the company, and of the directors and of committees of directors including the names of the directors present at each such meeting

#### **Advisory Committee**

60. (1) The directors may elect an Advisory Committees as they see fit
- (2) The Terms of Reference for any Advisory Committee shall be agreed and decided by the directors

#### **Accounts**

- 61 (1) The directors must prepare for each financial year accounts as required by the Companies Acts
- (2) The directors must keep accounting records as required by the Companies Acts

### **DIRECTORS' INDEMNITY AND INSURANCE**

#### **Indemnity**

62. (1) Subject to paragraph (2), a relevant director of the company or other officer or an associated company may be indemnified out of the company's assets against—
  - (a) any liability incurred by that director or other officer 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 or other officer acting on behalf of and within the scope of the company's instructions 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**

63. (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director or officer of the company or any other persons who the directors feel it is appropriate to insure 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

## **MISCELLANEOUS**

### **Public Body Considerations**

- 64 (1) The company shall observe all the legal requirements imposed on it by virtue of any of its members being a fire and rescue authority or other public body  
In particular without limiting the generality of the foregoing, the company shall -
- (a) not engage in activities for party political purposes or publish party political materials,
  - (b) prepare and publish a statement of practice in respect of letting contracts and abide by it,
  - (c) obtain appropriate competitive tenders prior to and exclude so far as a public body would be required to, non-commercial matters when deciding the letting of contracts,
- (2) The company shall observe all legal requirements imposed on it by virtue of it being a controlled company as defined by Section 68 of the Local Government and Housing Act 1989 and by virtue of the provisions of the Local Authorities

(Companies) Order 1995 and any other regulations or orders made from time to time or the Local Government Act 2003 in relation to a Local Authority's interest in companies

- (3) Any proposal by the directors to incur capital expenditure which if it were incurred by a HFRA would count as capital expenditure under the Local Government Act 2003 and any proposed borrowing or other credit arrangements for capital purposes shall except where permitted by these Articles require a special resolution passed at a general meeting of the company or such other consent as signified by the HFRA

### **Rules**

65. (1) The company shall not without a special resolution -
- (a) amend the memorandum or articles of association of the company
  - (b) alter any rights or restrictions attaching to any class of share in the capital of the company
  - (c) change the name of the company
  - (d) pass any resolution or engaged in any other matter which represents a substantial change in the nature of the business of the company or in the manner in which such business is conducted
  - (e) issue any additional shares
  - (f) make any change in the company's accounting reference date,
  - (g) make any change in the company's registered office,
  - (h) change the classification or status of the company

### **Winding Up**

- 66 (1) If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide among the members in specie the whole or any part of the assets of the company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or difference classes of members
- (2) The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability

**67 HFRA Financial Controls for the Company**

- (1) The company shall not without the prior written consent of HFRA or as may be within the scope of a current Business Plan approved by HFRA to do any of the following ,
- (a) enter into any contract, transaction or arrangements with any third party (whether legally binding or not) except up to the permitted value provided that such transactions are in the ordinary and proper course of its business on arm's length terms and upon commercial terms as could be expected in the market for similar activity
  - (b) borrow or raise any money from any person (other than pursuant to the business plan) or make any change in the banking arrangements or facilities (including changes to bank mandates) of the company,
  - (c) mortgage or charge the company's undertaking, property or any part thereof, nor issue debentures, debenture stock or any other securities whether outright or as security for any debt, liability or obligation of the company or of any third party, for the benefit of any third party lender,
  - (d) enter into any transaction or series of related transactions (whether at one time or over a period of time) involving the incurring of any capital expenditure except up to the permitted value,
  - (e) increase or vary the company's authorised share capital or create new shares or alter the rights or obligations attached to any of the shares of the company or issuing or allotting any shares of the company or the grant or agreement to granting any option over shares of the company or the issuing of any obligations convertible into shares,
  - (f) sell, transfer, lease, assign or otherwise dispose of a part or the whole of any property and/or assets of the company or any subsidiary (or any interest therein) or contract so to do whether or not for valuable consideration except up to the permitted value
  - (g) form, acquire or dispose of any subsidiary or amalgamate or merge with any other company or concern or acquire any shares of any other company or

participate in any partnership or joint venture with another person from the private sector,

- (h) lend or advance to any person, firm or company any monies exceeding in aggregate £15,000 or more in any financial year of the company,
  - (i) enter into any personal favourable contract or arrangement with any elected member or officer of HFRA or any of its subsidiaries,
  - (j) enter into or vary the terms of any credit transaction falling within the definition contained in regulation 12 of the Local Authorities (Companies) Order 1995 except where the credit transaction is between members of the HFRA group for accounting purposes with the exception of securing overdraft facilities of up to £50,000,
  - (k) remove or vary any of the terms of appointment of the company's auditors,
  - (l) participate in any scheme of arrangement or petition or pass any resolution to wind up the company or make application for an administrative order,
  - (m) capitalise, repay or otherwise distribute any amount standing to the credit of any reserve of the company or redeem or purchase of any shares or otherwise reorganise its share capital,
  - (n) admit any person (whether by subscription or transfer) as a member of the company,
  - (o) commence, settle or compromise any legal dispute or proceeding to which the company is a party except up to the permitted value ,
- (2) No person dealing with the company shall be concerned to see or enquire as to whether any requisite approval of HFRA has been obtained and no obligation incurred or security given or transaction effected by the company to or with any third party shall be invalid or ineffectual unless the third party had at the time express notice that the

incurring of such obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the directors