

# ARTICLES OF INCORPORATION OF A PUBLIC COMPANY

## I. Name

The name of the company is ..... **Limited**

## II. Registered Office

The Registered Office of the company will be situated at ....., ..... *(please state the exact location with postal code, town/dzongkhag very clearly)*

## III. Object

The main objects to be pursued by the company on its incorporation are:

- i. To operate .....business
- ii. To undertake....business

## IV. Limited Liability

The liability of the shareholders is limited to the amount, if any, unpaid on the shares held by them.

## V. Capital

The authorized share capital of the company is **100 million** Ngultrum divided into **1,000,000** Equity shares of 100 Ngultrum each and the paid up capital of the Company is **100 million** Ngultrum divided into **100,000** equity shares of 100 Ngultrum each. *(the figures in bold above are for guidance only, you can insert your own number of capital / total investment)*

## VI. Regulations

### PART 1

#### *Interpretation and Limitation of Liability*

##### ***Defined terms***

1. In these articles, unless the context requires otherwise:

- (1)“additional director” has the meaning given in section 139 of companies Act;
- (2)“appointer” has the meaning given in article 24;
- (3)“articles” means the company’s articles of incorporation;
- (4)“call” has the meaning given in article 53;
- (5)“call notice” has the meaning given in article 53;
- (6)“certificate” means a paper certificate evidencing a person’s title to specified shares or other securities;
- (7)“Chairman” has the meaning given in article 11;
- (8)“chairman of the meeting” has the meaning given in article 30;
- (9)“Companies Act” means the Companies Act of Bhutan;
- (10)“company’s lien” has the meaning given in article 51;
- (11)“distribution recipient” has the meaning given in article 71;
- (14)“document” includes, unless otherwise specified, any document sent or supplied in electronic form, that is, a document sent or supplied:
  - (a) by electronic means (for example, by e-mail or fax or online system route), or
  - (b) by any other means while in an electronic form (for example, a disk delivered by hand or sent by post);
- (15)“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;
- (16)“hard copy form” means a paper copy or similar form capable of being read;
- (17)“holder” in relation to shares means the person whose name is entered in the share register as the holder of the shares, or, in the case of a share in

respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

(18)“instrument” means a document in hard copy form;

(19)“lien enforcement notice” has the meaning given in article 52;

(20)“occupational pension scheme” means a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of:

(a) that employer or those employers, or

(b) any other employer (whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons);

(21) “paid” means paid or credited as paid;

(22)“participate”, in relation to a directors’ meeting, has the meaning given in article 8;

(23)“partly paid” in relation to a share means that part of that share’s nominal value or any premium at which it was issued has not been paid to the company;

(24)“proxy notice” has the meaning given in article 37;

(25)“securities seal” has the meaning given in article 46;

(26)“transmittee” means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

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

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

## **PART 2**

### ***DIRECTORS***

#### ***Directors' Powers and Responsibilities***

##### ***Directors' general authority***

2. The directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company unless reserved to shareholders in Articles or by law.

##### ***Shareholders' reserve power***

3. (1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

##### ***Directors may delegate***

4. (1) The directors may delegate any of the powers which are conferred on them under the articles:

- (a) to such person or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions; as they think fit.

(2) If the directors so specify, any such delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

##### ***Committees***

5. (1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from these articles if they are not consistent with the law.

## **Decision-Making By Directors**

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

6. Decisions of the directors may be taken:

- (a) at a directors' meeting, or
- (b) in the form of a directors' written resolution.

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

7. (1) any director may call a directors' meeting.

(2) The company secretary must call a directors' meeting if a director so requests.

(3) A directors' meeting is called by giving notice of meeting to the directors.

(4) Notice of any directors' meeting must indicate:

- (a) its proposed date and time;
- (b) where it is to take place(venue); and
- (c) if it is anticipated that directors participating in the meeting will not be in the same place,how it is proposed that they should communicate with each other during the meeting.

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

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

8. (1) Directors participate in a directors' meeting, or part of a directors' meeting, when:

- (a) the meeting has been called and takes place in accordance with these articles, and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

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

9(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings must never be less than two, or two third of total number of directors, whichever is higher.

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

11. (1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may appoint other directors to chair directors' meetings in the chairman's absence.

(4) The directors may terminate the appointment of the chairman, at any time.

(5) If neither the chairman nor any director appointed generally to chair directors' meetings in the chairman's absence is participating in a meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### ***Voting at directors' meetings: general rules***

12.(1) A decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Each director participating in a directors' meeting has one vote.

(3) If a director has an interest in an actual or proposed transaction or arrangement with the company:

(a) that director may not vote on any proposal relating to it, but

(b) this does not preclude the directors voting in relation to that transaction or arrangement on which they does not have such an interest.

### ***Chairman's casting vote at directors' meetings***

13.(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with these articles, the chairman or other director is not to be counted as participating in the decision-making process on the grounds of recusal based on Conflict of interest.

### ***Conflicts of interest***

15.(1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.

(3) This paragraph applies when:

- (a) the company by ordinary resolution does not apply the provision of these articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting;
- (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes:

- (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;
- (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and
- (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the

company or any of its subsidiaries which do not provide special benefits for directors or former directors.

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

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

### ***Proposing directors' written resolutions***

16.(1) Any director may propose a directors' written resolution.

(2) The company secretary must propose a directors' written resolution if a director so requests.

(3) A directors' written resolution is proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution must indicate:

(a) the proposed resolution, and

(b) the time by which it is proposed that the directors should adopt it.

(5) Notice of a proposed directors' written resolution must be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

### ***Adoption of directors' written resolutions***

17.(1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with these articles.

(4) The company secretary must ensure that the company keeps a record, in writing, of all directors' written resolutions for at least ten years from the date of their adoption.

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

18. The directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## **Appointment of Directors**

### ***Methods of appointing directors***

19. Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:

- (a) by ordinary resolution of shareholders, and
- (b) upon nomination by shareholders or directors

### ***Retirement of directors by rotation***

20. (1) At the first annual general meeting all the first directors must retire from office.

(2) At every subsequent annual general meeting any directors:

- (a) who have been appointed by the directors since the last annual general meeting, or
- (b) who were not appointed or reappointed at one of the preceding two annual general meetings, must retire from office and may offer themselves for reappointment by the shareholders on rotation as prescribed in the law.

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

21. A person ceases to be a director as soon as:

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

### ***Directors' remuneration***

22. (1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine:

- (a) for their services to the company as directors, and
- (b) for any other service which they undertake for the company.

(3) A director's remuneration may:

- (a) take any form, and
- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### ***Directors' expenses***

23. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- (a) meetings of directors or committees of directors,
- (b) general meetings, or
- (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

### **Additional Directors**

#### ***Appointment and removal***

24. (1) The directors may appoint as an additional director, or any other person approved by resolution of the directors, to:

- (a) exercise the board's powers, and
- (b) carry out responsibilities, in relation to the taking of decisions by the directors in normal course of business until next annual meeting.

(2) Any appointment or removal of an additional director must be effected by notice in writing to the company signed by the directors, or in any other manner approved by the directors.

(3) The notice must:

- (a) identify the proposed additional director, and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed additional director that he/she is willing to act as a director.

### ***Rights and responsibilities of additional directors***

25. (1) An additional director has the same rights, in relation to any directors' meeting or directors' written resolution, as other directors.

(2) Additional directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as any other director; and

(3) An additional director is entitled to receive same remuneration from the company for serving as director.

## **PART 3**

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

#### **Organization of General Meetings**

#### ***Shareholders can call general meeting if not enough directors***

27. If:

- (a) the company has fewer than three directors, and
- (b) the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so,

then shareholders holding 10% and above shareholding (individually or jointly) can call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

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

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

(2) A person is able to exercise the right to vote at a general meeting when:

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

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

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

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

### ***Quorum for general meetings***

29. Five members present in person shall constitute a quorum for public companies. No business is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### ***Chairing general meetings***

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

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

(a) the directors present, or

(b) (if no directors are present), the meeting,

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

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

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

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

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

- (a) shareholders of the company, or
- (b) otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

### ***Adjournment***

32.(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if:

- (a) the meeting consents to an adjournment, or
- (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must:

- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

- (a) to the same persons to whom notice of the company's general meetings is required to be given, and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### **Voting at General Meetings**

#### ***Voting: general***

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

#### ***Demanding a poll***

35.(1) A poll on a resolution may be demanded:

- (a) in advance of the general meeting where it is to be put to the vote, or
- (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by:

- (a) the chairman of the meeting;
- (b) the directors;
- (c) two or more persons having the right to vote on the resolution; or
- (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if:

- (a) the poll has not yet been taken, and
- (b) the chairman of the meeting consents to the withdrawal.

### ***Procedure on a poll***

36.(1) Polls at general meetings must be taken when, where and in such manner as the chairman of the meeting directs.

(2) The chairman of the meeting may appoint scrutineers (who need not be shareholders) and decide how and when the result of the poll is to be declared.

(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

(4) A poll on:

(a) the election of the chairman of the meeting, or

(b) a question of adjournment, must be taken immediately.

(5) Other polls must be taken within 30 days of their being demanded.

(6) A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.

(7) No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded.

(8) In any other case, at least 7 days' notice must be given specifying the time and place at which the poll is to be taken.

### ***Content of proxy form:***

37.(1) Proxies may only validly be appointed by filing a form (a "proxy form") which:

(a) states the name and address of the shareholder appointing the proxy;

(b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy form to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as:

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

***Delivery of proxy form:***

38.(1) Any notice of a general meeting must specify the address or addresses (“proxy form”) at which the company or its officials will receive proxy form relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy form has been delivered to the company by or on behalf of that person.

(3) Subject to paragraphs (4) and (5), a proxy form must be delivered to a proxy notification address not less than 48 hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than 48 hours after it is demanded, the proxy form must be delivered to a proxy notification address not less than 24 hours before the time appointed for the taking of the poll.

(5) In the case of a poll not taken during the meeting but taken not more than 48 hours after it was demanded, the proxy form must be delivered:

- (a) in accordance with paragraph (3), or
- (b) at the meeting at which the poll was demanded to the chairman, secretary or any director.

(6) An appointment under a proxy may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy form was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered before:

- (a) the start of the meeting or adjourned meeting to which it relates, or

(b) (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for taking the poll to which it relates.

(8) If a proxy notice is not signed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointer's behalf.

### ***Amendments to resolutions***

39.(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

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

### ***Application of Rules to Class Meetings***

#### ***Class meetings***

41. The provisions of these articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

## **PART 4**

### **SHARES AND DISTRIBUTIONS**

#### **Issue of Shares**

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

42.(1) Without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

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

##### ***Payment of commissions on subscription for shares***

43.(1) The company may pay any person a commission in consideration for that person:

- (a) subscribing, or agreeing to subscribe, for shares, or
- (b) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid:

- (a) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other, and
- (b) in respect of a conditional or an absolute subscription.

#### **Share Certificates**

##### ***Certificates to be issued except in certain cases***

45.(1) The company must issue each shareholder with one or more certificates in respect of the shares which that shareholder holds.

(2) All certificates must be issued free of charge.

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

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

### ***Contents and execution of share certificates***

46.(1) Every certificate must specify:

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

(2) Certificates must:

- (a) have affixed to them the company's common seal or an official seal which is a facsimile of the company's common seal with the addition on its face of the word (a "securities seal"), or
- (b) be otherwise executed in accordance with the Companies Act.

### ***Consolidated share certificates***

47.(1) When a shareholder's holding of shares of a particular class increases, the company may issue that shareholder with:

- (a) a single, consolidated certificate in respect of all the shares of a particular class which that shareholder holds, or
- (b) a separate certificate in respect of only those shares by which that shareholder's holding has increased.

(2) When a shareholder's holding of shares of a particular class is reduced, the company must ensure that the shareholder is issued with one or more certificates in respect of the number of shares held by the shareholder after that reduction. But the company need not (in the absence of a request from the shareholder) issue any new certificate if:

- (a) all the shares which the shareholder no longer holds as a result of the reduction, and
- (b) none of the shares which the shareholder retains following the reduction, were, immediately before the reduction, represented by the same certificate.

(3) A shareholder may request the company, in writing, to replace—

- (a) the shareholder's separate certificates with a consolidated certificate, or
  - (b) the shareholder's consolidated certificate with two or more separate certificates representing such proportion of the shares as the shareholder may specify.
- (4) When the company complies with such a request it may charge such reasonable fee as the directors may decide for doing so.
- (5) A consolidated certificate must not be issued unless any certificates which it is to replace have first been returned to the company for cancellation.

### ***Replacement share certificates***

48.(1) If a certificate issued in respect of a shareholder's shares is:

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

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

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

### **Partly Paid Shares**

#### ***Company's lien over partly paid shares***

51.(1) The company has a lien ("the company's lien") over every share which is partly paid for any part of:

- (a) that share's nominal value, and

(b) any premium at which it was issued, which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company's lien over a share:

(a) takes priority over any third party's interest in that share, and

(b) extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

(3) The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

### ***Enforcement of the company's lien***

52.(1) Subject to the provisions of this article, if:

(a) a lien enforcement notice has been given in respect of a share, and

(b) the person to whom the notice was given has failed to comply with it,

the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice:

(a) may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

(b) must specify the share concerned;

(c) must require payment of the sum payable within 14 days of the notice;

(d) must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and

(e) must state the company's intention to sell the share if the notice is not complied with.

(3) Where shares are sold under this article:

- (a) the directors may authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser, and
  - (b) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.
- (4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
- (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice,
  - (b) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.
- (5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date:
- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share, and
  - (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.

### ***Call notices***

53.(1) Subject to the terms on which shares are allotted, the directors may send a notice (a "call notice") to a shareholder requiring the shareholder to pay the company a specified sum of money (a "call") which is payable in respect of shares which that shareholder holds at the date when the directors decide to send the call notice.

(2) A call notice:

(a) may not require a shareholder to pay a call which exceeds the total sum unpaid on that shareholder's shares (whether as to the share's nominal value or any amount payable to the company by way of premium);

(b) must state when and how any call to which it relates it is to be paid; and

(c) may permit or require the call to be paid by installments.

(3) A shareholder must comply with the requirements of a call notice, but no shareholder is obliged to pay any call before 14 days have passed since the notice was sent.

(4) Before the company has received any call due under a call notice the directors may:

(a) revoke it wholly or in part, or

(b) specify a later time for payment than is specified in the notice,

by a further notice in writing to the shareholder in respect of whose shares the call is made.

### ***Liability to pay calls***

54.(1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

(2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

(3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them:

(a) to pay calls which are not the same, or

(b) to pay calls at different times.

### ***When call notice need not be issued***

55.(1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share (whether in respect of nominal value or premium):

(a) on allotment;

(b) on the occurrence of a particular event; or

(c) on a date fixed by or in accordance with the terms of issue.

(2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

***Failure to comply with call notice: automatic consequences***

56.(1) If a person is liable to pay a call and fails to do so by the call payment date:

(a) the directors may issue a notice of intended forfeiture to that person, and

(b) until the call is paid, that person must pay the company interest on the call from the call payment date at the relevant rate.

(2) For the purposes of this article:

(a) the “call payment date” is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the “call payment date” is that later date;

(b) the “relevant rate” is:

(i) the rate fixed by the terms on which the share in respect of which the call is due was allotted;

(ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

(iii) if no rate is fixed in either of these ways, 5 per cent per annum.

(3) The directors may waive any obligation to pay interest on a call wholly or in part.

***Notice of intended forfeiture***

57. A notice of intended forfeiture:

(a) may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

- (b) must be sent to the holder of that share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;
- (c) must require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice;
- (d) must state how the payment is to be made; and
- (e) must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

### ***Directors' power to forfeit shares***

58. If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

### ***Effect of forfeiture***

59.(1) The forfeiture of a share extinguishes:

- (a) all interests in that share, and all claims and demands against the company in respect of it, and
- (b) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.

(2) Any share which is forfeited in accordance with these articles:

- (a) is deemed to have been forfeited when the directors decide that it is forfeited;
- (b) is deemed to be the property of the company; and
- (c) may be sold, re-allotted or otherwise disposed of as the directors think fit.

(3) If a person's shares have been forfeited:

- (a) the company must send that person notice that forfeiture has occurred and record it in the register of shareholders;
- (b) that person ceases to be a shareholder in respect of those shares;

- (c) that person must surrender the certificate for the shares forfeited to the company for cancellation;
  - (d) that person remains liable to the company for all sums payable by that person under these articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
  - (e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- (4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

### ***Procedure following forfeiture***

60.(1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer.

(2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date:

- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share, and
- (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.

(3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which:

- (a) was, or would have become, payable, and

(b) had not, when that share was forfeited, been paid by that person in respect of that share,

but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.

### ***Surrender of shares***

61(1) A shareholder may surrender any share:

(a) in respect of which the directors may issue a notice of intended forfeiture;

(b) which the directors may forfeit; or

(c) which has been forfeited.

(2) The directors may accept the surrender of any such share.

(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.

(4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

### **Transfer and Transmission of Shares**

#### ***Transfers of certificated shares***

62.(1) Certificated shares may be transferred by means of an instrument of transfer in a prescribed form, which is executed by or on behalf of:

(a) the transferor, and

(b) the transferee.

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

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

(4) The directors may refuse to register the transfer of a certificated share if:

(a) the share is not fully paid;

(b) the transfer is not lodged at the company's registered office or such other place as the directors have appointed;

- (c) the transfer is not accompanied by the certificate for the shares to which it relates, or such other evidence as the directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;
- (d) the transfer is in respect of more than one class of share; or
- (e) the transfer is in favour of more than four transferees.

(6) If the directors refuse to register the transfer of a share, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### **Transmission of shares**

64.(1) If title to a share passes to a transmittee, the company may only recognize the transmittee as having any title to that share.

(2) Nothing in these articles releases the estate of a deceased shareholder from any liability in respect of a share solely or jointly held by that shareholder.

### ***Transmittees' rights***

65.(1) A transmittee who produces such legal/judicial evidence of entitlement to shares as the directors may properly require:

- (a) may choose either to become the holder of those shares or to have them transferred to another person, and
- (b) pending any transfer of the shares to another person, has the same rights as the holder had.

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

### **Exercise of transmittee's rights**

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

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

(3) If the share is an uncertificated share and the transmittee wishes to have it transferred to another person, the transmittee must:

(a) procure that all appropriate instructions are given to effect the transfer,  
or

(b) procure that the uncertificated share is changed into certificated form and then execute an instrument of transfer in respect of it.

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

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

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

## **Consolidation of Shares**

### ***Procedure for disposing of fractions of shares***

68.(1) This article applies where:

(a) there has been a consolidation or division of shares, and

(b) as a result, shareholders are entitled to fractions of shares.

(2) The directors may:

(a) sell the shares representing the fractions to any person including the company for the best price reasonably obtainable;

(b) in the case of a certificated share, authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(c) distribute the net proceeds of sale in due proportion among the holders of the shares.

(3) Where any holder's entitlement to a portion of the proceeds of sale amounts to less than a minimum figure determined by the directors, that shareholder's portion may be distributed to an organization which is a civil society organization for the purposes of the law of the Kingdom of Bhutan.

(4) The person to whom the shares are transferred is not obliged to ensure that any purchase money is received by the person entitled to the relevant fractions.

(5) The transferee's title to the shares is not affected by any irregularity in or invalidity of the process leading to their sale.

### **Distributions**

#### ***Procedure for declaring dividends***

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

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

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

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

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

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

#### ***Calculation of dividends***

70.(1) Except as otherwise provided the rights attached to shares, all dividends must be:

- (a) declared and paid according to the amounts paid up on the shares on which the dividend is paid, and
  - (b) apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.
- (2) If any share is issued on terms providing that it ranks for dividend as from a particular date that share ranks for dividend accordingly.
- (3) For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

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

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

- (a) transfer to a bank account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- (2) In these articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—
  - (a) the holder of the share; or
  - (b) if the share has two or more joint holders, whichever of them is named first in the register of shareholders; or

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

### ***Unclaimed distributions***

74.(1) All dividends or other sums which are:

- (a) payable in respect of shares, and
- (b) unclaimed after having been declared or become payable, shall be deposited with the government as per Companies Act, until claimed.

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

(3) If:

- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
- (b) the distribution recipient has not claimed it, the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company. It shall be a state property and deposited into consolidated fund of the government.

### **Capitalization of Profits**

#### ***Authority to capitalize and appropriation of capitalized sums***

77.(1) The directors may, if they are so authorized by an ordinary resolution:

- (a) decide to capitalize any profits of the company (only if it does not affect the company's solvency) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalize (a "capitalized sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalized sums must be applied:

- (a) on behalf of the persons entitled, and

(b) in the same proportions as a dividend would have been distributed to them.

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

(4) A capitalized sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled, or

(5) The directors may:

(a) apply capitalized sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(b) authorize any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

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

78.(1) Anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which the Companies Act provides for documents or information which are authorized or required by any provision of that Act to be sent or supplied by or to the company.

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

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

### **Administrative Arrangements**

#### ***Company seals***

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

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

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person is:

(a) any director or Chief executive of the company; or

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

(5) If the company has an official seal for use abroad, it may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorized by a decision of the directors.

(6) If the company has a securities seal, it may only be affixed to securities by the company secretary or a person authorized to apply it to securities by the company secretary.

(7) For the purposes of these articles, references to the securities seal being affixed to any document include the reproduction of the image of that seal on or in a document by any mechanical or electronic means which has been approved by the directors in relation to that document or documents of a class to which it belongs.

### ***Right to inspect accounts and other records***

82. Except as provided by Companies Act or authorized by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents other than a shareholder.

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

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

## **Directors' Indemnity and Insurance**

### ***Indemnity***

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

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme,
- (c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorize any indemnity which would be prohibited or rendered void by any provision of the Companies Act or by any other provision of law.

(3) In this article:

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a "relevant director" means any director or former director of the company or an associated company.

### ***Insurance***

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

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

## VII. Subscription

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of these Articles of Incorporation, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names: -

| Sl No               | Name | No. of Shares | %       | Value     | Signatures<br>(on legal stamp) |
|---------------------|------|---------------|---------|-----------|--------------------------------|
| 1                   | Mr.X | 50,000        | 50      | 5,000,000 | XYZ                            |
| 2                   | Ms.Y | 50,000        | 50      | 5,000,000 | XYZ                            |
| Total shares taken: |      |               | 100,000 | 100 %     | 10,000,000                     |

**Place:**

**Dated:**

**Witness to the above signatures:**

Signature:

Name of Witness: Mr./Mrs.

Address of Witness:

Occupation of Witness: