

## **COMPANIES ACT 2014**

### **CONSTITUTION**

**-of-**

#### **IRISH VISUAL ARTISTS' RIGHTS ORGANISATION COMPANY LIMITED BY GUARANTEE**

**Adopted by special resolution on the [insert date]**

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#### **MEMORANDUM OF ASSOCIATION**

1. The name of the company is Irish Visual Artists' Rights Organisation Company Limited by Guarantee ("the Company").
2. The Company is a company limited by guarantee, registered under Part 18 of the Companies Act 2014.
3. The Company is a "collective management organisation" for the purposes of the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (S.I. No 156 of 2016).
4. The objects for which the Company is established are:
  - (a) To protect, promote, enhance, exercise and enforce all rights, property and interest of visual artists in their works.
  - (b) To inform visual artists and others about copyright in visual works of art.
  - (c) To collect, administer and (having made allowance for the expenses and liabilities of the Company incurred in the operation of the Company) distribute in accordance with Rules of Administration adopted by the Company from time to time, fees, royalties and other remuneration (including the Artists' Resale Royalty) which the Company believes is owing to visual artists, arising from the exploitation of their works.
  - (d) To enter into, to alter and if appropriate, to rescind agreements, and to grant and revoke licences with third parties concerning the use of visual works of art.
  - (e) To enter into reciprocal agreements with foreign collective management organisations for the collection and distribution of remuneration (including the Artists' Resale Right) due to Irish visual artists for the exploitation of their rights in foreign countries, and to foreign visual artists for the exploitation of their rights in Ireland.

- (f) To issue legal proceedings, including by way of injunction, to restrain breaches of the rights of visual artists, and to recover monies owed to visual artists for the exploitation of their works and/or the infringement of their rights, and to release, compromise or refer to arbitration any disputes or proceedings concerning the same.
  - (g) To obtain from visual artists such assignments and authorities as may be necessary for the Company to fulfil the objectives set forth in this Memorandum
  - (h) To carry out the same functions on behalf of the copyright heirs and assigns of visual artists as the company carries out on behalf of the artists themselves.
5. The Company shall have the following powers, in addition to all other powers conferred upon it by law:
- (a) To enter into contracts, arrangements and agreements concerning the business of the Company with individuals, companies, associations and bodies of all kinds including governmental, statutory and local authorities, organisations and agencies.
  - (b) To enter into any partnership, joint venture or international network, and to participate in the incorporation of or become an affiliate of any company or other association which is calculated to serve, directly or indirectly, the interests or purposes of the Company.
  - (c) To support and promote the objectives of the Company by conferences, public or private meetings, seminars, workshops, publications, conducting surveys and studies, and by such other means as may be deemed necessary or desirable.
  - (d) To develop, acquire and protect any intellectual property rights and rights in the nature of the same, confidential information, know-how and trade secrets which shall confer any proprietary, exclusive or non-exclusive right upon the Company and to use, exercise, enforce, develop, sell or grant licences in respect of, or otherwise turn to account the same.
  - (e) Subject to compliance with all applicable laws and regulations, to invest and deal with monies and other property held by the Company not immediately required in such manner as shall be considered fit, and from time to time to sell or vary such investments.
  - (f) To purchase, take on lease or in exchange, rent, hire or otherwise acquire any premises, buildings, lands, chattels, or other property, real or personal, and to develop, sell, manage, lease, mortgage, dispose of or otherwise deal with all or any part of the property, assets or rights of the Company.
  - (g) To borrow and raise money for the purposes of the Company and to guarantee or secure the repayment of any money borrowed, raised or owing, including by mortgage, charge or lien upon the property or assets of the Company, present or future.

- (h) To purchase or acquire and undertake all or any part of the property assets liabilities and engagements of any one or more companies, institutions, associations or undertakings carrying on business which the Company is authorised to conduct, or possessed of property suitable for the purposes of the Company.
- (i) To subscribe for, take, purchase or otherwise acquire and hold shares or other interests in or securities in any company having all or any of the objects of the Company or carrying on any business capable of being carried on so as, directly or indirectly, to benefit the Company.
- (j) To join, amalgamate, merge, become associated with, or to enter into a partnership, joint venture or reciprocal concession with any organisation, authority, body or person calculated to be of benefit to the Company.
- (k) To promote, form, establish, acquire or incorporate any association, institution company or body for a purpose compatible with the objects of the Company.
- (l) To draw, accept, make, endorse, execute and issue bills of exchange, promissory notes and other negotiable or transferable instruments.
- (m) To lend money for such purposes, to such persons and bodies, and upon such terms as may seem expedient, provided that this power shall not extend to the lending of money to or the guarantee of performance of contracts of members or directors of the Company.
- (n) To establish, undertake and execute any trusts which may seem directly or indirectly conducive to the objects of the Company.
- (o) To establish, subscribe to and provide funds, trusts or other schemes by which monies may be provided for retirement annuities and benefits of any kind for the time being allowed by law, for the benefit of persons employed by or providing services to the Company.
- (p) To provide gratuities, donations, pensions and emoluments to any person at any time in the employment of the Company, or engaged in any business acquired by the Company and the families and dependants of any such persons.
- (q) To subscribe to any charity and to grant donations for any public or charitable cause, and to establish, support or aid in the establishment or support of any charitable or other non-profit institution, trust or fund.
- (r) To carry on any trade or business which may in the opinion of the Directors be advantageously carried on by the Company in connection with or as ancillary to the general business of the Company

- (s) To do all such other lawful things (whether or not for gain) as are incidental or conducive to the attainment of the objects of the Company, or any of them, or calculated directly or indirectly to enhance the value or render useful or profitable any of the Company's property, rights or interests.
  - (t) To do all of the above things in any part of the world as principal, agent, or in any other capacity.
- 6 The liability of the members is limited.
7. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any member of the Company, provided however that nothing herein shall prevent the payment by the Company of:
- (a) monies to which a member is entitled pursuant to the Rules of Administration of the Company;
  - (b) reasonable and proper remuneration to any member, director or officer of the Company for services rendered to the Company, provided there shall be an agreement in writing for the provision of such services and the sums payable shall not exceed what is reasonable and proportionate given the nature of the services to be provided;
  - (c) reasonable out-of-pocket expenses incurred by any member, director or officer of the Company for attending to any matter affecting the business of the Company; and
  - (d) reasonable and proper rent for premises demised or let by any member to the Company.
8. Every member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up, during or within one year after the cessation of membership, for payment of the debts and liabilities of the Company contracted before the cessation of membership, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding €1.00.
9. If upon the winding up or dissolution of the Company there remains, after the satisfaction of all of its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the members of the Company but shall be given or transferred to some other institution or entity having objects similar to those of the Company, such institution or entity to be determined by the members of the Company at or before the time of dissolution.

## ARTICLES OF ASSOCIATION

### INTERPRETATION

1. (a) In these articles:

<i>“the Act”</i>	means the Companies Act 2014, any amendments and statutory re-enactments thereof, and statutory instruments made pursuant thereto;
<i>“the CRM Regulations”</i>	means the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (S.I. No. 156 of 2016) and any amendments thereof
<i>“Rules of Administration”</i>	Rules adopted by the Company providing for the administration of rights by the Company;
<i>“rights”</i>	means copyright and related rights and all property, right and interest of visual artists and their successors in title, in their works; and the term <i>rightholder</i> shall be construed accordingly;
<i>“member”</i>	means a member of the Company, admitted in accordance with these articles;
<i>“director”</i>	means a person appointed as a director pursuant to these articles ;
<i>“the Board”</i>	means the board of directors of the Company, who shall comprise the “supervisory board” for the purposes of the CRM Regulations;
<i>“the Registered Office”</i>	means the registered office for the time being of the Company;
<i>“the Secretary”</i>	means any person(s) or body corporate appointed by the Board in accordance with these articles to perform the role of company secretary.

(b) Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to every mode of representing words in visible form.

(c) Unless the contrary intention appears, words or expressions contained in these articles shall bear the same meaning as in the Act.

### **OPTIONAL PROVISIONS OF THE ACT**

2. To the extent that they are omitted from or modified by these articles, the optional provisions of the Act as defined in section 1177(2) thereof are hereby excluded or modified, as the case may be.

### **ALTERATION OF THE CONSTITUTION**

3. Subject to the provisions of the Act and the provisions of this constitution, the Company may by special resolution in general meeting alter either or both its memorandum and articles of association. Any alteration or addition so made shall be as valid as if originally contained therein.

### **RULES OF ADMINISTRATION**

4. The Company shall adopt and maintain Rules of Administration which shall identify the rights administered by the Company and provide for the manner in which they shall be administered.
5. The Rules of Administration shall address the matters specified in regulations 9-13 (inclusive) of the CRM Regulations.
6. Subject to the provisions of the CRM Regulations and the provisions of this constitution, the Company may, by ordinary resolution in general meeting, alter the Rules of Administration.

### **MEMBERS**

7. The Company has at the date of adoption of this constitution, [1552] members. The Board may from time to time register an increase or a decrease in their number.
8. The members of the Company shall be those persons or bodies corporate who are members at the date of adoption of this constitution and those who shall subsequently be admitted as members by the Board and entered as such in the register of members of the Company.
9. No person shall be admitted to membership by the Board unless he or she is a practising visual artist of some kind, or (including in the case of a body corporate) is the copyright heir or assignee of a visual artist.

10. Every member shall, as a condition of membership, execute a mandate addressed to the Company, giving the Company the power to administer the rights in the members' work. Every such mandate shall be in such form as the Board may from time to time prescribe.

### **TERMINATION OF MEMBERSHIP**

11. Any member may, by giving notice in writing to the Company, terminate his, her or its membership. The notice period shall be the longer of six months, or the period from the date of service of notice to the end of the financial year in which the notice is served PROVIDED HOWEVER that if any proceedings have been instituted by or against the Company in respect of a member's works, either in the name of the Company or the name of the member, and such member ceases to be a member during the currency of the said proceedings, any rights the subject of which proceedings which have been vested in the Company by such member or are controlled by the Company shall remain so vested or controlled and until such proceedings are finally determined, unless and until the Board shall otherwise determine AND PROVIDED FURTHER that termination shall be without prejudice to licence terms already running, granted by the Company prior to receipt of notice of termination.
12. On the death of a member, his or her membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Company by the member, or controlled by the Company by virtue of his or her membership, shall remain so vested or controlled for a period ending on the 31st December in the third year following the year in which the member's death took place, and any payment to which the member, if living, have been entitled in accordance with the rules of the company shall be made to the member's personal representative during such period of time.
13. The Board may require a member to resign his, her or its membership by serving notice upon the member terminating his or her membership, such notice to expire no earlier than the date of service of the notice.
14. The bankruptcy of an individual member and the liquidation of a corporate member shall terminate his, her or its membership.

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

15. Members shall have the rights set out in Regulation 4 of the CRM Regulations
16. Every member shall, as a continuing condition of membership, be bound by the provisions of the constitution of the Company and any amendment thereof, and shall observe all (if any) any rules or regulations made from time to time by the Company in general meeting or by the Board.

## GENERAL MEETINGS OF MEMBERS

17. The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it and not more than one year shall elapse between the date of one annual general meeting of the Company and that of the next.
18. The business of the annual general meeting shall incorporate the matters set out in section 186 of the Act, as well as the matters allocated to the general assembly of members set out in regulation 6 of the CRM Regulations, and shall include :
  - (a) consideration of the Company's statutory financial statements and the report of the directors, together with the report of the statutory auditors on those statements and that report;
  - (b) the review by the members of the Company's affairs and the general performance of the Board;
  - (c) the authorisation of the directors to approve the remuneration of the statutory auditors;
  - (d) subject to the provisions of these articles, the appointment and dismissal of directors;
  - (e) the appointment or re-appointment of statutory auditors;
  - (f) the remuneration and other benefits of the directors (if any), including pension awards and entitlements, rights to other awards and severance pay;
  - (g) the following matters:
    - I. The general policy on the distribution of rights revenue due to rightholders;
    - II. The general policy on the use of non-distributable amounts;
    - III. The general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;
    - IV. The general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
    - V. The use of non-distributable amounts;
  - (h) consideration of the annual transparency report prepared in accordance with regulation 20 of the CRM Regulations;
  - (i) any other matters reserved to the members of the Company under the terms of this constitution or the Rules of Administration.
19. All general meetings of the Company, other than annual general meetings, shall be known as "extraordinary general meetings". Every general meeting of the Company shall be a meeting of the general assembly of members, for the purposes of the CRM Regulations.



20. The matters specified in the CRM Regulations as being matters to be determined by the general assembly of members, to the extent that they are not settled at the annual general meeting of the Company, may be decided in an extraordinary general meeting.
21. The Board may, whenever it thinks fit, convene an extraordinary general meeting and extraordinary general meetings may also be convened as provided by Section 1203 of the Act. If at any time there are not sufficient directors in Ireland capable of acting to form a quorum, any director or any member of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.
22. General meetings of the Company shall be held at such time and at such place in the State as the Board shall appoint.
23. A meeting, other than an adjourned meeting, shall be called, in the case of an annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice, and in the case of any other extraordinary general meeting, by not less than 7 days' notice. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. It shall be given in the manner specified in these articles to such persons as are under these articles entitled to receive such notices from the Company.
24. The notice of a general meeting shall specify –
  - a) the place, the date and the time of the meeting;
  - b) the general nature of the business to be transacted at the meeting;
  - c) in the case of a proposed special resolution, the text or substance of the resolution with reasonable prominence, a statement that a member may appoint a proxy (who need not be a member) and the time by which the proxy form must be received at the Registered Office
25. The statutory auditors of the Company shall be entitled to:
  - a) attend any general meeting of the Company;
  - b) receive all notices of, and other communications relating to any general meeting which any member of the Company is entitled to receive;
  - c) be heard at any general meeting which they attend, on any part of the business of the meeting which concerns them as statutory auditors
26. A meeting of the Company, notwithstanding that it is called by shorter notice than that specified at article 19 herein, shall be deemed to have been duly called if it is so agreed by all of the members entitled to attend and vote at the meeting, and the statutory auditors of the Company.
27. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Five members present in person or by proxy shall be a quorum.

28. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
29. The Chairperson of the Board shall preside as chairperson at every general meeting of the Company. If he or she has notified his or her inability to attend or is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
30. The chairperson may with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place.
31. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

#### **REPRESENTATIVES OF CORPORATE MEMBERS AT MEMBERS' MEETINGS**

21. (a) Every corporate member of the Company shall nominate in writing a person who shall be authorised to act as its exclusive representative at all meetings of the Company and meetings convened for the purpose of dealing with Company business. The representative (who shall be known as a "nominated representative") shall be entitled to attend all such meetings on behalf of the corporate member and to exercise all of the voting powers of membership on behalf of the member, as fully as if the nominated representative were the member of the Company. No person other than the nominated representative or the proxy of the nominated representative shall be entitled to attend or to vote on behalf of a corporate member at a general meeting of the Company.
- (b) A corporate member may at any time withdraw and replace its nominated representative, on giving notice in writing to the Company.
- (c) The Board may require a corporate member to withdraw and replace its nominated representative, on giving notice in writing to the member.
- (d) For the purposes of articles 26 to 28 (inclusive), articles 32 to 42 (inclusive), article 51, article 104 and article 114, the term "member" in the case of a corporate member shall be deemed to refer to the nominated representative of the member.

## PROXIES

32. Any member of the Company entitled to attend and vote at a meeting of the Company shall be entitled to appoint any other member as his or her proxy to attend the meeting and vote instead of him or her, provided that the appointment does not result in a conflict of interest. A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.
33. The instrument of proxy in the form set out in article 33 herein, signed by the member appointing the proxy, shall be deposited at the Registered Office no later than 24 hours before the time fixed for the meeting or presented to the Secretary or the chairperson of the meeting no later than the time fixed for commencement of the meeting or adjourned meeting for which the proxy is granted and shall not otherwise be valid.
34. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit:

**IRISH VISUAL ARTISTS' RIGHTS ORGANISATION COMPANY LIMITED BY GUARANTEE**  
**(“the Company”)**

*[Name of member] (“the Member”) of [address of member] being a member of the Company, hereby appoints [name and address of proxy] or failing him or her [name and address of alternative proxy] as the proxy of the Member to attend, speak and vote for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and any adjournment thereof.*

*This proxy shall only be valid for the specified meeting and any adjournment of that meeting.*

*The proxy is to vote as follows:*

*Voting instructions for proxy  
(choice to be marked with an “x”)*

<i>Resolution No</i>	<i>in favour</i>	<i>abstain</i>	<i>against</i>
<i>1.</i>			
<i>2.</i>			
<i>3.</i>			

*Unless otherwise instructed the proxy will vote as he or she thinks fit.*

*Signature of Member*

*Dated*

## **VOTES OF MEMBERS**

35. Where a matter is being decided (whether on a show of hands or on a poll) every member present in person or by proxy shall have one vote.
36. A vote shall take place on a show of hands, unless a poll is demanded before or on the declaration of the result of a show of hands.
37. A demand for a poll may be made by –
  - a) the chairperson of the meeting; or
  - b) at least three members present in person or by proxy; or
  - c) any members present in person representing not less than 10% of the voting rights of members entitled to vote at the meeting.
38. Unless a poll is demanded, a declaration by the chairperson that a resolution has on a show of hands been carried, or lost, an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against such resolution.
39. If a poll is demanded it shall be taken in such manner as the chairperson directs and the result of the poll shall be deemed to be the resolution, in relation to the matter concerned, of the meeting at which the poll was demanded.
40. Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting shall be entitled to a second or casting vote.
41. No member shall be entitled to vote at a meeting of members of the Company if there are monies due and outstanding by such member to the Company.
42. No objection shall be raised to the qualification to vote of any voter except at the meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.

## **RESOLUTIONS**

43. Notwithstanding article 23 herein, a special resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given, if the conditions specified in section 191 of the Act are satisfied.
44. The terms of any resolution (whether special or otherwise) before a general meeting may be amended by ordinary resolution at the meeting, provided that the resolution as amended will still be such that adequate notice of the same can be deemed to have been duly given.

45. When a resolution is passed at an adjourned general meeting, it will be treated as having been passed on the date of that meeting and not on any earlier date.

### **MINUTES OF GENERAL MEETINGS**

46. The Company shall, as soon as may be after the holding of a meeting, cause minutes of the proceedings of general meetings and the terms of all resolutions to be entered in books kept for the purpose. All such books shall be kept in the same place.
47. Any minute referred to in article 46, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or the chairperson of the next succeeding meeting, shall be evidence of what occurred at the meeting.

### **THE BOARD OF DIRECTORS**

48. The Company shall have a minimum of five and a maximum of eleven directors, of whom up to six may be elected pursuant to article 50 and up to five may co-opted pursuant to article 52. There shall at all times be at least one more elected director than there are co-opted directors. Subject thereto, within the numerical range five to eleven, the Board may from time to time by ordinary resolution increase or reduce the number of directors.
49. Elected directors shall be individual members of the Company. Nominated representatives of corporate members shall not be eligible for election as directors. There shall however be no requirement that co-opted directors be members of the Company, and no exclusion from co-option of nominated representatives.
50. With the exception of directors co-opted pursuant to article 52, vacancies for the position of director shall be filled by election at the annual general meeting of the Company.
51. No person shall be eligible for election as a director at a general meeting, unless not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the Registered Office notice in writing signed by a member of the Company entitled to attend and vote at the meeting, of his or her intention to propose the person concerned for such election; and notice in writing signed by the person concerned of his or her willingness to be elected.
52. The Board shall be at liberty to co-opt up to five directors for specific periods of time, who shall be persons who, in the opinion of the Board, will help to provide balanced representation of the interests the Company seeks to reflect, or who are identified as persons who will add to the vision and performance of the Board.
53. Notwithstanding article 50, the Board shall have the power at any time and from time to time, to co-opt a person to be a director to fill a casual vacancy in the number of elected

directors. Any director so appointed shall hold office only until the next annual general meeting and, provided he or she is eligible for election, may be elected thereat.

54. No person may be a director of the Company unless he or she has attained the age of 18 years.
55. Any purported appointment of a director without that person's consent shall be void.
56. At a general meeting of the Company, a motion for the unopposed appointment of two or more persons as directors of the Company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

### **TERM OF OFFICE OF DIRECTORS**

57. (a) The term of office of an elected director shall be three years, renewable once for a further period of three years PROVIDED HOWEVER that a retired director who has served for six consecutive years shall be eligible for re-election for one additional term of three years, when one year has elapsed since the date of his or her retirement.
- (b) A director whose contribution to the Board is, in the opinion of a majority of his or her fellow-directors, of exceptional value to the Board shall be eligible for re-election for consecutive terms of three years, without limit.
- (c) In the event that the term of office of the director who is Chairperson of the Board, appointed pursuant to article 77 shall expire prior to the expiration of his or her term of office as Chairperson of the Board, his or her term of office as director shall be automatically extended to coincide with the expiry of his or term as Chairperson of the Board.
- (d) A year for the purpose of this article shall mean the period from one annual general meeting of the Company to the next.
- (e) It is clarified that the term of office of directors in place at the date of adoption of this constitution shall be calculated to have commenced at the date of actual appointment and not at the date of adoption of this constitution.
58. The term of office of a director co-opted pursuant to article 52 shall be the period for which the co-option was made, not exceeding three years. The term shall be renewable by the Board for a further term or terms not exceeding three years each.

### **REMOVAL OF DIRECTORS**

59. The Company may by ordinary resolution remove a director before the expiration of his or her period of office. Such a resolution shall not be effective unless the provisions of section 146 of the Act are observed.

60. A vacancy created by the removal of a director under this article may be filled at the meeting at which he or she is removed and, if not so filled, may be filled as a casual vacancy.

### **VACATION OF OFFICE**

61. The office of director shall be vacated, and the director shall be deemed to have resigned, if the director:

- a) is adjudicated bankrupt or, being a bankrupt, has not obtained a certificate of discharge in the relevant jurisdiction; or
- b) becomes or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act; or
- c) is the subject of a declaration of restriction under the Act and the Board, at any time during the currency of the declaration, resolves that his or her office be vacated; or
- d) becomes, in the unanimous opinion of his or her fellow-directors, unable to act effectively because of illness or other material inhibition; or
- e) resigns his or her office by notice in writing to the Company or by notice verbally delivered, recorded in a Board minute; or
- f) is sentenced to a term of imprisonment (including a term that is suspended) following conviction of an indictable offence; or
- g) fails to observe any provision of this constitution, of the Act or of the CRM Regulations relating to the disclosure of conflict between the director's personal interests and those of the Company; or
- h) being a member of the Company or the nominated representative of a member of the Company, if the membership is terminated or the member is removed from that position pursuant to these articles; ; or
- i) is absent from four consecutive meetings of the Board, or six such meetings in any two year period, unless the remaining directors shall unanimously agree to excuse such absence.

### **SECRETARY**

62. The Company shall have a Secretary, who may be one of the directors.

63. The Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any Secretary so appointed may be removed by it.

64. Without derogating from the applicable statutory and other legal duties, the duties of the Secretary shall be those delegated to the Secretary from time to time by the Board.

65. The directors shall ensure that the Secretary has the skills or resources necessary to discharge the statutory and other duties associated with the position, including to maintain

(or to procure the maintenance of) the Company records (other than accounting records) required to be kept in relation to the Company.

### **REGISTER OF DIRECTORS AND SECRETARIES**

66. The Company shall keep a register of its directors and secretaries, and shall enter in the register the information specified in Section 149 of the Act.

### **POWERS AND DUTIES OF DIRECTORS**

67. The conduct of the business of the Company shall be governed by the Board, which may exercise all such powers of the Company as are not by the Act or by these articles required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Act and of these articles and to such directions, being not inconsistent with the aforesaid provisions as may, by special resolution, be given by the Company in general meeting but no direction given by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that direction had not been given.

68. Without prejudice to the generality of article 67, by way of delegation of powers by the members, the Board shall have the authority to decide the following matters:

- a) The risk management policy of the Company;
- b) The approval of any acquisition, sale or hypothecation of immovable property by the Company;
- c) The approval of mergers and alliances, the setting up of subsidiaries and the acquisition of other entities or of shares or other rights in other entities;
- d) The approval of taking out loans, granting loans or providing security for loans.

69. The Board shall continuously monitor the activities and the performance of the duties of the person(s) who manage the business of the Company, thereby performing the “supervisory function” in relation to management as required by regulation 7(1) of the CRM Regulations and addressing the responsibility in regulation 8(1) of the CRM Regulations to ensure that the person(s) responsible for managing the business of the Company do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

70. The Board may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking and property or any part thereof.

71. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the Board shall from time to time by resolution determine.



### **DELEGATION OF POWERS BY THE BOARD**

72. The Board may delegate any of its powers to such person or persons as it shall think fit, including committees. The composition of committees shall be determined by the Board and may include persons who are not directors. A committee member who is not a director shall, as a condition of membership of the committee, agree to be bound by the provisions of this Constitution. Committees shall, in the exercise of their powers, conform to any regulations that may be imposed on them by the Board.
73. The Board may from time to time and at any time by power of attorney appoint any Company, firm or person or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles), in such terms, for such period and subject to such conditions as they may think fit.
74. The Board may from time to time appoint a person to act as the Chief Executive Officer of the Company for such period and on such terms as to remuneration or otherwise as the Board thinks fit and, subject to the terms of any agreement entered into with such person, may revoke such appointment.
75. The Chief Executive Officer and/or such other person or persons with management responsibility as may be designated by the Board from time to time shall comprise the “persons responsible for managing the business” of the Company for the purposes of regulation 8 of the CRM Regulations.

### **PROCEEDINGS OF DIRECTORS AND COMMITTEES**

76. The members of the Board shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
77. The Board shall appoint one of the elected directors to act as Chairperson of the Board and fix the period for which he or she shall hold office.
78. The Chairperson shall act as the chairperson of Board Meetings. If the Chairperson of the Board has notified his or her inability to attend the meeting or is not present within 15 minutes after the time appointed for holding the same, the directors present shall choose one of their number to be chairperson of the meeting.
79. Matters referred to a vote shall be decided by simple majority. When there is an equality of votes, the chairperson shall have a second or casting vote.
80. The quorum necessary for the transaction of the business of the Board may be fixed by the Board from time to time and unless so fixed shall be three.

81. The Chairperson of the Board may, and the Secretary on the requisition of any two directors shall, at any time summon a meeting of the Board.
82. The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing director or directors may act for the purpose of increasing the number of directors to that number of or summoning a general meeting of the Company, but for no other purpose.
83. A committee established pursuant to article 72 may elect a chairperson of its meetings; if no such person is elected, or if the chairperson has notified his or her inability to attend the meeting is not present within 15 minutes after the time appointed for holding it, the members of the committee may choose one of their number to be chairperson of the meeting.
84. Subject to these articles and to any directions given by the Board, a committee may meet, adjourn and regulate its meetings as it thinks proper; the quorum necessary for the transaction of its business may be fixed by the committee from time to time and unless so fixed shall be the figure representing at least one half of the number of members of the committee.
85. Questions arising at any committee meeting shall be determined by a majority of votes of members of the committee present, and where there is an equality of votes, the chairperson shall have a second or casting vote.
86. All acts done by the Board or by a committee established by the Board or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
87. A resolution in writing, signed by all the directors or members of a committee, as the case may be, for the time being entitled to receive notice of a meeting shall be as valid as if it had been passed at a meeting duly convened and held.
88. Meetings of the Board and of committees established by the Board may be convened by electronic communication and may be held and joined by directors as a telephone conference or by way of internet or other electronic facility, provided that each director or committee member who declares himself or herself present at the meeting can speak to and be heard by all of the others. A communications technology failure shall not invalidate decisions taken at the meeting, provided a quorum of directors remains in communication with each other throughout. Such a meeting shall be deemed to take place where the chairperson of the meeting then is unless he or she shall be outside the State, in which case the meeting shall be deemed to take place at the Registered Office.

### **MINUTES OF BOARD MEETINGS**

89. The Company shall cause minutes to be entered in books kept for that purpose of –
- a) all appointments of officers made by the directors;
  - b) the names of the directors present at all meetings of its directors and of any committees;
  - c) all resolutions and proceedings at all meetings of its directors and of committees.
90. Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.
91. Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
92. Where minutes have been made in accordance with articles 89 – 91 (inclusive) then, until the contrary is proved-
- a) the meeting shall be deemed to have been duly held and convened;
  - b) all proceedings had at the meeting shall be deemed to have been duly had; and
  - c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.

### **REMUNERATION OF DIRECTORS**

93. Directors shall not be remunerated for acting as such.
94. Subject to compliance with any rules or protocols laid down by the Board, directors may be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board, any committee established by the Board, general meetings of the Company, or otherwise incurred in connection with attending to the business of the Company.

### **USE OF COMPANY PROPERTY BY DIRECTORS**

95. No director shall use Company property for his or her own use or benefit SAVE HOWEVER that *de minimis* use of Company property may be made by a director for the exclusive purpose of carrying out his or her duties as a director, when such use is sanctioned at a meeting of the Board.

### **POWER OF DIRECTOR TO ACT IN A PROFESSIONAL CAPACITY FOR THE COMPANY**

96. Any director may act by himself or herself, or his or her firm, in a professional capacity for the Company, and shall be entitled to remuneration for professional services rendered as if he or she were not a director.

### **CONFLICT OF INTEREST**

97. A director or committee member who is in any way interested, directly or indirectly, in any contract or other arrangement that the Company proposes to enter into, shall declare the nature of his or her interest at the meeting of the Board or committee at which the question of entering into the contract or arrangement is first raised, or at the next meeting after he or she became so interested.
98. Neither a director nor a committee member shall vote in respect of any contract, appointment or arrangement in which he or she is interested. He or she shall not be counted in the quorum present at the meeting.

### **TRANSPARENCY**

99. The Company shall produce a transparency report for each financial year no later than eight months following the end of the financial year. The transparency report shall be in the form prescribed by regulation 20 of the CRM Regulations and shall be published in the manner specified therein.

### **ACCOUNTS**

100. The Company shall keep or cause to be kept adequate accounting records in accordance with Chapter 2 of Part 6 of the Act.
101. The accounting records shall be kept on a continuous basis and shall be sufficient to explain the Company's transactions and facilitate the preparation of financial statements that give a true and fair view of the assets, liabilities, financial position and profit or loss of the Company.
102. The accounting records shall include:
- a) entries from day to day of all monies received and expended by the Company;
  - b) a record of the assets and liabilities of the Company;
  - c) a record of all transactions whereby goods are purchased and sold;
  - d) a record of all transactions whereby services are provided or purchased by the Company.
103. The Company's financial records shall be kept at the Registered Office or at such other place as the Board shall direct.
104. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the financial statements and

accounting records of the Company or any of them shall be open to inspection of its members, not being directors of the Company.

105. The Board shall from time to time in accordance with the provisions of Part 6 of the Act cause to be prepared and to be laid before the annual general meeting of the Company such financial statements and reports of the directors and statutory auditors as are required by those provisions to be laid before the annual general meeting.

#### **AUDIT**

106. Statutory auditors shall be appointed by the Company and their duties regulated in accordance with Part 6 of the Act.
107. The Board shall arrange for the statutory financial statements of the Company for each financial year to be audited by the statutory auditors.

#### **SEAL**

108. The Company shall have a common seal that states the Company's name in legible characters.
109. The seal shall be used only on the authority of the Board, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the Secretary or by a second director or by some other person appointed by the Board for the purpose.

#### **NOTICES**

110. A notice convening a general meeting shall be delivered by the Company to every person entitled to attend the same by hand/courier, by sending it by post to him to his registered address, or, in the event that the intended recipient has authorised it in writing, by fax or e-mail to the fax number or e-mail address provided by the intended recipient.
111. A notice of any other description, including a notice convening a Board meeting may be delivered by hand/courier, by ordinary pre-paid post by fax or by e-mail.
112. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been received at the expiration of 24 hours after the letter containing the same is posted. Where a notice is served by fax or e-mail, the service shall be deemed to have been effected at the expiration of 24 hours after the fax or e-mail has been sent, unless there is a notified failure or error in delivery in that period.
113. The accidental omission to give notice of any meeting convened pursuant to these articles, or the non-receipt of such notice by any person entitled to receive notice shall not invalidate the proceedings at that meeting.

114. Notice of every general meeting shall be given in the manner hereinbefore authorised to: every member, every director and the statutory auditor for the time being of the Company.

### **INSURANCE**

115. The Company may discharge the cost of Directors' and Officers' insurance for its officers, on such terms as the Board shall decide.