

**The Government of the Republic of the Union of Myanmar**

**Ministry of Planning and Finance**

**Directorate of Investment and Company Administration**

Notification No. 60 /2018

13th Waning of First Waso, 1380 M.E.

( 10<sup>th</sup> July 2018 )

**Prescribed Model Constitution under the Myanmar Companies Law 2017**

In exercise of the power conferred under section 462(a) of the Myanmar Companies Law 2017, the Directorate of Investment and Company Administration issues this Notification.

1. The prescribed form of model constitution for a private company limited by shares is set out in Schedule One to this Notification.
2. This Notification shall come into effect on 1 August 2018.

(Aung Naing Oo)

**Registrar**

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# Company Constitution

of

(Company)

Adopted on        /        / 20

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*Note 1: This is a model form of constitution which has been prepared for private companies limited by shares. It provides maximum flexibility in the management and administration of companies. A company may include provisions which limit the objectives and powers of the company. The model constitution should be reviewed carefully prior to being adopted to ensure that it best serves the objectives of the company and its members as a whole.*

*Note 2: If the company is to be a company limited by guarantee, the constitution should state the amount of the guarantee, that the liability of members is limited by the amount of the guarantee and that each member undertakes to contribute to the assets of the company in the event of it being wound up in accordance with the law. If the company is to be a company limited by guarantee without share capital, all clauses relating to shares and share capital should be deleted from the constitution.*

*Note 3: An alternative form of constitution should be adopted if the proposed company is to be an unlimited company.*

*Note 4: A company may adopt its own constitution and is not required to use this model constitution.*

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## Chapter 1 Definitions

1. In this Constitution, subject to clause 2, unless the context otherwise requires:
  - (a) **corporate representative** means a person appointed as a body corporate Member's representative under the Law.
  - (b) **Board** means the Directors acting together as a board of directors which will be the single Director in the case of a single director company.
  - (c) **Director** means a person appointed as a director of the Company in accordance with this Constitution and the Law.
  - (d) **distribution** includes a return of capital, bonus share issue, payment in respect of any share buy-back and any other income or capital distribution.
  - (e) general meeting means a general meeting of the Company.
  - (f) **Law** means the Myanmar Companies Law 2017 (Pyidaungsu Hluttaw Law No. 29) as amended and in effect from time to time.
  - (g) **Lien Monies** has the meaning given in clause 28(a).
  - (h) **Member** means a person who is entered in the Register as the holder of one or more Shares.
  - (i) **Office** means the registered office of the Company.
  - (j) **Ordinary Resolution** means a resolution which has been passed by a simple majority of the votes of Members entitled to vote as are present in person or by proxy at a general meeting of which notice specifying the intention to propose the resolution as an ordinary resolution has been duly given.
  - (k) **Outstanding Monies** has the meaning given in clause 29(b).
  - (l) **poll** means, for the purposes of voting, a count of votes attached to shares held by each Member.
  - (m) **Register** means the register of the Company's members required to be set up and maintained under the Law.
  - (n) **resolution** means any resolution and includes a resolution of the Directors, an Ordinary Resolution and a Special Resolution.
  - (o) **Seal** means the common seal of the Company.
  - (p) **Secretary** means any person appointed as a secretary of the Company in accordance with this Constitution and the Law.
  - (q) **Share** means a share in the share capital of the Company.
  - (r) **show of hand** means, for the purposes of voting, a count of hands of Members.
  - (s) **Special Resolution** means a resolution which has been passed by a majority of not less than three-fourths of the votes of Members entitled to vote as are present in

person or by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

### **Definitions in the Law**

2. All words used in this Constitution which have been defined in the Law have the same meaning as given to them in the Law, unless otherwise stated.

### **Constitution subject to the Law**

3. This Constitution is subject to the Law. Where there is any conflict or inconsistency between a clause of this Constitution and the Law, except to the extent that such conflict or inconsistency is permitted under the Law, the Law prevails in respect of the conflict or inconsistency.
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## **Chapter 2 Preliminary matters**

4. This is the constitution of the Company.
  5. The Company is a company limited by shares and the liability of each Member is limited to the amount unpaid (if any) on Shares held by them in accordance with the Law.
  6. Subject to any decision of Members in accordance with the Law, the Company will have the following classes of Shares:
    - (a) ordinary shares (which shall have the rights as set out in the Law); and
    - (b) the additional classes of Shares, if any, set out in the Schedule (which shall have the rights set out in the Schedule); and
    - (c) any other classes of shares issued in accordance with the Law.
  7. No Member may hold less than one Share.
  8. The Company's Office will be situated in the Republic of the Union of Myanmar.
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## **Chapter 3 Share capital**

### **Allotment and issue of Shares**

9. Subject to the Law, the Company may:
  - (a) allot and issue Shares to any persons, on any terms and at those times as the Directors determine;
  - (b) grant an option over the issue of any Shares to any persons, on any terms and during any time as the Directors determine; and
  - (c) without limiting clause 9(a), allot and issue Shares with any preferential, deferred or special rights or with any restrictions (whether in regard to dividends or other distributions, voting or otherwise) as the Directors determine.

## **Company may issue preference Shares**

10. Subject to the Law, and without limiting clause 9, the Company may allot and issue preference Shares on any terms the Directors determine including preference Shares which are, or which at the option of the Company or holder or both may be, liable to be redeemed or converted into ordinary Shares.

## **Applications for Shares**

11. If the Company receives an application for a Share by or on behalf of a person and the Company allots a Share to the person as a consequence of that application, the application is to be treated as:
- (a) an agreement by the person to accept that Share subject to the terms on which the Share is allotted;
  - (b) a request by the person for the Company to enter the person's name in the Register as the holder of that Share; and
  - (c) an agreement by the person to become a Member and, subject to the Law, to be bound by this Constitution.

## **Joint holders**

12. Two or more persons registered as the holders of any Share are deemed to hold the Share as joint holders, subject to the following provisions:
- (a) the joint holders are jointly and severally liable for all payments (including amounts payable under a call) which are required to be made on, for or in respect of the Share;
  - (b) if a joint holder dies, the survivor or survivors are the only person or persons recognised by the Company as having any title to the Share, but the Directors may require evidence of death;
  - (c) any one joint holder may give a valid receipt for any dividend or other distribution to the joint holders;
  - (d) delivery of a notice, a report, accounts or a certificate for the Share to any joint holder is sufficient delivery to all the joint holders; and
  - (e) the joint holders shall be treated as a single Member.

## **Recognition of trusts or other interests in Shares**

13. Subject to the Law, the Company may treat the registered holder of any Share as the absolute owner of that Share and, accordingly, the Company is not required to recognise (whether or not it has notice):
- (a) a person as holding a Share on any trust; or
  - (b) any equitable, contingent, future or partial interest in any Share.

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## Chapter 4 Certificates

### Issue of certificates

14. If the Company is required by the Law to issue a certificate for any Shares, the certificate must be issued in accordance with, and must include all information required by, the Law.

### Member's entitlement to certificate

15. Subject to this Constitution, each Member is entitled upon request and free of charge to one certificate for each class of Shares registered in their name.

### Certificate for joint holders

16. If Shares are registered in the names of two or more persons, the Company is only required to issue one certificate for each class of those Shares.

### Cancellation of certificate on transfer or transmission

17. Subject to this Constitution and to the requirements of the Law, on every application to register the transfer of any Shares, or to register any person as a holder of any Shares which have been transmitted to that person by operation of law, the certificate for those Shares must be delivered to the Company for cancellation if such a certificate has been issued.

### Replacement of certificates

18. The Company must issue a replacement certificate to a Member upon request if a certificate for any Share is:
- (a) worn out or defaced, on delivery of the worn out or defaced certificate to the Company; or
  - (b) lost or destroyed, when the Company is given:
    - (i) evidence that the certificate has been lost or destroyed, and has not been pledged, sold or otherwise disposed of; and
    - (ii) an undertaking to return the certificate to the Company, if found or received.
19. The Company must issue all replacement certificates within 28 days after receiving the original certificate or being given the evidence and other items referred to in clause 18(b), as applicable, or such shorter period (if any) required under the Law.

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## Chapter 5 Lien & Forfeiture

### Lien

20. The Company has a first and paramount lien on each Share for:
- (a) all amounts due and unpaid on the Share;
  - (b) all amounts owing to the Company for acquiring the Share;
  - (c) all amounts payable to the Company in respect of the Share;

- (d) interest (if any) accrued under clause 40 (including as a result of the application of that clause to any debt or amounts under clause 39); and
- (e) reasonable costs and expenses incurred by the Company because an amount referred to in this clause is not paid when due.

### **Extent of lien**

21. The Company's lien on a Share extends to all dividends and other distributions and other amounts payable to the holder of the Share in respect of the Share, including the proceeds of the sale or other disposal of the Share. The Company may deduct from or set-off against any dividends or other distributions or other amounts subject to the Company's lien any amounts, interest and costs and expenses referred to in clause 20.

### **Exemption from lien**

22. The Company may at any time:
- (a) exempt a Share in whole or in part from the provisions of clauses 20 and 21; or
  - (b) except in respect of an amount unpaid on a Share, waive or compromise payment of all or any part of any amounts, interest and costs and expenses referred to in clause 20.

### **Company may forfeit instead of exercising lien**

23. If clauses 24 to 26 apply to a Share to which clauses 20 to 22 also apply, the Company may choose which of the lien or forfeiture procedures under this clause it will use. Choosing to use one of the procedures under a clause does not limit the Company's rights to use the other procedures under the other clauses.

### **Forfeiture on non-payment of calls**

24. Without limiting clauses 20 to 22, unless the Company otherwise determines, any Share on which a call is unpaid (in whole or in part) will, 28 days after the Company gives notice to the Member that the day for its payment has expired, be absolutely forfeited without any resolution of the Directors or other proceeding being required. Subject to the Law, the Company may then cancel or sell or otherwise dispose of the forfeited Share.

### **Evidence of forfeiture**

25. A written statement declaring that the person making the statement is a Director or Secretary and that a Share has been forfeited on a date stated in the statement, is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to or otherwise have an interest in the Share.

### **Effect of forfeiture**

26. On forfeiture of a Share, the person whose Share is forfeited:
- (a) ceases to be a Member in respect of the forfeited Share;
  - (b) without limiting clause 26(a), loses all entitlements to dividends or other distributions determined or declared or otherwise payable in respect of the forfeited Share and not actually paid; and

- (c) remains liable to pay the Company all amounts which, at the date of forfeiture, were payable by them to the Company on, for or in respect of the forfeited Share, including all interest (if any) accrued under clause 40. The Company is under no obligation to enforce payment.

### **Sale of Share under lien or sale of forfeited Shares**

- 27. The Company may sell or otherwise dispose of any Share on which the Company has a lien subject to clause 28, or which it has determined shall be forfeited, on any terms and in any manner the Directors determine, provided the sale or other disposal is in accordance with any applicable requirements of the Law.
- 28. The Company may not sell any Share on which it has a lien unless:
  - (a) an amount in respect of which the lien exists (**Lien Monies**) is presently due; and
  - (b) the Company has, not less than 28 days before the date of sale, given a written notice to the person registered as the holder of the Share stating that the Lien Monies is presently due and demanding payment of the Lien Monies in full, and the Lien Monies has not been paid in full in accordance with such notice.

### **Proceeds of sale**

- 29. The Company must apply the proceeds of the sale or other disposal of a Share under this chapter 5:
  - (a) first, in payment of all costs and expenses incurred in selling or otherwise disposing of the Share; and
  - (b) second, in payment of the Lien Monies (in the case of a lien) or, in payment of the amounts payable on, for or in respect of the forfeited Share by the registered holder of the Share, and unpaid (**Outstanding Monies**).
- 30. The Company must pay the balance (if any) to the person registered as the holder of the Share immediately before the Share was sold or otherwise disposed of or as that person directs.

### **Effecting the sale or other disposal**

- 31. The Company may do all things necessary or desirable to facilitate and effect the sale or other disposal of a Share pursuant to this chapter 5.
- 32. The transferee or other recipient of any Share sold or otherwise disposed of under this chapter 5 is not required to see that the proceeds of the sale or other disposal are properly applied as set out in this chapter 5. The transferee or other recipient's title to the Share is unaffected by any irregularity or invalidity in connection with the sale or other disposal or the application of the proceeds of the sale or other disposal.
- 33. The transferee or other recipient of any Share sold or otherwise disposed of under this chapter 5 is discharged from liability for any amounts called on the Share which were due before the sale or other disposal of the Share, unless otherwise agreed by the transferee or other recipient and the Company.

### **No release of liability**

34. Where the proceeds of the sale or other disposal of a Share under this chapter 5 (after payment of all costs and expenses incurred in selling or otherwise disposing of the Share) are insufficient to pay the Lien Monies or Outstanding Monies in full, the person or persons liable to pay the Lien Monies or Outstanding Monies remain liable to the Company for the balance of the Lien Monies or Outstanding Monies. Nothing in, or done pursuant to, this chapter 5 releases a person who is or was registered as the holder of any Share, from any liability to the Company in respect of the Lien Monies or Outstanding Monies.

### **Remedies**

35. The remedy of any person aggrieved by the sale or other disposal of their Shares under this chapter 5 is limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against the Company or any other person.

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## **Chapter 6 Calls**

### **Company may make calls**

36. The Company may:
- (a) make calls as the Directors determine on a Member for any or all of the amounts unpaid on Shares held by the Member which are not payable at fixed times under the terms of issue of the Shares;
  - (b) make a call payable by instalments; and
  - (c) revoke or postpone a call or extend the time for payment of the call.

### **Time of call**

37. A call is deemed to have been made when the resolution of the Directors authorising that call is passed or as otherwise specified in the resolution.

### **Notice and payment of calls**

38. The Company must give written notice of a call on a Member to the Member at least 21 days before the amounts called are due. The notice must specify the time and a reasonable method for payment. The non-receipt of any notice of a call by, or the accidental omission to give notice of a call to, the Member will not invalidate the call.

### **Fixed payments deemed calls**

39. Any amount which, by the terms of issue of a Share, becomes payable on issue or at any fixed date, will for the purposes of this Constitution be deemed to be a call for that amount duly made, notified and payable on the date on which the amount is payable. In the case of non-payment, all the provisions of this Constitution relating to non-payment of calls, including payment of interest, costs and expenses, forfeiture and the cancellation or the sale or other disposal of the Member's Shares will apply as if the amount had become payable by virtue of a call duly made and notified.

### **Interest on amounts not paid**

40. Amounts called on a Share and not paid on or before the date for payment bear interest from the date for payment to the time of actual payment at any reasonable rates the Directors may determine. The Company may waive payment of interest, either in whole or in part.

### **Payment of calls**

41. A Member must pay the amount of each call made on them at the times and by the methods determined by the Directors or the terms of issue of the Shares on which the call is made.

### **Prepayment of calls**

42. A Member may at any time pay to the Company all or any part of the amount unpaid on the Shares held by the Member beyond the amounts actually called (if any).

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## **Chapter 7 Transfer of Shares**

### **Transfer document**

43. Subject to this Constitution and the Law, a Member may transfer any Shares by a transfer document duly stamped and delivered to the Company. The transfer document must:
- (a) be in writing in the usual or common form or in any other form as the Directors may determine or agree to accept;
  - (b) include all information required by the Law, including a declaration by the transferor or transferee (or both of them) as to whether as a result of the transfer an overseas corporation or other foreign person (or combination of them) will acquire or cease to have an ownership interest in the company's shares;
  - (c) be signed by or on behalf of the transferor and transferee or as otherwise permitted by the Law; and
  - (d) be accompanied by the certificate (if required by Law and if such certificate has been issued) for the Shares to be transferred and any other evidence the Directors may require to prove the title of the transferor to or their right to transfer the Shares.

### **Registration of transfer**

44. Subject to clause 45, the Company must register each transfer of Shares which complies with clause 43 and must do so without charge.

### **Directors may refuse to register transfer**

45. Subject to the Law, the Directors may refuse to register any transfer of Shares if, within 21 days of receipt of the application for transfer and other documents required by this chapter 7, the Board passes a resolution to this effect setting out the reason for refusing the transfer and the Company then sends to the transferee and the transferor notice of this refusal, including the reasons for such refusal, within a further 7 days of passing the resolution.

### **Retention and return of transfer document**

46. The Company must:

- (a) retain all transfer documents for registered transfers of Shares for the period determined by the Directors or otherwise required by law; and
- (b) except in the case of fraud or suspected fraud, return on demand any transfer document for a transfer of Shares which the Directors refuse to register to the person who delivered the document.

### **Transfer not complete until name entered in the Register**

47. The transferor of a Share remains the holder of the Share until the name of the transferee is entered in the Register as the holder of the Share.

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## **Chapter 8 Transmission of Shares**

### **Death of a Member**

48. If a Member dies and the Member:
- (a) was a joint holder of any Shares, any surviving joint holders are the only persons the Company will recognise as having any title to or interest in those Shares; or
  - (b) was the sole holder of any Shares, the legal personal representatives of the Member are the only persons the Company will recognise as having any title to or interest in those Shares.
49. Nothing in clause 48 releases the estate of a deceased Member from any liability for any amount unpaid on, or otherwise owing to the Company for or in respect of a Share, whether that Share was held by the deceased solely or jointly with one or more other persons.

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## **Chapter 9 Alteration of capital**

50. The Company may alter its capital in any manner permitted by the Law. Subject to the Law, the Directors may do anything required to give effect to any resolution which alters the Company's share capital.

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## **Chapter 10 Variation or cancellation of rights or restrictions**

### **Variation or cancellation of rights or restrictions on class of Shares**

51. Subject to the terms of issue of any Shares and the Law, all or any of the rights and restrictions attached to or imposed on any class of Shares may only be varied or cancelled, including by converting or reclassifying Shares from one class to another:
- (a) with the written consent of holders of at least 75% of the Shares of that class; or
  - (b) with the approval of a Special Resolution passed at a meeting of holders of the Shares of that class.

### **No variation by issue of further Shares ranking equally**

52. Subject to the terms of issue of any Shares, the rights or restrictions attaching to or imposed on the Shares of any class will not be deemed to be varied by the allotment or issue of further Shares ranking equally in respect of those rights and restrictions.

### **Changes to this Constitution**

53. Each Member agrees to be bound by any modification of this Constitution made in accordance with the Law after the date on which they become a Member.

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## **Chapter 11 General meetings**

### **Annual general meetings**

54. Annual general meetings must be held if required by and in accordance with the Law. The business of an annual general meeting may include:
- (a) where the Company is required to prepare such reports, receiving and considering the annual financial report, directors' report and auditor's report;
  - (b) electing Directors; and
  - (c) where the company is required to appoint an auditor, the appointment of the auditor; whether or not this is stated in the notice of meeting.

### **Convening general meetings**

55. Subject to the Law, any Director may convene a general meeting at a reasonable time and place they determine.

### **Members may requisition general meeting**

56. Members may requisition the holding of a general meeting in accordance with the Law. The Directors must convene a meeting so requisitioned in accordance with the time limits under the Law.

### **Notice of general meeting**

57. If the Company is a private company, at least 21 days' notice of a general meeting must be given, or if the Company is a public company, at least 28 days' notice of a general meeting must be given.
58. Notice of a general meeting must be given in the manner provided by this Constitution and the Law to the Members and those persons who are otherwise entitled under this Constitution or the Law to receive notices of general meetings, and must include or be accompanied by all information required by the Law.

### **Directors entitled to notice of general meeting**

59. A Director is entitled to receive notice of, attend and speak at all general meetings.

## **Omission to give notice of general meeting or comply with notice requirements**

60. Subject to the Law:
- (a) the accidental omission to give notice of a general meeting (or any postponement or, if required, adjournment of or change to the meeting) to, or non-receipt of any such notice by, any Member or any person who is otherwise entitled under this Constitution or the Law to receive notices of general meetings; or
  - (b) failure to strictly comply with clause 58 in respect of a notice of a general meeting, does not invalidate any of the proceedings at the meeting.

## **Class meetings**

61. The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every meeting of the holders of a class of Shares except that:
- (a) a quorum is constituted by:
    - (i) if one person holds all of the Shares of the class, that person; or
    - (ii) if two or more persons hold the Shares of the class, at least two persons who hold Shares of the class; and
  - (b) any holder of Shares of the class present at the meeting may demand a poll.

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## **Chapter 12 Proceedings at general meeting**

### **Member deemed to be present**

62. A Member may attend a general meeting, and is deemed to be present, in any of the following ways:
- (a) in person;
  - (b) by attorney;
  - (c) by proxy; or
  - (d) in the case of a Member which is a body corporate, by a corporate representative.

### **Attorney of Member**

63. Any Member may appoint an attorney to act on their behalf at any or all general meetings or all general meetings during a specified period. Before the first meeting at which the attorney acts on the Member's behalf, the power of attorney validly appointing the attorney must be deposited at the Office or at any other place specified in the notice of the meeting for that purpose. If requested by the chair of any general meeting to which the power of attorney relates, the attorney must deliver to the chair a duly executed declaration of non-revocation of the power of attorney. Subject to the Law, the chair's decision or, in the chair's absence, the Directors' decision as to the validity of a power of attorney is final and binding.

## **Representative of body corporate**

64. Any Member that is a body corporate may, in accordance with the Law, authorise any person to act as its representative at any or all general meetings or all general meetings during a specified period. That corporate representative is then entitled to exercise the same powers as the body corporate appointing the corporate representative could have exercised as a Member at the relevant general meetings or in voting on a resolution, if it were a natural person.

## **Quorum for general meeting**

65. No business may be transacted at any general meeting unless a quorum is present at all times during the meeting. A quorum is constituted by:
- (a) if the Company has only one Member, that Member; and
  - (b) if the Company has two or more Members, two Members.

## **No quorum**

66. If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) any meeting convened by Members or by the Directors on request of Members is dissolved; and
  - (b) any other meeting stands adjourned to the same day in the next week at the same time and place or to any other day, time and place as the Directors may determine and give notice of to the Members and those persons who are otherwise entitled under this Constitution or the Law to receive notices of general meetings. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, then those Members who are present are deemed to be a quorum and may transact the business specified in the original notice convening the meeting.

## **Chair of general meeting**

67. The chair of the Directors or, in the chair's absence, the deputy chair of the Directors (if any) will be entitled to take the chair at every general meeting. If there is no chair or deputy chair of the Directors, or if neither of them is present within 30 minutes after the time appointed for holding the meeting or willing to take the chair, the Directors present at the meeting may choose a chair of the meeting. If the Directors do not choose a chair of the meeting, the Members present must choose one of the Directors to be chair, and if no Director is present or willing to take the chair, the Members must choose one of the Members (or their proxy, attorney or corporate representative) to be chair.
68. The chair of a general meeting may, in the case of a conflict of interest or otherwise in their discretion, appoint someone else (who need not be a Director) to chair one or more items of business or resolutions at the meeting. While acting as chair the appointee may exercise all of the chair's powers and discretions conferred by this Constitution or the Law. The chair resumes the chair after the appointment concludes.

## **Powers of chair**

69. The chair of a general meeting is responsible for the general conduct of and procedures at the meeting. The chair's decisions about general conduct and procedures is final and binding.

70. At any general meeting, if the chair of the meeting declares that a resolution has been carried, or carried by a particular majority, or not carried and an entry to that effect is recorded in the minutes of the meeting, that declaration is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against or abstained on that resolution.

### **Adjournment of general meeting**

71. Subject to clause 72, the chair of a general meeting may adjourn the meeting to a different day, time and place, but only business left unfinished at the meeting from which the adjournment took place may be transacted at the adjourned meeting.
72. Clause 71 does not permit the chair of a general meeting to adjourn a meeting convened by a single Director, or in accordance with the Law by Members, by the Directors on request of Members or by a court unless the persons who convened the meeting (or at the request of whom the meeting was convened) consent to the adjournment.

### **Notice of adjourned general meeting**

73. If a general meeting is adjourned for more than 28 days, notice of the adjournment must be given to all Members and those persons who are otherwise entitled under this Constitution or the Law to receive notices of general meetings in the same manner in which notice was, or ought to have been, given of the original meeting.

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## **Chapter 13 Voting**

### **Resolution determined by majority**

74. At a general meeting all proposed resolutions will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Law.

### **Casting vote of chair**

75. If, on a resolution at a general meeting, an equal number of votes occurs on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any votes to which the chair may be entitled as a Member, proxy, attorney or corporate representative.

### **Method of voting**

76. Each proposed resolution at a general meeting will be determined by a show of hands unless, before a vote is taken or before or immediately after the declaration of the result of the vote on a show of hands, a poll is demanded as provided by the Law.

### **Demand for poll**

77. A poll may be demanded on any resolution at a general meeting by:
- (a) at least five Members present and entitled to vote on the resolution;
  - (b) any one or more Members present and holding Shares conferring not less than 10% of the votes that may be cast on the resolution on a poll; or
  - (c) the chair of the meeting.

## **Conducting a poll**

78. If a poll is demanded on any resolution at a general meeting, the chair of the meeting:
- (a) will decide the manner in which, and the date and time at which, the poll is taken;
  - (b) must ascertain the number of votes attaching to Shares held or represented by persons voting in favour of the resolution and by those voting against the resolution; and
  - (c) will determine any dispute about admitting or rejecting a vote and that determination, made in good faith, will be final and binding.

## **Votes**

79. Subject to this Constitution and the rights or restrictions on voting on any class of Shares:
- (a) on a show of hands every Member present has one vote; and
  - (b) on a poll every Member present has:
    - (i) one vote for each fully paid Share held by that Member; and
    - (ii) a fraction of a vote for each partly paid Share, equivalent to the proportion which the amount paid is of the total amounts paid and payable for that Share.
80. A person entitled to cast more than one vote on a poll need not use all their votes or cast all the votes they use in the same way.

## **Voting by proxy**

81. A Member who is entitled to vote on a proposed resolution at a general meeting may appoint a person as that Member's proxy to attend the meeting and vote on that Member's behalf.
82. A proxy may demand or join in demanding a poll.
83. If a Member is present at any general meeting for which the Member has validly appointed a proxy to attend and vote for the Member, the proxy's authority to:
- (a) speak for the Member is suspended while the Member is present; and
  - (b) vote for the Member on any proposed resolution is not suspended while the Member is present but is revoked by the Member voting in person.
84. Subject to the Law, a proxy may vote or abstain from voting on a proposed resolution at a general meeting as they choose. However, if the instrument appointing the proxy directs the way in which the proxy must vote or abstain from voting, then the proxy may only vote or abstain in that way.

## **Validity of vote given in accordance with proxy, attorney or representative**

85. Unless the Company has received written notice of the matter before the start or resumption of the general meeting at which a person votes as a proxy, attorney or corporate representative of a Member, a vote cast by the person will be valid even if, before the person voted, the Member:
- (a) dies;

- (b) is mentally incapacitated;
- (c) revokes the person's appointment or authority;
- (d) revokes the authority under which the person was appointed by a third party; or
- (e) transfers the Share for which the appointment or authority was made or given.

### **Voting if call unpaid on Shares**

86. A Member may not, at any general meeting, vote any Share they hold if any amounts are due and payable to the Company at the time of the meeting on, for or in respect of the Share. This does not restrict the Member from voting any other Shares which they hold, including, subject to clause 79(b)(ii), partly paid shares.

### **Voting by joint holders**

87. Subject to clause 88, a joint holder of Shares entitled to vote on a proposed resolution at a general meeting may vote all of the Shares in respect of which they are joint holder on that resolution.
88. If more than one joint holder of Shares is present at any general meeting and tenders a vote on a proposed resolution, only the vote of the joint holder whose name appears first on the Register will be counted.

### **Voting by transmittee**

89. If a person entitled to a Share because of the transmission of the Share to them by operation of law gives the Company, at least 48 hours before the time notified for a general meeting (or a postponed or adjourned meeting), evidence of the entitlement as the Directors may require, that person may exercise the rights in respect of the Share (including voting the Share) at the meeting as if that person were registered as the holder of the Share.

### **Ruling on entitlements and votes**

90. A person may only object to whether a purported voter is entitled to vote or a vote by any person present and entitled (or claiming to be entitled) to vote should be admitted or rejected, at the meeting at which the purported voter wishes to vote or the vote objected to is given or tendered. The objection must be determined by the chair of the general meeting, whose decision is final and binding. A vote not disallowed as a result is valid and effective for all purposes.

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## **Chapter 14 Resolutions without meetings**

### **Where only one Member**

91. If the Company has only one Member, the Company may pass a resolution without a general meeting being held if that Member (or their attorney or corporate representative) records the resolution and signs the record.

## **Where more than one Member**

92. If the Company is a private company and has more than one Member, the Company may pass a resolution, other than a resolution to remove an auditor under the Law, without a general meeting being held if all the Members entitled to vote on the resolution (or their attorneys or corporate representatives) sign a document containing a statement that they are in favour of the resolution set out in the document. Identical copies of the document and accompanying information may be distributed for signing by different Members. The resolution is passed when all of the Members have signed the document.

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## **Chapter 15 Proxies**

### **Instrument appointing proxy**

93. An instrument appointing a proxy must be in writing and signed by the appointor and include the Member's name and address, the Company's name, the proxy's name and the meetings at which the proxy may be used (which may be all meetings).
94. An appointment of proxy may be a standing one.

### **Deposit of proxy with Company**

95. An instrument appointing a proxy and the power of attorney (if any) under which it is signed must be received by the Company at least 48 hours before the time for holding the general meeting to which the proxy relates and may be:
- (a) delivered to the Office;
  - (b) sent by fax to the Office or to any other fax number specified in the notice of the meeting for that purpose;
  - (c) sent by email or other means to an electronic address specified in the notice of the meeting for that purpose; or
  - (d) otherwise received by any other means specified in the notice of meeting, notified by the Company from time to time or otherwise permissible under the Law.

### **Validity of proxy**

96. Subject to the Law, the decision of the chair of a general meeting or, in the chair's absence, the Directors' decision as to the validity of an instrument appointing a proxy or the power of attorney (if any) under which it is signed is final and binding.

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## **Chapter 16 The Directors**

### **Number of Directors**

97. The number of Directors must not be less than one (if the Company is a private company) or three (if the Company is a public company).

### **Directors must be natural persons**

98. A Director must be a natural person.

### **Directors' tenure of office**

99. Subject to the Law, each Director will hold office until they are removed under this Constitution or automatically cease to be a Director in accordance with the Law.

### **No Share qualification**

100. A Director is not required to hold any Shares.

### **Appointment or removal of Directors**

101. Directors may be appointed or removed by Ordinary Resolution or by notice in writing to the Company signed by or on behalf of all Members.

### **Directors may fill casual vacancies or appoint additional Directors**

102. The Directors also have power at any time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Board provided that the total number of Directors must not at any time exceed the maximum number for the time being fixed by or under this Constitution (if any).

### **Alternate Director**

103. Subject to the Law, each Director may, with the approval of the other Directors, appoint a person (whether or not a Member) to act as an alternate Director in that Director's place during any period the appointing Director determines. The appointment must be in writing and signed by the appointing Director and a copy of the appointment must be given to the Company at the Office or to a meeting of the Directors.

104. Any alternate Director:

- (a) may be removed or suspended from office by written notice to the Company from the Director who appointed the alternate (**appointer**);
- (b) is entitled to receive notice of, attend (if the appointer is not present) and be counted towards a quorum at meetings of Directors;
- (c) is entitled to vote at meetings of Directors they attend on all resolutions on which the appointer could vote had that appointer attended and, where the alternate is a Director in the alternate's own right, will have a separate vote on behalf of the appointer in addition to the alternate's own vote;
- (d) is not required to hold any Shares;
- (e) subject to the terms of their appointment, may exercise any powers that the appointer may exercise in the alternate's own right where the appointer is unavailable for any reason except the power to appoint an alternate Director.
- (f) will automatically vacate office if the appointer is removed or otherwise ceases to be a Director;

- (g) while acting as a Director, is:
  - (i) an officer of the Company and not the appointing Director's agent; and
  - (ii) responsible to the Company for the alternate's own acts and defaults;
- (h) is not entitled to receive any remuneration from the Company but is entitled to be paid or reimbursed for reasonable travelling and other costs and expenses incurred in attending and returning from meetings of Directors, any committee of the Directors or any general meetings or otherwise in connection with the Company's business; and
- (i) may act as an alternate for more than one Director.

### **Remuneration of Directors**

105. Directors may be paid remuneration for their services as Directors.
106. Subject to the Law and any restriction or limit imposed by the Company in general meeting and the terms of any agreement entered into with any Director, the Board may determine:
- (a) the amount and form of remuneration to be paid to each Director; or
  - (b) the aggregate amount and form of remuneration to be paid to all Directors and may divide the aggregate remuneration among themselves in any proportions and in any manner as they may determine. If the Directors do not or are unable to make a determination as to the apportionment of the aggregate remuneration, it must be divided among them equally.

### **Expenses of Directors**

107. In addition to any remuneration, the Directors are entitled to be paid or reimbursed all reasonable travelling and other costs and expenses incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or any general meetings or otherwise in connection with the Company's business.

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## **Chapter 17 Directors' contracts**

### **Directors not disqualified from holding office or contracting with Company**

108. Subject to the Law:
- (a) no Director will be disqualified by virtue of being a Director from holding any office or position of profit with the Company or any other person;
  - (b) no Director will be disqualified by virtue of being a Director from contracting with the Company or any other person; and
  - (c) no contract referred to in this chapter 17 or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested can be avoided, and no Director will be liable to account to the Company for any profit arising from that contract or arrangement or from any office or position referred to in this chapter 17, by reason only of that Director holding that office or position or the Director's fiduciary relationship with the Company.

### **Director can act in professional capacity**

109. Subject to the Law, a Director or a Director's firm may act in a professional capacity for the Company and be remunerated for doing so.

### **Director may vote on contract in which the Director is interested**

110. Subject to compliance with clause 111, a Director may be present and vote at a meeting of Directors on any matter about any contract or arrangement in which the Director is interested (whether directly or indirectly) and may be counted in a quorum for the meeting at which the matter is considered and may affix the Seal to, and execute or otherwise act in respect of, that contract or arrangement provided that the other directors pass a resolution that identifies the director and the nature of the interest and states that those directors are satisfied that the interest should not disqualify the director from being present at the meeting or voting.

### **Directors to declare interest**

111. Except where the Law does not require it, any Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors notice of that interest, by giving details of the nature and extent of the interest and its relation to the Company's affairs and by otherwise meeting the requirements of the Law, at a meeting of Directors as soon as possible after the Director becomes aware of their interest in the matter.

### **Directors to declare potential conflicts**

112. Any Director who holds any office or position or possesses any property or assets in circumstances where the holding or possession might, either directly or indirectly, create conflicting duties or interests with those duties or interests that the Director has in their capacity as a Director, must declare the fact of holding that office or position or possessing that property or assets, and the nature and extent of any conflict, at the first meeting of Directors held after they become a Director or (if already a Director) at the first meeting of Directors held after they become aware of the relevant facts which give rise to the conflict.

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## **Chapter 18 Powers of Directors**

### **Powers of Directors**

113. The Directors will manage or cause the management of the business of the Company and may exercise, or cause to be exercised, all powers, authorities and discretions of the Company that are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting.
114. Except as permitted or required by the Law or this Constitution, no Member may direct the Company or the Directors in the exercise of the powers, discretions and authorities conferred on the Company or the Directors under this Constitution.
115. Directors powers will be exercised in the manner provided and permitted by this constitution and the Law.

### **Powers to borrow or raise money and pay costs and expenses**

116. Without limiting clause 113, the Directors may:

- (a) borrow or raise any sum of money or obtain other financial accommodation for Company purposes, and may grant mortgages and charges or otherwise provide security for the repayment of that sum or financial accommodation or the payment, performance or fulfilment of any debts, liabilities, contracts, arrangements or obligations incurred, entered into or performed by the Company in any manner and on any terms as they determine, including by granting any security on its uncalled or unpaid capital for the time being; and
- (b) pay, or cause to be paid, all costs and expenses incurred in forming and promoting the Company.

### **Directors may vote shares in other companies**

117. Subject to the Law, the Directors may exercise the voting power conferred by the shares in any company held by the Company in any manner they determine, including in circumstances where a Director may be interested in the exercise, such as an exercise in favour of any resolution appointing a Director as an officer of the other company or voting or providing for the payment of remuneration to officers of the other company.

### **Agent or attorney**

118. The Directors may at any time appoint any person to be an agent or attorney of the Company for any purpose and with any of the powers, authorities and discretions exercisable by them, any Director, the Secretary, or any officer under this Constitution or the Law, and may revoke, vary or suspend that appointment, on any terms they determine.

### **Delegation of powers**

119. The Directors may delegate any of the powers, authorities and discretions exercisable by them under this Constitution or the Law to a committee of Directors, a single Director, an employee of the Company or any other person, and may revoke, vary or suspend that delegation, on any terms they determine.

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## **Chapter 19 Proceedings of Directors**

### **Board meetings**

120. The Directors may meet:
- (a) in person;
  - (b) by telephone;
  - (c) by audiovisual linkup; or
  - (d) by any other instantaneous communications medium,
- for dispatch of business, and adjourn and otherwise regulate their meetings as they determine.

### **Director to be regarded as present at Board meeting**

121. A Director is regarded as present at a meeting of Directors where the meeting is conducted by telephone, audiovisual linkup or other instantaneous communications medium if the Director is able to hear, and to be heard by, all other Directors attending the meeting.

### **Place of Board meeting**

122. A meeting of Directors conducted by telephone, audiovisual linkup or other instantaneous communications medium will be deemed to be held at the place agreed on by the Directors attending the meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting. Meetings may be held outside the Republic of the Union of Myanmar.

### **Convening of Board meeting**

123. A Director may at any time, and the Secretary (if any) on the request of a Director must, convene a meeting of Directors.

### **Notice of Board meeting**

124. Notice of every meeting of Directors must be given to each Director, but failure to give or receive that notice will not invalidate any meeting.

### **Directors may act notwithstanding vacancy**

125. The Directors may act despite there being a vacancy on the Board, but if and so long as their number is below the number required for a quorum, they must not act except in an emergency or to fill a vacancy or to convene a general meeting.

### **Quorum for Board meeting**

126. No business may be transacted at any meeting of Directors unless a quorum is present at the start of the meeting. Unless the Directors otherwise determine, a quorum is constituted by:
- (a) if the Company has only one Director, that Director; and
  - (b) if the Company has two or more Directors, two Directors.
127. If a quorum is present at the beginning of a meeting of Directors, it is deemed to be present throughout the meeting even if a Director absents themselves, or abstains from voting, for any reason.

### **Board meeting competent to exercise all powers**

128. A meeting of Directors at which a quorum is present will be competent to exercise all or any of the powers, authorities and discretions exercisable by the Directors under this Constitution or the Law.

### **Chair of Board meetings**

129. The Directors must elect a chair of their meetings and determine the periods for which the chair is to hold office. If no chair is elected or if at any meeting the chair is present within 15 minutes after the time appointed for the meeting, the Directors present at the meeting may choose one of the Directors present to be chair of the meeting.

### **Questions to be decided by majority**

130. Questions arising at or proposed resolutions submitted to any meeting of Directors will be decided by a simple majority of votes of Directors present and voting. If the votes cast are equal, the chair will have a casting vote in addition to any vote to which the chair may be entitled as a Director.

### **Resolution in writing**

131. If there is only one Director, that Director may pass a resolution by recording it and signing the record.
132. If there is more than one Director, the Directors may pass a resolution without a meeting of Directors being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Identical copies of the document and accompanying information may be distributed for signing by all Directors. The resolution is passed when the last participating Director signs the document.

### **Committee powers and meetings**

133. Any committee of Directors must exercise the powers, authorities and discretions delegated to it in accordance with any directions that may be imposed on it by the Directors.
134. The meetings and proceedings of any committee of Directors consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any directions of the Directors.

### **Validity of acts of Directors**

135. All acts done by the Board, a committee of the Directors or any person acting as a Director will be valid even it is discovered afterwards that there was some defect in the appointment or election of that Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

### **If Company is a wholly-owned subsidiary**

136. If the Company is a wholly-owned subsidiary:
- (a) each Director is authorised to act in the best interests of a holding company of the Company; and
  - (b) a Director is taken to act in good faith in the best interests of the Company if:
    - (i) that Director acts in good faith in the best interests of a holding company of the Company; and
    - (ii) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

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## Chapter 20 Secretary

137. The Directors may appoint a secretary of the Company in accordance with the Law. The Directors may also appoint any person:
- (a) to perform the duties of secretary of the Company on a temporary basis; or
  - (b) to assist the Secretary of the Company.
138. A Secretary holds office on the terms (including as to remuneration) and with the powers, authorities and duties, as the Directors determine. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors. A Secretary may be removed by the Directors.

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## Chapter 21 The Seal

139. If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal; and
  - (b) the Seal may only be used with the authority of the Directors or the authority of any person or a committee of the Directors given authority by the Directors to authorise the use of the Seal.

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## Chapter 22 Financial statements

### Financial records

140. The Directors must cause financial and other records to be kept as required by any applicable law and this Constitution.

### Financial report and Directors' report

141. If required by the Law or the Directors so determine, the Company must prepare a financial report and Directors' report for the last financial year of the Company in accordance with all applicable laws.

### Auditor and audit

142. If the Company is required by the Law, or the Directors resolve, to appoint an auditor for each financial year:
- (a) the auditor must be appointed and removed in accordance with applicable law;
  - (b) the Directors may agree the auditor's remuneration; and
  - (c) the financial report of the Company for that financial year must be audited by the auditor in accordance with applicable law.

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## **Chapter 23 Dividends and other distributions**

### **Power to determine dividends vested in Directors**

143. The Directors may determine that a dividend (including an interim dividend) is payable and may fix the amount, timing and method of payment of the dividend.

### **Apportionment of dividends**

144. Subject to this Constitution, the Law and the rights and restrictions attached to or imposed on any class of Shares, dividends are to be apportioned and paid among the Members in proportion to the number of Shares held by them.

### **Distributions payable by distribution of assets**

145. Subject to all applicable laws, the Directors may determine that any dividend or other distribution be paid wholly or partly by the distribution of specific property or assets, including paid up shares, debentures or other securities of the Company or any other company, trust or entity.
146. Each Member agrees and consents to the distribution to them of any property or assets under clause 145, including shares, debentures or other securities of the Company or any other company, trust or entity.

### **Directors' discretion**

147. All matters concerning dividends or other distributions including valuations of property and assets will be determined by the Directors, and in particular the Directors may:
- (a) settle any difficulty, dispute or matter regarding any dividend or other distribution;
  - (b) fix the value for distribution of the specific property or assets or any part of that property or those assets;
  - (c) determine that cash payments will be made to, or at the direction of, any Member on the basis of the value so fixed; and
  - (d) vest any specific property or assets in trustees on trust for any Member.

### **Company not required to pay interest**

148. The Company is not required to pay any interest in respect of any dividend or other distribution.

### **Company may retain certain dividends and distributions**

149. The Company may retain the dividends or other distributions payable in respect of a Share to which any person is entitled because of the transmission of the Share to them by operation of law until that person or a nominated transferee is registered as the holder of the Share.

### **Company may deduct money payable to Company**

150. The Company may deduct from any dividends or other distributions payable to a Member all amounts presently due from the Member to the Company on account of calls or otherwise.

## **Payment**

151. The Company may pay any dividend, other distribution or other amounts payable in respect of any Share by any method of payment the Directors determine.

## **Unclaimed distributions**

152. All dividends or other sums which are payable in respect of shares, and 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.

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## **Chapter 24 Winding up**

### **Distribution of surplus**

153. Subject to this Constitution, the Law and the rights and restrictions attached to or imposed on any class of Shares:
- (a) in a winding up of the Company any property and assets available for distribution to Members will be divided amongst the Members in proportion to the number of Shares held by them, irrespective of the amount paid up or credited as paid on the Shares;
  - (b) for the purposes of determining any property and assets available for distribution to Members in a winding up of the Company, any amount unpaid on a Share is to be treated as the property and assets of the Company;
  - (c) the amount of any property and assets available for distribution to Members that would otherwise be distributed to a holder of a partly paid Share must be reduced by the amount unpaid on that Share at the date of the distribution; and
  - (d) if the effect of the reduction under clause 153(c) would be to reduce the distribution to the holder of a partly paid Share to a negative amount, the holder must pay that amount to the Company.

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## **Chapter 25 Minutes and registers to be kept**

### **Minutes**

154. The Company must enter in its minute books:
- (a) within 21 days of the relevant meeting, minutes containing details of:
    - (i) the names of the Directors present at each meeting of Directors and of any committee of Directors;
    - (ii) all declarations made or notices given by any Director under chapter 17; and
    - (iii) all resolutions and proceedings of general meetings, meetings of Directors and meetings of any committee of the Directors; and
  - (b) resolutions passed by Members or Directors without a meeting.

### **Minutes to be signed by the chair**

155. Any minutes of any general meetings, meetings of Directors or meetings of any committee of the Directors must be signed within a reasonable time after the meeting by the chair of the meeting or by the chair of the next succeeding meeting or by another authorised Director and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **Registers**

156. The Company must keep a register of Members and any other registers required to be kept under the Law.

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## **Chapter 26 Inspection of records**

157. Subject to the Law, the Directors may determine to what extent the documents and records of the Company will be open to inspection by any person and any reasonable fees payable. This chapter 26 does not limit the rights of a Member, Director or former Director under applicable Law or any agreement with the Company.

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## **Chapter 27 Notices**

### **Notices by Company**

158. The Company may give a notice to any Member in any one of the following ways:
- (a) personally, by giving it to the Member;
  - (b) by leaving it addressed to the Member at the Member's address in the Register or notified to the Company;
  - (c) by fax to the Member at the Member's fax number in the Register or notified to the Company;
  - (d) by e-mail to the Member's electronic address in the Register or notified to the Company;
  - (e) by post by sending it addressed to the Member at the Member's address in the Register or notified to the Company; or
  - (f) otherwise by any method (including by advertisement) as the Directors may determine.

### **Notices to joint holders**

159. The Company may give a notice to the joint holders of a Share by giving the notice to the joint holder whose name appears first in the Register and that notice will be deemed to be sufficient notice to all the joint holders.

### **Notice deemed to be given**

160. Any notice by advertisement will be deemed to have been given on the day of publication of the newspaper containing the advertisement.

161. Any notice sent by post will be deemed to have been given on the day following the day on which the notice is posted.
162. Any notice sent by fax or other electronic means will be deemed to have been given on the same day that it is sent.
163. Any notice given to a Member personally or left at the Member's address will be deemed to have been given when delivered.

#### **Notices binding on transferees**

164. Every person who becomes entitled to any Share by operation of law, transfer or otherwise will be bound by every notice in respect of the Share which, before that person's name and address is entered on the Register, is duly given to the person from whom title to the Share is derived.

#### **Signing notices**

165. The signature to any notice to be given by the Company may be written, printed or provided by electronic means.

## **Schedule**

*[Insert terms of classes of shares to be issued other than ordinary shares (if any).]*