

Going for Gold

How golden shares can help lock in
mission for social enterprises

ONE OUNCE
FINE GOLD
999.9

Prepared for Big Society Capital



**BIG
SOCIETY
CAPITAL**
Transforming
social investment

2015

Foreword

Nick O'Donohoe and Simon Rowell, Big Society Capital

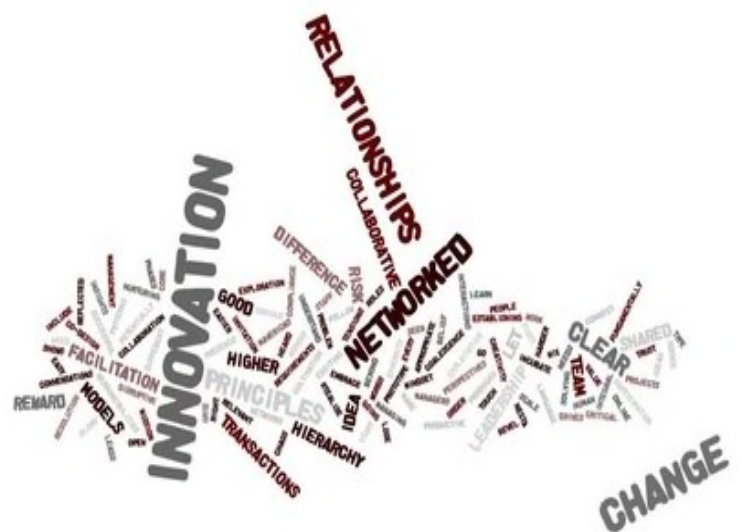
Mission is critical. It's critical to any organisation, and influences not just its activities and strategy but also its culture. The boldest goals, like landing a man on the moon, have only been achieved by consolidated effort with a clear sense of mission.

Increasingly, it's not just Government, but business that is embedding a sense of mission to their organisations. Many new entrepreneurs are being driven by a mission to improve society, not just to make a profit. Many new investors are attracted to this clear sense of mission and keen to support these bold ambitions. The introduction of B Corps to the UK as a new way of helping investors identify mission-driven companies can help accelerate this trend.

At Big Society Capital, our mission is to grow the social investment market. We have developed our own way to ensure we are held accountable to our mission through our governance structure, with Big Society Trust as the guardian of our social mission. This tool has helped us set a clear direction for how we want to improve society but has also ensured that our investors are aligned with this. Both for ourselves, and in our role as an investor in social organisations, we've found that it's not just what mission an organisation has, but how it is protected for the long-term that is important.

But many new tools are needed to align investors and enterprises towards and to protect a common mission. This report, *Going for Gold*, describes how golden shares can be deployed as such a tool in practice. Golden shares were developed in the blurring of lines between public and private sectors, and important lessons can be learned for how to manage multiple competing interests for society's benefit. For social investment, this could be a powerful way to identify innovative mission-locked businesses to help them to harness the deep pockets of financial capital, without jeopardising their social mission.

However, it's not just social investment that should take notice. Mission-locked businesses can be powerful agents of change across Government in delivering public services, such as social care and early years' education, where people need to trust that the organisations providing the services to loved ones are doing it for the right interests. Larger companies can also differentiate themselves to employees, consumers and the broader public by making a real long-term commitment to helping society as well as delivering a financial return. Robust and practical tools, like golden shares, can provide the mechanics for the building of a more mission-driven society.



Executive Summary

Most new businesses require investment to grow. However, new investment should not move a social enterprise away from its social mission. So how can an investor be sure that her target investment is truly a social business? How can a founder be sure his investor's economic concerns won't steer his business away from the social goals? With no badge and no clear differentiator (unless structured an asset-locked entity such as a CIC or Bencom¹), the assurances can be hard to find.

The golden share is a valuable tool for social enterprise because it eliminates the risk that a social mission could be ignored by incoming shareholders whilst not restricting the day to day management of the business. Whilst a variety of rights can be attributed to a golden share, in the context of social enterprise, its purpose is to protect only what is necessary to ensure the continued centrality of the social mission to an enterprise and it can be structured so as to be redeemable by the company or otherwise restrict eligible transferees of the golden share - both important safeguards tailored to the enterprise. Having this mechanism in place helps the social enterprise operate freely whilst safeguarding its social purpose more robustly and with more longevity than a social object clause in its articles can achieve alone, and can also serve as a flag to differentiate those businesses which are committed to a social good in the long term.

This report considers the current investment climate for social businesses and the challenges of linking investors with enterprises that share compatible goals against a diverse backdrop of business models and legal forms. The golden share model is presented as a potential solution to the challenges faced by social and commercial investors and social enterprises and the report further sets out guidelines for structuring a golden share into the social business of the future.

Golden shares can help preserve the social purpose within a social enterprise, help it stay accountable for external scrutiny and raise investment.



¹

Community Interest Company and community benefit society, respectively.

Why have and why protect a mission lock?

Any type of enterprise using business to bring about social or environmental change might be referred to as a 'social enterprise', a term originating from the 1990's when the social enterprise movement began to evolve. Social enterprise is now looked upon as the future for social change. This paper does not seek to enter the debate around the definition of social enterprise, rather, it addresses how we might spot one.

For the purpose of this report, we will concentrate on those enterprises that combine social objectives and profit, or 'profit-with-purpose' businesses, rather than the much wider group of impact-driven businesses or not-for-profit organisations/charities. This is because it is those businesses that have become lost in the melee and are missing out on investment opportunities and scope to scale up their enterprises. Whether an investor is looking for concessionary returns or a risk adjusted return on capital, when investing in a social enterprise, identifying the impact will be key as will identifying where that impact lies for the enterprise in terms of measurement of success.

In the absence of a specific legal form, the 'profit-with-purpose' business is rather difficult to identify since it may take any one of the legal identities that traditional businesses take. Internationally there is focus on new legal forms for profit-with-purpose businesses in the same way that certain asset-locked entities have evolved over recent years². But with this change there is scope for regulation to evolve alongside which has potential to hinder the very thing that needs to be preserved – the freedom to evolve as a competitive and sustainable business.

² For example, the UK introduced the community interest company or CIC which is an asset locked company in the fullest sense, so that a) its assets will not be disposed of for less than their market value during the lifetime of the business other than in order to further the social mission; b) on a winding up any assets available for distribution will only be distributed to another asset locked entity with a similar social purpose; and c) the distribution of profits to members will be restricted both whilst the business is a going concern and upon liquidation.

Why is this important?

There is data to suggest that 8% (ie. approximately 100,000 businesses) of the UK's small and medium sized enterprise (SME) employers are in fact impact focussed, albeit they distribute profits.³ There are anticipated to be a similar number of asset and profit locked businesses. Whilst the spotlight remains firmly on these sustainable profit-with-purpose businesses, they retain huge potential to drive change. But how does such an enterprise attract the critical capital necessary to achieve change if it remains indistinguishable from its non-impact driven peers? Furthermore, how does it convince its stakeholders (including impact investors) that it will remain true to its social mission even beyond change of ownership?

Interestingly, the Deloitte Millennials Report in 2013 showed that 50% of young people wanted to work for a business with ethical practices – meaning that 50% of the very best young talent will hold those ideals. Having survived a global economic meltdown, confidence in big business is low but as a result, consumers are becoming increasingly interested in the attitudes of the companies, from which they acquire products and services, to social responsibility. In a survey conducted by Nielsen in 2013 the number of consumers within the survey who were willing to pay more for goods and services supplied by companies that give back to society represented half of those polled. That of itself gives a strong message about the consumer's attitude to branding and the power of social impact for business.

There are two sides to every social enterprise: the social purpose and the business element. All businesses need growth capital and therefore investment, but a primary purpose of social good may discourage normal commercial investment. Notwithstanding that, go back a step or two, and impact

³ Profit-With-Purpose Business – Subject paper of the Mission Alignment Working Group and taken from data contained in the BMG Research (2013) Social Enterprise: Market Trends (Based on the BIS 2012 Small Business Survey), UK Cabinet Office: London

investors⁴ may want to see a strong mission lock in order to offer grant and match funding. Make that lock too tight and the ability of the business to grow in the longer term will be hindered. Locking in a social mission can be an effective legal means of ensuring that a social purpose is protected from profit-seekers. However, a mission lock can just as easily shackle a business and prevent it from achieving inward investment and growth, and thus equally limit the ability of the enterprise to adequately achieve that very same mission.

A case in point

Dame Anita Roddick's endeavours to embed social impact into the DNA of the Body Shop were admirable and for many years, very successful. The Body Shop were instrumental in changing attitudes to testing cosmetics on animals and the strength of that social message was very much at the heart of the Body Shop's success. However, as with many commercial successes, which no doubt the Body Shop was, and probably as a result of its profound social messaging, it gradually became swallowed up by traditional commercial business to its detriment (see Schedule 1). Its social mission, and ultimately the thing that had made it such a success, was ultimately eroded by the fact that its new investors had been drawn not to its mission but to its commercial success. In some ways Anita Roddick was the pioneer of modern profit-for-purpose enterprise. Through her activism she was transparent and accountable in the delivery of a strong mission commitment. It was only once she relinquished control that the Body Shop's new management forgot what it was that had made the company so successful.

Despite what the press may have implied, Anita didn't 'sell out'. Having accepted much needed development capital from a garage owner, it was soon clear that his vision was not aligned with that of Anita and her team. Floating the business was, she felt, her only option to deal with an investor with a differing direction. But it wasn't, of course, the answer.

The Body Shop would, no doubt, have benefitted from some protection for its social mission. Surely therefore, requiring an investor to buy into that mission from the outset is the most effective way of not only ensuring that investors with similar motivations can be accessed but also that a social business doesn't allow its economic success to erode the very thing that made it

successful. The necessity to lock in the mission may become particularly pressing where the original founder team is exiting the business or relinquishing significant control to incoming investors.

But creating too great a barrier between social enterprise and conventional economy is also unhelpful. By limiting economic returns to investors, many of the investor population will shy away. Entrepreneurs are then left with little option but to take on debt (if available to them) rather than equity. And the debt will weaken their balance sheet, further limiting their ability to attract investment and potentially impacting their social mission.

So how can we find middle ground, where the mission is protected from inception, access to capital is not eroded by restrictions on profit-distribution and the enterprise remains free to do what it does best – sustainably invoke social and environmental change? The key is to separate the right to profit from the right to control the company's primary purpose.

The expectations from all the parties need to be realistic in order to achieve social impact and financial returns through the same vehicle, but more importantly they need to be aligned from the outset.

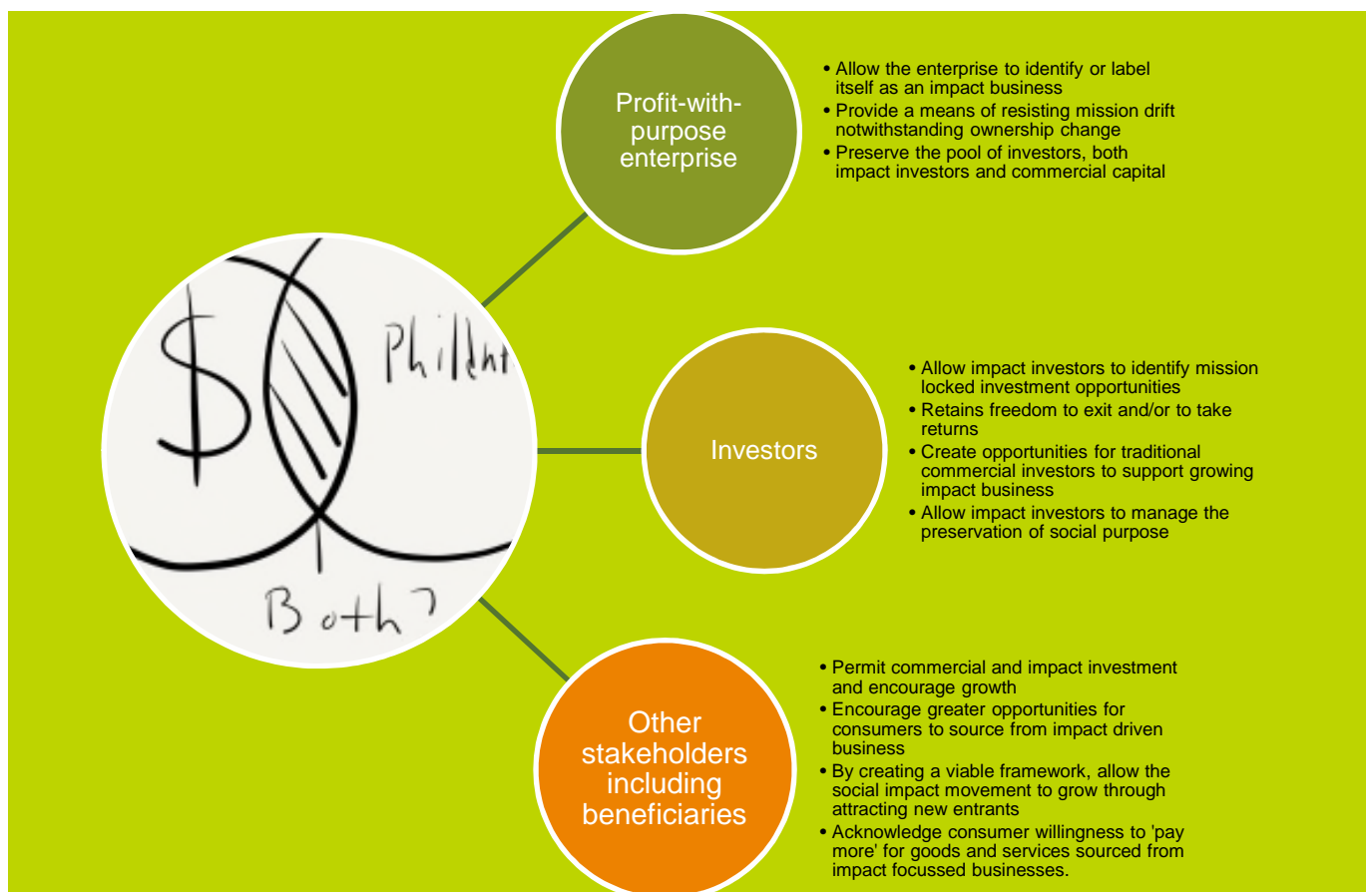
⁴ Although impact investors expect to achieve a return on capital, or at least a return of capital, the organisations they invest in also carry a commitment to measure and report on social and environmental impact resulting from investments.

What could the solution be?

This paper considers revenue generating businesses with a social purpose, without considering whether those enterprises reinvest all of the revenues created from their commercial activity into their social mission or not. It does not consider purely charitable or not-for-profit organisations, but enterprises generating revenue principally through trading rather than from subsidies or grant funding. We will look at both enterprises that wish to partially or totally restrict the use of their assets and profits to the furtherance of their social purpose, as well as those who distribute all of their profits to shareholders but wish to commit to prioritising their

social mission and therefore benchmarking their success at least partially on their long term ability to deliver social impact.

It is helpful to understand why some form of legal, market relevant framework would benefit the stakeholders of a profit-with-purpose. The chart below looks at some of the key drivers for establishing a form of entity (whether as a hybrid of one of the existing legal forms or otherwise) for each of the distinct stakeholder groups.



Many traditional commercial enterprises do, of course, deliver impact without any identifiable mission lock and remain true to and account for that delivery against strong and clear objectives. From a legal perspective, what we try to achieve as part of this report is a similar level of flexibility for mission locked enterprises who wish to maintain the freedom to distribute their profits and therefore remain as attractive propositions for the wider investor community.

A mixed fiduciary purpose can be achieved already. A UK company limited by shares permits distributions of profits and assets subject to company law and the constitutional documents of the entity and is a form used by many enterprises with social impact objectives. The downside of this model is that there is no visible social character to the legal form chosen, which can equally be used for an exclusively profit focussed business. In the US, the Benefit Corporation and the B Corps provide a more evident 'impact focus' label. Whilst the Benefit Corporation is a legal status recognised in 28 US states, the B Corp is a certification programme available to businesses around the world. Both require adherence to reporting standards relating to social and environmental performance. However, both can also abandon their status if they so wish (the B Corporation with the sanction of 75% or more of its shareholders and the B Corps through relinquishing its accreditation) and therefore do not provide an irrevocable mission lock. At the other end of the spectrum is the CIC which effectively locks in the social mission but is too restrictive to provide access to an unlimited investor pool to allow an enterprise to grow to scale.

Just as the importance of the Body Shop's commitment to eradicating animal cruelty became as important to its commercial success as its economic strategy, so too is the social mission core to other enterprises. Take Patients Know Best as a modern example. A patient controlled medical records portal, Patients Know Best relies upon the trust of its users not to monetise their information, for its success. For those suffering from complex medical conditions, a centralised data store for information and data from a variety of medical and social care agencies, is key to the efficient management of their conditions. But as a start-up tech enterprise, there will be plenty of profit driven entities looking to steal the march on Patients Know Best. In order to attract equity investment, something that Patients Know Best will need to do to keep moving forwards and scaling its business, it needs to be able to offer true risk-adjusted returns to investors. However, for a business that is founded on the trust of its users, its needs to also demonstrate a tangible commitment to its social mission.

It should also be noted, when considering access to investment, that until recently tax relief for investors was only available if the investment was contributed by way of a subscription for shares at incorporation of the relevant entity. While tax relief is now available for the provision of debt to certain social enterprises⁵, it is only available to those that have used a specific legal form which includes an asset lock. The equity subscription model is also necessary in order for an investor to benefit from the Enterprise Investment Scheme or the Seed Enterprise Investment Scheme.

It may also follow that a traditional commercial equity model offering a return on investment won't necessarily be a barrier to access to loans and grants from the social investment market. It may in fact provide leverage to facilitate match funding. If the two can be aligned, then the success of the sector has to be improved because of the much greater access to funding from both sides of the table.

A company may have an objects clause specifically stating its social purpose in its articles of association. However, without any additional protection, this can be amended or removed by shareholders of the company, something that is a particular risk for early or growth-stage social enterprises taking on significant equity investment or enjoying significant commercial success. The key question is, how do we achieve the robust mission lock found in a CIC thus offering long term assurances to stakeholders about impact, whilst preserving the commercial flexibility found in the Benefit Corporation and B Corps?

The answer could lie in the 'golden share' made fashionable by European governments, including the UK in the 1970s and 1980s, to protect and lock in certain constitutional elements of privatised businesses.

5

For the purposes of Social Investment Tax Relief 'social enterprise' includes charities, community interest companies and community benefit societies.

What is a 'Golden Share'?

'Golden shares' as they have been come to be known, or 'special rights' were founded in the privatisation movement and allowed governments to retain control over entities that were to be sold off by government to the private sector. It was believed that this was necessary and justifiable on the grounds that governments could, notwithstanding privatisation, continue to implement certain policy objectives which were considered to be in the public interest. The popularity of the golden share grew in the 1980's in the UK when the UK government privatised a string of well-

known entities including British Aerospace, British Airways, British Gas and British Petroleum. Other utilities such as Brit Oil plc, Enterprise Oil plc and Cable and Wireless plc (amongst others) swiftly followed suit. Almost all of these former state owned enterprises issued a special type of share (referred to colloquially as the "golden share"), to a representative of the Government as a condition of the privatisation. A non-exhaustive summary of these, along with more modern day commercial and social impact examples, is included below.

COMPANY	GOLDEN SHAREHOLDER	BUSINESS SECTOR
Social enterprise examples – Golden shares used to lock in social mission		
Café Direct PLC (SC141496)	Guardian Share Company Ltd (4863720)	Wholesale of coffee, tea, cocoa and spices
Traidcraft PLC (1333367)	Traidcraft Foundation	Alleviating poverty through trade
Commercial examples – Golden shares used to lock in social/responsible business principles		
Thomson Reuters Corporation	Thomson Reuters Founders Share Company	News and Information
Commercial examples – Golden Shares used to allow relevant government departments a level of control over privatised industries (particularly where there is a public protection concern such as in relation to defence, infrastructure and utilities)		
BAE Systems plc (01470151)	Secretary of State for Business, Innovation and Skills	Aerospace, systems and defence
BAE Systems Marine (Holdings) Limited (01957765)	Treasury Solicitor on behalf of HM Government	Building and repairing of ships
Belfast International Airport Limited (NI027630)	Department for Regional Development	Air transportation and related services
British Energy plc (SC162273)	Secretary of State for Business, Innovation and Skills	Generation and sale of electricity
British Energy Generation Limited (now EDF Energy Nuclear Generation Limited) (03076445)	Secretary of State for Business, Innovation and Skills	Production and distribution of electricity
British Energy Generation (UK) Limited (SC117121)	Secretary of State for Business, Innovation and Skills and Secretary of State for Scotland	Production and distribution of electricity
CDC Group plc (03877777)	Secretary of State for International Development	Colonial development and investment in developing countries

Devonport Royal Dockyard Limited (02077752)	Secretary of State for Defence	Building and repairing of ships
Eurostar (UK) Limited (02462001) [Golden Share has been redeemed]	The Solicitor for the Affairs of Her Majesty's Treasury	Transport via railways
Inter-Capital and Regional Rail Limited (03565312)	The Secretary of State for the Department of Transport	Transport via railways
NATS Holdings Limited (04138218)	Secretary of State for the Environment, Transport and the Regions	Air traffic control
Partnerships UK plc (03993425) Placed into member's voluntary liquidation in May 2013	HM Treasury and The Scottish Ministers	Provides expertise in developing and expanding the Government's public private partnership programme.
QinetiQ Limited (03796233)	Secretary of State for Defence	Technical testing and analyses
Rolls-Royce plc (01003142)	Treasury Solicitor on behalf of HM Government (in Rolls Royce Holdings plc)	Aerospace/ defence
Rosyth Royal Dockyard Limited (SC101959)	Secretary of State for Defence	Building and repairing of ships
Royal Mail Holdings plc (now Postal Services Holding Company Limited) (04074919)	HM Government (Secretary of State for Business, Innovation and Skills)	Nationwide and international distribution service
Stena Line Limited (01402237)	Wholly owned by Stena Line Holdings BV	Sea and coastal water transport
United Kingdom Nirex Ltd (01927761) Company dissolved 22 June 2010	The Secretary of State for Trade and Industry	Waste disposal (radioactive waste)
NATS Holdings Limited (04138218)	Secretary of State for the Environment, Transport and the Regions	Air traffic control
Partnerships UK plc (03993425) Placed into member's voluntary liquidation in May 2013	HM Treasury and The Scottish Ministers	Provides expertise in developing and expanding the Government's public private partnership programme

The purpose of the golden share was to allow a government to retain some control of the board of the privatised entity. In most cases, control would only be permitted where certain events arose. Amongst other things, the golden share often had rights attached to it giving the holder veto rights against certain actions, such as large disposals; limiting the size of shareholdings; blocking foreigners from holding shares and controlling the appointment of directors. Schedule 2 includes examples of nationalised industries with details of the rights attaching to their golden shares. This is useful as a starting point for the types of influence that a golden shareholder may have on an entity in which it holds a share. The key purpose of the golden share

however, was not to influence day to day management (which remained reserved to the board and management of the company), but rather to provide specific safeguards in connection with matters of public significance.

However, following a series of European Court of Justice (ECJ) cases, golden shares when issued to governments were found in many circumstances to be contrary to the right to freedom of establishment and free movement of capital enshrined in the European Community Treaty albeit they are not per se illegal. The generally accepted view is that the use of golden

shares is sanctioned by the common law in the UK and is not unlawful under the UK Companies Act 2006.

The special rights enjoyed by holders of golden shares in preference to the holders of ordinary shares tend to include, amongst other things, a right to be repaid before ordinary shareholders if the company is wound up. However, unlike most other preference shares, golden shares do not generally give the holder a right to vote at a general meeting of the issuing company or a right to receive dividends. The holder will have the right to receive notice of, attend and speak at general meetings of the company and may require a board or observer seat.

Of course, there is an obvious question here. With no right to vote, what is so 'golden' about the golden share? The golden nature stems from the fact that the board is required to obtain the golden shareholders written consent before acting if any of the pre-determined specified events occurs. This is structured by including the specified circumstances or events as "class rights" of the golden share. For example, in a social enterprise context, the company's social mission would be categorised as a class right of the golden share class in the company's articles of association. It is not possible to amend the rights attaching the golden shares without the consent of their holders and accordingly, the board is forced to seek the views of, negotiate with and obtain the consent of the holder of the golden share before proceeding with its preferred course of action if that action is inconsistent with the social mission (or other rights attaching to the golden share under the company's articles of association).

What remains important however, is that the golden share protects only that which is totally necessary. Economic efficiency rests upon the ability of the board of directors of a company to operate quickly and consistently and a golden share serves no purpose by hindering this.

It may be that for commercial reasons, the rights attaching to the golden shares vary from case to case. Later on in this paper we consider the different rights, their purpose and some alternatives which may be deemed appropriate for some enterprises in the context of locking in a social mission.

Special rights, such as those attached to golden shares, essentially alter the decision making process within a company. They can also influence the development of a company's ownership structure. For these reasons it is essential that both the holder of the golden share itself and the other shareholders in the company, fully understand its impact. In the context of a mission lock, it should be understood that in many cases the investment in such a share will be unattractive because

it offers no economic return. That of itself makes the share illiquid which although not an issue whilst the subscriber endures, may become troublesome if the subscriber entity is wound up or otherwise disbanded. Because of this illiquidity, the question of what happens to the golden share in such circumstances needs to be considered.

Typically the golden share is a redeemable preference share. As such, the share can be re-purchased by the company issuing it but only in the circumstances prescribed by the articles of association. In the privatisation examples, a redemption was restricted, in most cases, from taking place earlier than a certain date (often 5 years from the date of issue) to ensure that the Government had a minimum-term tenure. Where the golden share is redeemable, the power to redeem can rest with the board of the issuer, with the shareholder or alternatively it can be pre-agreed for a future date. However, a golden share does not have to be redeemable and the fact that a golden share is redeemable will mean that the rights it protects will have an end date. If not redeemable, restrictions on transfer of the golden share will need to apply in order to ensure that the share, and more particularly the rights it conveys, are retained within a restricted pool of eligible transferees. This is covered in more detail later on in this paper.

Use of golden shares in other commercial circumstances.

In the same way that privatised companies were able to be partially controlled by the state, there is scope to use a golden share mechanism to enshrine rights (including a social purpose) within an otherwise unrestricted corporate entity making it almost impossible to relinquish. That can offer a powerful message where the special right creates a mission lock which survives change of ownership without hindering or affecting commercial investment.

The golden share isn't restricted in its use however. In the same way that it was used in connection with a transition period for privatised companies, so too have traditional commercial enterprises enshrined certain rights during the early days of an investment. This provides investors with certainty and control over certain actions (not usually day to day management) whilst an early stage business becomes established.

The use of golden share to lock in a social mission

The premise here is to grant the golden shareholder the right of veto and control over the mission statement upon which an enterprise is founded. This can be achieved either alone or alongside an element of asset lock, though it should be borne in mind that any level of

asset lock may have an adverse effect upon the availability of investment. The holder of the golden share becomes the custodian of the social mission. By placing restrictions on the ability to transfer the golden share, it is possible to ensure that the guardianship always remains in the hands of an organisation for whom social impact is a primary focus. Without attaching any substantive economic rights to the golden share, this can be achieved in the absence of any potential conflict arising from the misalignment (perceived or otherwise) of profit and social impact.

Which social enterprises should consider issuing a golden share

Golden shares may not be appropriate for every social enterprise. Organisations that are already subject to a specific social regulator, for example, community interest companies (CICs) subject to the CIC regulator, are unlikely to consider the issue of a golden share as being necessary. The social mission within a CIC is protected to some extent by the existence of an asset lock meaning that mission drift is unlikely to occur through intervention by profit driven stakeholders. Other organisations may be completely confident in the commitment to maintain the social mission because the founders will never cede any control of the business.

Social enterprises that should consider whether golden shares should be deployed may have the following characteristics:

- High-growth: Enterprises that expect or intend to grow rapidly by number of customers/clients or start new business models and expect that the governance practices supporting their mission may not keep pace with changes;
- Single mission: Enterprises set up for the purpose of delivering one social impact may want to maintain significant expertise and focus about that specific social issue and avoid future dilution of mission; and
- Taking investment: Enterprises taking investment from private investors (as distinct from social investors) or from a large number of different investors will see control of the enterprise dispersed and make it susceptible to mission drift.

When should a golden share be issued

The golden share can be issued at any time, subject to the issuer meeting the procedural requirements of its constitution and of company law. It may be particularly relevant to issue a golden share at the following three key moments in the life of the enterprise:

- Start-up: When the enterprise is founded, there is an opportunity to consider the underlying mission of the company and embed a golden share. This is procedurally the easiest process because this structure can be included at the first constitution of the enterprise;
- Step-change in growth: When the enterprise raises equity growth capital to mark a step change in their operations to target new customers, develop a new business line or to scale up, control is diluted from the original owners to move to the new investors. Incorporating the golden share issue into this process is possible as the potential new investors will have visibility over the intended new structure and be required to consent to the new golden share before investment; and
- Sustaining a legacy: An enterprise that has reached its maturity stage and has decided that its long-term competitive advantage can help deliver social impact effectively in a particular way may consider this an appropriate time to safe-guard its legacy through issuing a golden share. This would encourage focus compatible with long-term strategy and prevent the risk of mission dilution over time.

Who should or can be the holder of the golden share

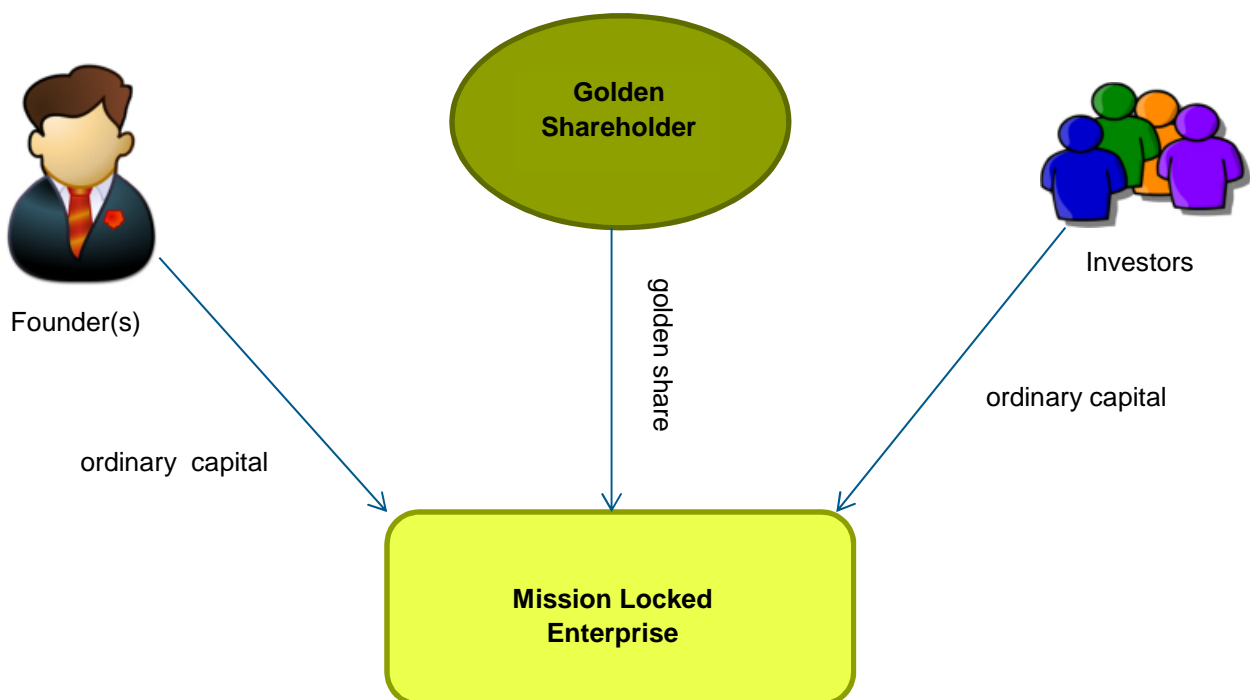
In the context of a social mission lock, the holder of the share, whether a corporate or an individual, should clearly be a person or entity who is aligned with the social purpose and not the economic success of the business. Therefore, this ought not be a person or entity holding shares of a class other than golden shares in the social enterprise, in particular if those shares have economic rights attached. There is also an argument that if the holder of the golden share also retains a voting seat on the board of the mission locked entity then that director immediately faces a conflict (albeit one which can be approved by the board) in terms of his or her statutory and fiduciary duties to the shareholders and stakeholders of the entity as a whole. Independence is key. A charity, or other asset locked entity might both present suitable options because neither is driven by commercial profit but rather by mission. However, other independent entities might also suffice provided they are aligned with the mission.

Creating and issuing a golden share

In any circumstance other than the first incorporation of a social enterprise, the creation and issue of a golden share will depend upon the constitution of the issuer. In particular, provisions relating to the allotment of shares would need to be reviewed and complied with. If the company has more than one class of share when the golden share is created, the articles will need to be reviewed in order to determine whether the creation of the golden share constitutes a variation of rights attaching to the existing shares. If this is in fact the case then the provisions on variation of class rights will need to be complied with. Assuming that neither the articles nor any other document affecting the relationship between shareholders (such as a shareholders' or investment agreement) creates any other requirements relevant to the allotment of shares in the company, the company may allot a golden share or shares.

Given that a golden share will constitute a new class of shares, it will be necessary to amend the articles of

association of the company in order to set out the rights attaching to those shares. Schedule 3 to this paper sets out an example of a set of articles of association which provide for a golden share and highlights the provisions relating to that share's rights. This is an example only and the rights provided look to protect the position with regard to the mission lock only, but may also be expanded to other rights specifically tailored to the desired social impact. For example, if a social enterprise were founded to maintain and manage a park or woodland for the benefit of local young people, then the ownership of such land could constitute a class right of the golden share (so that any sale would require the golden shareholder's consent). Examples of specific tailored rights in certain privatised businesses are described in Schedule 2 whilst the table detailed overleaf (page 12) considers a variety of share rights (though not exhaustively) and the applicability to golden shares in the context of best practice.



Once the golden share has been created the potential holder will need to subscribe for it. An example subscription letter is included in Schedule 4.

The subscriber is likely to be a company or charitable entity and in any event should be an organisation whose sole motivation in subscribing for the golden share is to preserve the integrity of the mission statement contained in the articles of association of the company.

If the subscriber of the golden share is a company then a board resolution to approve the subscription will be required. An example board resolution is included at Schedule 5. However, prior to such subscription, the constitutional documents of the subscriber, and any other shareholder arrangements (investment or shareholders' agreements) will need to be reviewed in order to ensure that there are no restrictions on the subscriber subscribing for shares in another company. If such restrictions exist then either the subscriber company will need to pass a special resolution to amend its articles in order to permit the subscription for and holding of the golden share or obtain the necessary shareholder/investor consents or another golden shareholder will need to be identified.

The golden share is, in essence, simply a class of share with specific rights attached. Those rights can be broad, or, if the only purpose for the share is to afford the holder a guardianship of the company's mission statement, then those rights can be very limited.

Statute does not provide us with any guidance on what share rights actually are and the term has been defined by common law. The most obvious rights attaching to classes of shares are voting rights and dividend/return of capital rights, or more broadly speaking, rights dictating control and economics. However, as can be seen from the table below, 'rights' can be much wider than this.

The table below looks at a cross section of rights that might attach to shares (Column 1); those rights that are considered to be essential to ensure the proper functioning of the golden share concept (whether created for mission lock or otherwise); and those which could attach to the golden share depending on the wider commercial arrangement. It should not be used as an exhaustive list of rights that might be attached to any particular class of shares.

(1)	(2)	(3)	(4)
RIGHT	APPLICABLE TO GOLDEN SHARES AS A MATTER OF BEST PRACTICE	COULD ATTACH TO GOLDEN SHARES	NOT APPLICABLE TO GOLDEN SHARES IN THE CONTEXT OF MISSION LOCK
The right to vote		✓	
The right to speak at general meetings		✓	
Right to appoint a director		✓	
Right to appoint an observer	✓		
The right to participate in any dividend if one is declared			✓
The right to receive or accrue a preferential dividend			✓
The right to participate in any return of capital whether on a winding up or otherwise and whether:			
- on a preferential basis;	✓		
- or pari passu			✓

(1)	(2)	(3)	(4)
RIGHT	APPLICABLE TO GOLDEN SHARES AS A MATTER OF BEST PRACTICE	COULD ATTACH TO GOLDEN SHARES	NOT APPLICABLE TO GOLDEN SHARES IN THE CONTEXT OF MISSION LOCK
The right to receive information about the company		✓	
Ability for the share to be redeemed		✓	
Swamping right/Enhanced voting on a poll		✓	
Right of veto in relation to reserved matters		✓	
Right of veto in relation to any proposed variation of class rights	✓		
Restriction on transfer of a class of shares	✓		
Restrictions on the ability of the company to issue shares with rights the same as or more than the rights attaching to an existing class(es) of shares	✓		
Right of pre-emption to participate in any future issue of shares of any class			✓
Restriction on the sale price of shares transferred	✓		
Right of another shareholder to require a compulsory transfer of shares in certain circumstances (drag right)			✓
Right to piggy-back on any proposed transfer of shares by another shareholder (tag right)			✓
Right to be included within a quorum for meetings of shareholders ⁶			✓
A requirement to compulsorily transfer a golden share if the golden shareholder ceases to be a relevant entity	✓		

⁶ So that such a meeting is not quorate unless a holder of shares of a particular class are present.

The purpose of the golden share is not to create any economic rights per se, although these can be attributed, but rather to create a means of locking in the social purpose in a manner that will survive a change of ownership. Accordingly, the rights attached to the golden share need only be very simple and limited. As can be seen from the provisions contained in the sample articles at Schedule 3, the basic rights that should attach to the golden share as a matter of 'best practice' in order to preserve the mission lock are:

- the right to appoint an observer (article 13.2) (or a director);
- a preferential right to a return on a winding up (article 31.1(b));
- a veto right in respect of any proposed variation of the following class rights attached to the golden share class (article 29.2(a)):
 - o the social mission statement;
 - o the right to appoint a director or observer;
 - o the restriction on transfer of the golden share;
 - o the references to "golden share", "golden shareholder" or the name of the golden shareholder; or
 - o the express class rights;

(As an alternative to using class rights, the golden share can be given enhanced voting rights on a poll in respect of specified matters (article 29.1(c)(iv).);

- a restriction on the ability of the company to issue any share with rights the same as or better than the rights attaching to the golden share;
- a restriction on transfer of the golden share;
- a restriction on the sale price on transfer of a golden share;
- a mechanism to deal with any event where the golden shareholder ceases to be a relevant entity

It is useful to understand why each of these rights is important and where variations to meet commercial desires can be implemented.

Right to appoint a director or observer

It is not the intention when issuing a golden share to permit the golden shareholder a right to participate in the day to day management of the company. However,

it is through the seat at the board that the holder of the golden share will have a window to any proposition that its shareholder rights might be altered. To this extent, an observer right would suffice. However, the golden shareholder appointee could also act in a non-executive capacity and be drawn from an appropriately qualified or experienced pool such that that experience might be beneficial to the company.

Preferential right to a return on a winding up

The primary purpose of the golden share is to create a guardianship for the social mission of the company rather than to protect any economic rights. As such it may not be deemed appropriate, or consistent with the ability to access a wide investor base, to confer any other rights to participate in the capital and/or profits of the company. Nevertheless, as it is likely that the holder of the golden share will be a charity or some other asset locked entity, by ensuring that the subscription value of the golden share is low, and that on a winding up of the company the subscription price of the golden share is paid in priority, such an entity is ring-fenced from exposure to loss (other than the initial investment which need only be a nominal sum) should the venture fail.

A veto right in respect of a variation of golden share class rights

Minority protections in the form of a veto over the proposed variation of class rights are not unusual and are often seen in shareholders' and investment agreements and/or articles of association. Their inclusion here is no different. The purpose is to ensure that no purported variation of the rights of one class of shares can be achieved without the support of the shareholders within that class. This is particularly important for the golden share since the strength of the mission lock will diminish if the members are able to vary the rights giving it effect, by a simple resolution. In the example attached in Schedule 3 those rights deemed varied expressly include any amendment to the article which sets out the mission statement. For the purposes of the mission lock this is the key element of the protections but it is also necessary to include restrictions on variations of the express rights attaching to the golden share such as the right to appoint a director or observer and the restriction on transfer of the golden share.

It is also worth noting that more detailed principles about how the enterprise operates to deliver social impact could also be included within the veto rights of the golden shareholder. In CafeDirect plc, the golden shareholder has the right in accordance with the Company's articles of association to veto any change in the key principles governing the way in which the business promotes social impact and relates to its smallholder farmers members (Gold Standard). The

golden shareholder does not, however, have the right to veto changes to the wording of the Gold Standard (allowing some flexibility).⁷

Enhanced voting on a poll

As mentioned above, it is not the role of the golden shareholder to participate in the day to day management of the company. The golden share therefore need not have any voting rights attached. If the golden share does entitle the holder to a vote, then on a poll, it will only be able to influence decisions of the shareholder if it represents more than 50% of the voting rights attached to all the shares in the company (for ordinary resolutions) or 75% for matters requiring a special resolution. However, it is more likely, given that the subscription will be kept to a minimum in order to protect the golden shareholder from loss as a result of its investment in the golden share, that the golden share, even if it carries voting rights, will not represent a high enough percentage of the voting rights of the company to influence decisions of the members. This becomes an issue if the resolution put to the members seeks to vary the rights that the golden share is intended to protect and in particular, allows the mission lock to be eroded. Therefore, by including 'swamping rights' for the golden shareholder, so that the holder has enhanced rights in circumstances where the company seeks to vary, delete or replace such rights, the golden shareholder will be able to block such a resolution and therefore protect the integrity of the golden share protection of the mission lock.

Restriction on the ability of the company to issue shares with rights the same as or more than the rights attached to the golden share

In order to ensure that the company is not able to issue shares which have the same rights or stronger rights than those of the golden share, thus diluting the golden shareholder's rights in respect of the preservation of the mission lock, a general restriction on the company can be included within the articles. Of course the shareholders entitled to vote will always be able to change the articles by special resolution. However, by making any variation to this article a deemed variation of the special rights attaching to the golden share, that right to vary can be resisted by the golden shareholder.

A restriction on transfer of the golden share

A key element of the golden share mechanism in protecting a mission lock is guardianship of that

mission, despite any potential future changes of ownership of the underlying enterprise. In order for it to work effectively, the golden share needs to be held independently of the commercial management of the business. In "The Social Business Frontier"⁸, the concept of 'enforcer' is introduced as a means of protecting the elements of impact through monitoring of an organisation and the creation of consequences to any breach of the lock. Although the golden share model is more akin to prevention than penalty, the idea of a person or entity acting as 'enforcer' or 'guardian' is the same. It therefore becomes important to restrict the identity of that guardian. Whether the golden shareholder is a member of the regulated social sector or not is a matter to be considered on a case by case basis. There is certainly some argument in favour of limiting the identity of the guardian to a member of the regulated sector⁹ because it ensures that the holder of the golden share will always be a person or entity whose primary objective is the protection of social impact and not commercially driven objectives. Similarly, the guardian or golden shareholder could comprise a group of social customers or end users, though this creates an extra level of administration in that the social customer group would need to be organised in a manner which would provide it with legal identity capable of holding a corporate share. It would also be possible to set up a charity with the specific purpose of holding golden shares in enterprises operating in a specified sector or sectors. In legal terms the golden share can be issued to any type of shareholder provided that the articles of association of the issuer permit.

The ideal scenario would be to simply limit the transfer of the golden share completely so that once it is issued it becomes non-transferable (subject always to its transmission on liquidation or otherwise). However, such an article is invalid.¹⁰ There is a further issue here which is that the golden shareholder is more likely than not to be an entity and not an individual and therefore

⁷ See CafeDirect plc: Committed to our Gold Standard: Annual Review 2014

⁸ Prepared for the UK National Advisory Board to the Social Impact Investment Taskforce established under the UK's Presidency of the G8 by Big Society Capital and Bridges IMPACT +

⁹ This could be a charity or CIC, or it could be the regulator itself (such as the Charity Commission) or a social certifier (such as B Lab).

¹⁰ Wellington Bowling Club v Sievwright [1925] GLR 227, CA (NZ)

there is always a risk that if it is the type of entity that is exposed to any type of commercial risk, it could fail. Similarly any regulated entity such as a charity will be subject to reporting obligations. As such there remains a risk that should it fail in its obligations to the Charity Commission, it might lose its charitable status. There is therefore an argument to suggest that, if only to cover the potential doomsday scenario for the golden shareholder, it is in the interests of the issuing company to allow a transfer of the golden share in limited circumstances but only to a limited category of holder, for example: registered charities, mission locked entities, or enterprises with a similar and/or aligned mission lock of their own. As a purely commercial entity might overcome the invalidity of a complete prohibition on transferability by prohibiting a certain type of transferee (such as a competitor), a guardian transferee might be restricted to a certain group such as those identified above. This means that should the 'doomsday' circumstances arise for the golden shareholder, the ability to protect the mission lock will be preserved.

Of course the golden share could also be redeemable (as mentioned above) and therefore transferred back to the company, either with or without a trigger linked to the passing of time. In the context of a mission lock however, it is the longevity of that lock rather than a transition that is important and so redemption after the passing of time, although preserving the lock for a fixed period, will not achieve that lock for the long term.

A pre-emption right might also be effective but subject to there being enough golden shares in number to achieve an even distribution of the rights across all remaining shareholders so that the power to exercise the special rights remains with a representative cross section of those remaining shareholders. Furthermore the mission lock will then return to those shareholders that may be profit driven and is therefore not as robust a protection as ensuring that the golden share remains independently held within a specific group of entities.



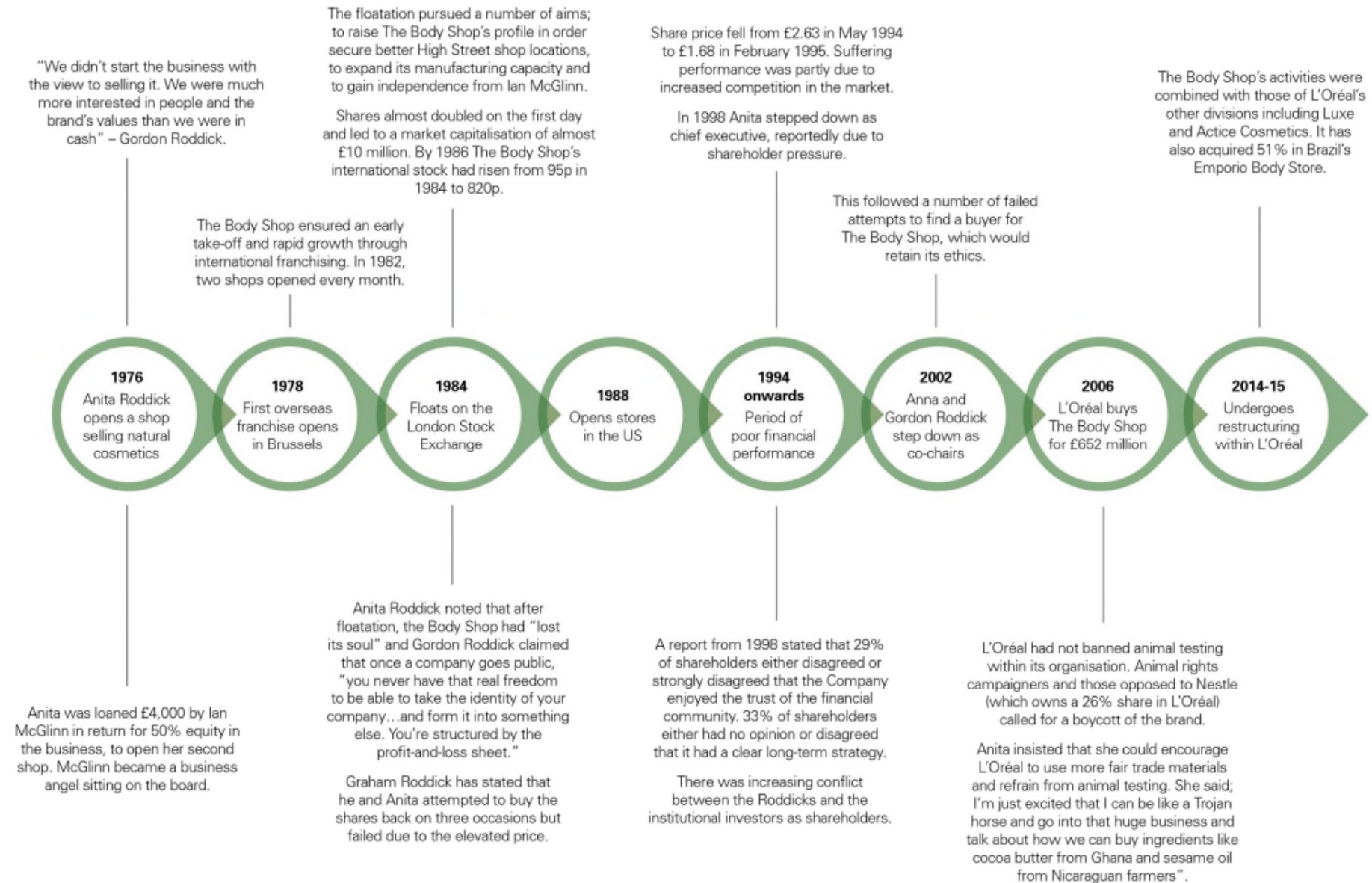
Conclusions

We should not be drawn into the debate about whether another form of entity should be created in order to address the confusion about what is or is not a social enterprise or whether such enterprises should be permitted to make and distribute profits. It is our view that there are sufficient legal structures in place already and these can be utilised in order to achieve the objectives of all stakeholders. Accordingly, the golden share should be viewed as an effective means of utilising current structures in a way that clearly identifies the constituent parts of a profit-with-purpose enterprise and enshrines them so that they can be identified. That way, impact investors can be confident that the social mission they invest in is preserved without the wider public being further confused by labelling, regulation, certification and form. Furthermore, the founders of social enterprises can be more confident that their investors are aligned with their social objectives.

In the UK the constitution of a company (limited by guarantee or by shares) is required to be filed with Companies House and therefore becomes a matter of public record. As the nature of the golden share and the mission statement itself form part of the articles of association of such an entity, both impact and profit-driven investors alike can easily identify a profit with purpose business and derive comfort from the integrity of the social impact output.

This is only the start of the discussion and we hope it encourages many more social enterprises and investors to consider if and how golden shares could be used by them to lock in social mission. With increased awareness and understanding, there will also be an opportunity to build a community to help share information, drive best practice and build a new role for golden shares for social enterprise and investment in the UK.

Schedule 1 – Body Shop Case Study



Schedule 2 – Golden shares in a privatisation context

In the 1970 and 1980s a wide variety of previously state owned enterprises were privatised by the UK government. These privatisations were motivated by a variety of factors; in some cases simply a need to provide funding for the relevant company which was beyond the capacity of the state, or, later, due to an intentional political move towards economic liberalism. Whatever the motivation, the government was reluctant to immediately cede entire control of key national assets to private investors, and so, the golden share was born.

Below are some examples of the use of golden shares in privatised, state-owned enterprises as at 2003. This was prior to the European Court of Justice's decisions questioning the compatibility of golden shares with the economic aims of the European Union, after which the UK government, in common with other EU states moved away from the use of golden shares.

Common golden shareholder rights used across sectors

GOLDEN SHAREHOLDER RIGHT	AWE PLC	ROYAL MAIL HOLDINGS PLC	BRITISH ENERGY GENERATION LIMITED
Right to receive notice of and attend general meetings	√	√	√
Prior written consent of the golden shareholder to be obtained before amending certain articles of the articles of association	√	√	√
Consent to be obtained before entering into a voluntary winding up	√	√	
Consent to be obtained before issuing/transferring/disposing of shares in the Company and/or a relevant subsidiary		√	√
Consent to be obtained before appointing directors	√	√	

Golden Shareholder rights protecting a specific public benefit

In addition to the common rights set out above, several enterprises had more specific golden shareholder rights that were directly related to the industry sector in which they were operating. These examples demonstrate that although there are numerous common golden shareholder rights, those seeking investment or investing in a social enterprise do not need to be restricted in respect of the rights they can attach to their golden shares.

British Energy Generation Limited ("BEGL")

Sector: Production and distribution of electricity

Golden Share Rights:

As well as the more common golden shareholder rights detailed above, BEGL also had rights requiring the prior written consent of the golden shareholder to be obtained before disposing of nuclear power stations or, prior to the permanent closure of a nuclear power station, disposing of assets necessarily required to generate the electricity owned by the BEGL.

Royal Mail Holdings Plc ("RMH")

Sector: Nationwide and international distribution service

Golden Share Rights:

In a similar fashion to the rights held by the golden shareholder in BEGL, the prior written consent of the golden shareholder of RMH was required before RMH or any group member could enter into a transaction whereby an asset was lost that would prevent the carrying on of business to the standard set out in Postal Services Act 2000.

BAA Plc

Sector: Airport Management and construction

Golden Share Rights:

As with BEGL and RMH, the prior written consent of the golden shareholder of BAA was required in the event that BAA was going to cease having the right to, or control of, half of the voting rights exercisable on any resolutions considered at a general meeting of any subsidiary owning a "Designated Airport" (as defined under section 40 of the Airports

Schedule 3 – Articles of Association

These articles of association are for illustrative purposes only. Each enterprise will have its own requirements in relation to its constitution. The articles attached below are in a simple form with the golden share provisions highlighted for ease. They do not consider any other shareholder arrangements that might be relevant or necessarily anticipate investment readiness. Furthermore, they are included as an example only and may not fit a specific set of commercial circumstances. Advice should always be obtained when attaching economic rights to the golden share as this may have tax implications for the golden shareholder and may impact the scope for equity fundraising as a result of the potential impact on return on capital. Similarly, transfer provisions should be considered carefully in order to preserve the strength of the mission lock.

THE COMPANIES ACT 2006

A PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[] LIMITED**

CLAUSE	CONTENTS	PAGE
PART 1 – INTERPRETATION AND LIMITATION OF LIABILITY		26
1.	DEFINED TERMS	26
2.	REGULATIONS OF THE COMPANY	27
3.	LIABILITY OF MEMBERS	27
4.	SOCIAL PURPOSE	27
PART 2 - DIRECTORS		27
5.	DIRECTORS' GENERAL AUTHORITY	27
6.	SHAREHOLDERS' RESERVE POWER	27
7.	DIRECTORS MAY DELEGATE	28
8.	COMMITTEES	28
9.	DIRECTORS TO TAKE DECISIONS COLLECTIVELY	28
10.	UNANIMOUS DECISIONS	28
11.	CALLING A DIRECTORS' MEETING	28
12.	PARTICIPATION IN DIRECTORS' MEETINGS	29
13.	QUORUM FOR DIRECTORS' MEETINGS	29
14.	CHAIRING OF DIRECTORS' MEETINGS	30
15.	CASTING VOTE AT DIRECTORS' MEETINGS	30
16.	TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY	30
17.	DIRECTORS' CONFLICTS OF INTEREST	31
18.	RECORDS OF DECISIONS TO BE KEPT	32
19.	DIRECTORS' DISCRETION TO MAKE FURTHER RULES	32
20.	CHANGE OF NAME	32
21.	METHODS OF APPOINTING DIRECTORS	32
22.	TERMINATION OF DIRECTOR'S APPOINTMENT	32
23.	APPOINTMENT AND REMOVAL OF DIRECTORS BY MAJORITY SHAREHOLDERS	33
24.	DIRECTORS' REMUNERATION	33
25.	DIRECTORS' EXPENSES	34
26.	APPOINTMENT AND REMOVAL OF ALTERNATES	34
27.	RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS	34
28.	TERMINATION OF ALTERNATE DIRECTORSHIP	35
PART 3 - SHARES AND DISTRIBUTIONS		35
29.	SHARES	35

30.	ALL SHARES TO BE FULLY PAID UP	37
31.	POWER TO ISSUE DIFFERENT CLASSES OF SHARE WITH DIFFERENT RIGHTS	37
32.	PAYMENT OF COMMISSIONS ON SUBSCRIPTION FOR SHARES	38
33.	EXCLUSION OF RIGHTS TO OFFERS ON A PRE-EMPTIVE BASIS	38
34.	COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS	38
35.	SHARE CERTIFICATES	38
36.	REPLACEMENT SHARE CERTIFICATES	39
37.	SHARE TRANSFERS	39
38.	TRANSMISSION OF SHARES	40
39.	EXERCISE OF TRANSMITTEES' RIGHTS	40
40.	TRANSMITTEES BOUND BY PRIOR NOTICES	41
41.	PROCEDURE FOR DECLARING DIVIDENDS	41
42.	PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS	41
43.	NO INTEREST ON DISTRIBUTIONS	42
44.	UNCLAIMED DISTRIBUTIONS	42
45.	NON-CASH DISTRIBUTIONS	42
46.	WAIVER OF DISTRIBUTIONS	43
47.	DISTRIBUTION IN SPECIE ON WINDING UP	43
48.	AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS	43
PART 4 - DECISION-MAKING BY SHAREHOLDERS		44
49.	NOTICE OF GENERAL MEETINGS	44
50.	ATTENDANCE AND SPEAKING AT GENERAL MEETINGS	44
51.	QUORUM FOR GENERAL MEETINGS	45
52.	CHAIRING GENERAL MEETINGS	45
53.	ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS	45
54.	ADJOURNMENT	46
55.	VOTING: GENERAL	46
56.	ERRORS AND DISPUTES	46
57.	POLL VOTES	46
58.	CONTENT OF PROXY NOTICES	47
59.	DELIVERY OF PROXY NOTICES	48
60.	AMENDMENTS TO RESOLUTIONS	49
61.	CLASS MEETINGS	49
62.	MENTAL DISORDER	49
PART 5 - ADMINISTRATIVE ARRANGEMENTS		50

63.	MEANS OF COMMUNICATION TO BE USED	50
64.	TIME OF SERVICE	50
65.	COMPANY SEALS	51
66.	NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS	51
67.	PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS	51
68.	INDEMNITY AND EXPENSES	51
69.	INSURANCE	52

EXAMPLE

Part 1

Interpretation and Limitation of Liability

1. DEFINED TERMS

In the articles, unless the context requires otherwise

"**Act**" means the Companies Act 2006;

"**articles**" means the company's articles of association;

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

"**chairman**" has the meaning given in article 14;

"**chairman of the meeting**" has the meaning given in article 52;

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

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

"**distribution recipient**" has the meaning given in article 42.2;

"**document**" includes, unless otherwise specified, any document sent or supplied in electronic form;

"**electronic form**" has the meaning given in section 1168 of the Act;

"**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;

"**Golden Shareholder**" means [***] Limited being a [private company limited by shares][guarantee], [registered in England and Wales][and having company number [***]];

"**Golden Share**" means the preferred share of £[1.00] held by the Golden Shareholder;

"**group company**" means the company's ultimate holding company (if any) and any body corporate which is directly or indirectly a wholly-owned subsidiary of the company or such ultimate holding company, in each case from time to time;

"**hard copy form**" has the meaning given in section 1168 of the Act;

"**holder**" in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

"**instrument**" means a document in hard copy form;

"**Ordinary Shares**" means the ordinary shares of £[***] each in the capital of the company;

"**ordinary resolution**" has the meaning given in section 282 of the Act;

"**paid**" means paid or credited as paid;

"**participate**", in relation to a directors' meeting, has the meaning given in article 12;

"**proxy notice**" has the meaning given in article 58;

"**shareholder**" means a person who is the holder of a share;

"**share**" means a **Golden Share** or an Ordinary Share in the capital of the company and 'shares' shall be construed accordingly;

"**special resolution**" has the meaning given in section 283 of the Act;

"**subsidiary**" has the meaning given in section 1159 of the Act;

"**transmittee**" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

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

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

2. **REGULATIONS OF THE COMPANY**

These articles are the articles of association of the company and the Companies Act 2006 Model Articles For Private Companies Limited By Shares do not apply.

3. **LIABILITY OF MEMBERS**

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

4. **SOCIAL PURPOSE**

The primary purpose of the company is to *[insert mission lock statement]*.

Part 2

Directors

Directors' Powers And Responsibilities

5. **DIRECTORS' GENERAL AUTHORITY**

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

6. **SHAREHOLDERS' RESERVE POWER**

6.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

6.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

7. **DIRECTORS MAY DELEGATE**

7.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles-

- (a) to such person(s) or committee(s);
- (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.

7.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

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

8. **COMMITTEES**

8.1 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.

8.2 The directors may make rules of procedure for all or any committees, such rules prevail over rules derived from the articles if they are not consistent with them.

Decision-Making by Directors

9. **DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

9.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 10.

10. **UNANIMOUS DECISIONS**

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

10.2 Such a decision may take the form of a resolution in writing, at least one copy of which has been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing. A resolution signed by an alternate director need not also be signed by or agreed to by his appointer.

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

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

11. **CALLING A DIRECTORS' MEETING**

- 11.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 11.2 Notice of any directors' meeting must indicate
- (a) its proposed date and time;
 - (b) where it is to take place; and
 - (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 11.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 11.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company either before or 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.

12. PARTICIPATION IN DIRECTORS' MEETINGS

- 12.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when-
- (a) the meeting has been called and takes place in accordance with the articles, and
 - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 12.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 12.3 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.

13. QUORUM FOR DIRECTORS' MEETINGS

- 13.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 13.2 Unless otherwise determined by the company in general meeting the number of directors shall be not less than two **one of whom shall be a director appointed and removed by the Golden Shareholder [following consultation with the company].**
- 13.3 [For the purposes of any meeting (or part of a meeting) held pursuant to article 17 to authorise a director's conflict if there is only one director in office eligible to vote other than the conflicted director(s) the quorum for such meeting (or part of a meeting) shall be that one director.]
- 13.4 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision-
- (a) to appoint further directors, or

- (b) to call a general meeting so as to enable the shareholders to appoint further directors.

14. CHAIRING OF DIRECTORS' MEETINGS

- 14.1 The directors may appoint a director to chair their meetings.
- 14.2 The person so appointed for the time being is known as the chairman.
- 14.3 The directors may terminate the chairman's appointment at any time.
- 14.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors may appoint one of themselves to chair it.

15. CASTING VOTE AT DIRECTORS' MEETINGS

- 15.1 If the numbers of votes at a meeting of directors for and against a proposal are equal (ignoring any votes which in accordance with the Act are to be discounted), the chairman or other director chairing the meeting has a casting vote.
- 15.2 Article 15.1 shall not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

16. TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY

Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts, a director:

- (a) may be a party to, or otherwise interested in, any contract, transaction or arrangement with the company or in which the company is otherwise (directly or indirectly) interested (a "**Relevant Matter**");
- (b) shall be entitled to vote on any proposed decision of the directors (or committee of directors) in respect of any Relevant Matter or proposed Relevant Matter in which he is interested;
- (c) shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of any Relevant Matter or proposed Relevant Matter in which he is interested;
- (d) may act by himself or his firm in a professional capacity for the company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- (e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the company is otherwise (directly or indirectly) interested; and
- (f) shall not, save as he may otherwise agree, be accountable to the company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any Relevant Matter or from any such office or employment or from any interest in any such body corporate and no such Relevant Matter shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

17. DIRECTORS' CONFLICTS OF INTEREST

- 17.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an "**Interested Director**") breaching his duty under section 175 of the Act to avoid conflicts of interest ("**Conflicts**").
- 17.2 Any authorisation under this article 17 will be effective only if:
- (a) the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of the articles or in such other manner as the directors may determine;
 - (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
 - (c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 17.3 Any authorisation of a Conflict under this article 17 may (whether at the time of giving the authorisation or subsequently):
- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
 - (b) provide that the Interested Director be excluded from the receipt of documents and information related to the Conflict and from participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
 - (c) provide that the Interested Director shall or shall not be entitled to vote in respect of any future decision of the directors in relation to any resolution related to the Conflict;
 - (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
 - (e) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 17.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 17.5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director prior to such revocation or variation, in accordance with the terms of such authorisation.
- 17.6 An Interested Director shall be under no duty to the company with respect to any information which he obtains or has obtained otherwise than as a director of the company and in respect of which he owes a duty of confidentiality to another person. In particular, the director shall not be in breach of the general duties he owes to the company by virtue of sections 171 to 177 of the Act because he fails:

- (a) to disclose any such information to the directors or to any director or other officer or employee of the company; or
- (b) to use or apply any such information in performing his duties as a director.

However to the extent that his relationship with that other person gives rise to a conflict of interest or possible conflict of interest, this article applies only if the existence of that relationship has been approved by the directors pursuant to this article 17.

- 17.7 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

18. RECORDS OF DECISIONS TO BE KEPT

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

19. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

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

20. CHANGE OF NAME

The company may change its name by resolution of the directors.

Appointment of Directors

21. METHODS OF APPOINTING DIRECTORS

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

- (a) by ordinary resolution;
- (b) by a decision of the directors; or
- (c) by a notice of his appointment given in accordance with article 23.

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

- 21.3 For the purposes of paragraph 21.2, where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

22. TERMINATION OF DIRECTOR'S APPOINTMENT

- 22.1 A person ceases to be a director as soon as:

- (a) that person ceases to be a director by virtue of any provision of the 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) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;
- (f) that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that that person should cease to be a director;
- (g) notice of his removal is given in accordance with article 23.

23. APPOINTMENT AND REMOVAL OF DIRECTORS BY MAJORITY SHAREHOLDERS

Any member holding, or any members holding in aggregate, at the relevant time a majority in nominal value of such of the issued share capital of the company as carries the right of attending and voting at general meetings of the company may, by notice in writing signed by or on behalf of him or them and delivered to the company's registered office or tendered at a meeting of the directors or at a general meeting of the company, at any time and from time to time appoint any person to be a director (either to fill a vacancy or as an additional director) or remove any director from office (no matter how he was appointed).

24. DIRECTORS' REMUNERATION

24.1 Directors may undertake any services for the company that the directors decide and the company may enter into a service contract with any director on such terms as the directors think fit.

24.2 Directors are entitled to such remuneration as the directors determine:

- (a) for their services to the company as directors; and
- (b) for (i) any other service which they undertake for the company or (ii) any executive office or employment with, the company or any body corporate which is a group company.

24.3 Subject to the articles, a director's remuneration may:

- (a) take any form;
- (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.

24.4 Unless the directors decide otherwise, directors' remuneration accrues from day to day.

24.5 Directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company, any group company or any other body corporate in which the company is interested and the receipt of such benefit shall not disqualify any person from being a director of the company.

25. **DIRECTORS' EXPENSES**

25.1 The company may pay any reasonable expenses which the directors (including alternative directors) and the company secretary (if one has been appointed) 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,

25.2 or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

Alternate directors

26. **APPOINTMENT AND REMOVAL OF ALTERNATES**

26.1 Any director (the "**appointor**") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:

- (a) exercise that director's powers, and
- (b) carry out that director's responsibilities,

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

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

26.3 The notice must:

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

27. **RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS**

27.1 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

27.2 Except as the articles specify otherwise, alternate 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 their appointors; and

(d) are not deemed to be agents of or for their appointors.

27.3 A person who is an alternate director but not a director:

- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and
- (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

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

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

28. TERMINATION OF ALTERNATE DIRECTORSHIP

28.1 An alternate director's appointment as an alternate terminates:

- (a) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
- (c) on the death of the alternate's appointor; or
- (d) when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

Part 3

Shares and Distributions

29. SHARES

29.1 Subject to article 30, the rights and restrictions attaching to the Shares are as set out below.

- (a) Any profits lawfully available and resolved by the Board to be distributed in any financial year or period shall be distributed **as follows:**
 - (i) the holder of the Golden Share shall be entitled in priority to any payment of dividend to the holders of the Ordinary Shares or any other class of shares in the capital of the Company to the first *******% of any such amount; and
 - (ii) the remainder shall be distributed] amongst the holders of the Ordinary Shares pro rata to the nominal value of each Share held by them. **Save as expressly provided otherwise in these Articles, the holder of the Golden**

Share shall not be entitled to share in the profits of the Company by virtue of its entitlement to hold the Golden Share.]

- (b) On a winding-up of the Company, the assets of the Company remaining after payment of its debts and liabilities and of the costs, charges and expenses of such winding-up must be applied first in paying to the holder of the Golden Share the amount paid up on the Golden Share and any surplus shall then be distributed amongst the holders of the Ordinary Shares in proportion to the nominal value of each Share held by them.
- (c)
- (i) Each holder of a Share is entitled to receive notice of, and to attend (either by a representative appointed in accordance with section 323 of the Act, or by proxy) and (either directly or through such representative or proxy) to speak at, general meetings of the Company.
- (ii) Each holder of an Ordinary Share who is an individual (present in person or by proxy) or a corporate entity (present by a duly authorised representative or by proxy) or, if not present as aforesaid, whose Beneficiary is present in person, by authorised representative or proxy, has:
- (1) on a show of hands, one vote; or
 - (2) on a poll, one vote for each Ordinary Share of which that person is the holder.
- (iii) The holder of the Golden Share shall not, save as provided by sub-articles 29.1(c)(iv) and 29.2(a), be entitled to vote at any General Meeting of the Company, and shall in no circumstances be entitled to vote at any separate General Meeting other than a separate General Meeting of the Golden Shareholders.
- (iv) Without prejudice to sub-article 29.2 on a poll on any resolution of the Company in general meeting, being a resolution the passing of which by the requisite majority of votes would be or would be deemed to be, a variation or abrogation of the rights attached to the Golden Share, the Golden Shareholder, if it opposes such resolution, shall have the right to cast such number of votes as shall be necessary to ensure the defeat of such resolution, and such right shall be exercisable either by a representative appointed by the Golden Shareholder in accordance with section 323 of the Act, or by proxy for the Golden Shareholder. No written resolution of the members of the Company may be passed which would be, or would be deemed to be, a variation or abrogation of the rights attached to the Golden Share without the Golden Shareholder expressly consenting to it in writing.

29.2

- (a) Whenever the capital of the Company is divided into different classes of shares either whilst the Company is a going concern or during or in contemplation of a winding up, the special rights attached to any class may be modified or abrogated and unless otherwise provided by the terms of issue of the shares of that class, either with the consent in writing of the holders of three quarters of the issued

shares of the class, or with the sanction of any special resolution passed at a separate general meeting of the holders of shares of that class (but not otherwise). The consent or resolution shall be binding upon all the holders of shares of the class. **The rights attached to the Golden Share shall not be varied other than with the express written consent of the Golden Shareholder.** All of the provisions of these Articles relating to, or to proceedings at, general meetings of the Company shall apply to general meetings of each class of shares **except that if such general meeting is a general meeting of the holder(s) of Golden Shares then the quorum shall be one person.**

- (b) The special rights attached to the Golden Share shall be deemed to be varied by:**
- (i) the creation or issue of any further Golden Shares but the special rights conferred upon the holders of any share other than the Golden Share shall not be deemed varied by the creation of further shares ranking *pari passu* with them; and**
 - (ii) the passing by the requisite majority of any of the following kinds of resolution by the Company in general meeting:**
 - (1) any resolution to amend, remove or replace any of article 4 and sub-articles 13.2 and 37.3;**
 - (2) any resolution to amend, remove or replace references to the Golden Shareholder, Golden Shareholder's Share or *[insert name of Guardian]* in article 1 (*Defined Terms*); sub-articles 13.2, 29.1, 29.2, 37.3, 37.4 and 50.2 ; and**
 - (3) any resolution to amend any such resolution as is described in any of the preceding sub-paragraphs of this sub-article 29.2.**

The doing of any act or thing which, in accordance with any provision of these Articles, requires the prior written consent of the Golden Shareholder, shall be deemed to be a variation or abrogation of the rights attached to the Golden Share.

30. ALL SHARES TO BE FULLY PAID UP

30.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

30.2 This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

31. POWER TO ISSUE DIFFERENT CLASSES OF SHARE WITH DIFFERENT RIGHTS

31.1 Subject to the articles, but without prejudice to the rights attached to any existing shares, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

31.2 No share with rights the same as or greater than the Golden Share may be issued by the company.

31.3 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.

31.4 In the event that rights and restrictions attaching to shares are determined by ordinary resolution or by the directors pursuant to this article, those rights and restrictions shall apply, in particular in place of any rights or restrictions that would otherwise apply by virtue of the Act in the absence of any provisions in the articles of a company, as if those rights and restrictions were set out in the articles.

32. PAYMENT OF COMMISSIONS ON SUBSCRIPTION FOR SHARES

32.1 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, a subscription or subscriptions for shares

32.2 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.

33. EXCLUSION OF RIGHTS TO OFFERS ON A PRE-EMPTIVE BASIS

In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the company.

34. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

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

35. SHARE CERTIFICATES

35.1 The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

35.2 Every certificate must specify:

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

35.3 No certificate may be issued in respect of shares of more than one class.

35.4 If more than one person holds a share, only one certificate may be issued in respect of it and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them

35.5 Certificates must:

- (a) have affixed to them the company's common seal, or

(b) be otherwise executed in accordance with the Companies Acts.

36. REPLACEMENT SHARE CERTIFICATES

36.1 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, subject to having first complied with the obligations in articles 36.2(b) and 36.2(c), entitled to be issued with a replacement certificate in respect of the same shares.

36.2 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.

37. SHARE TRANSFERS

37.1 No Share or interest in any Share may be transferred and the directors shall not register any transfer of Shares in the Company except in circumstances where the transfer is permitted by this article 37. Any transfer or purported transfer of any Share or of any interest in any Share made otherwise than in accordance with these Articles shall be void and of no effect whatsoever. In addition, the directors shall be at liberty by notice in writing to the registered holders of any Shares that are the subject of any transfer or purported transfer not made in accordance with these Articles to disenfranchise such Shares until such time as the directors (acting reasonably) are satisfied that the provisions of these Articles relating to the transfer of shares have been complied with.

37.2 A member who wishes to transfer any share (other than a Golden Share) to a person who is not already a member of the Company shall give notice of such intention to the directors giving particulars of the shares in question. The directors as agents for the member giving such notice may dispose of such shares or any of them to members of the Company at a price to be agreed between the transferor and the directors, or, failing agreement, at a price determined as the fair value by the auditors for the time being of the Company. If within twenty eight (28) days from the date of the notice, the directors are unable to find a member or members of the Company willing to purchase all such shares, the transferor may dispose of so many of such shares as shall remain undisposed of in any manner and to any person as he may think fit provided such transfer is within 3 months of the date of the notice. The directors shall be obliged to register any such transfer.

37.3 [Other than in accordance with sub-article 37.4 t] [T]the holder of the Golden Share shall not be permitted to transfer such share.

37.4 In the event that:

- (a) the Golden Shareholder wishes to transfer the Golden Shareholder Share;

- (b) any person becomes entitled to shares in consequence of the administration, receivership or liquidation of the Golden Shareholder; or
- (c) the Golden Shareholder permits or agrees to permit or purports to permit any person to take security over any or all of the Golden Shareholder's interest in the Golden Share; or
- (d) the Golden Shareholder ceases to be a charity registered with the Charity Commission of England and Wales,

then the Golden Shareholder or the person so entitled to the Golden Share (as the case may be) shall be bound to transfer the Golden Share to such person as the directors shall direct. Any transfer directed pursuant to this sub-article 37.4 shall be to a charity registered as such with the Charities Commission and such transferee shall have a charitable purpose which, in the opinion of the directors (acting reasonably) shall be aligned with the Social Purpose of the Company detailed in article 4. On the sale or transfer of the Golden Share the price for the Golden Share shall be £[1.00].

- 37.5 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- 37.6 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 37.7 The company may retain any instrument of transfer which is registered.
- 37.8 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- 37.9 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the

38. TRANSMISSION OF SHARES

- 38.1 If title to a share passes to a transferee, the company may recognise only the transferee as having any title to that share.
- 38.2 A transferee who produces such evidence of entitlement to shares as the directors may properly require:
 - (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
 - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder from whom the transferee derived such entitlement had.

- 1.2 Transferees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the event which gave rise to the transmission unless they become the holders of those shares.

39. EXERCISE OF TRANSFERREES' RIGHTS

- 39.1 Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

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

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

40. **TRANSMITTEES BOUND BY PRIOR NOTICES**

If a notice is given to a shareholder in respect of shares and a transmittee (or a transferee nominated by such transmittee pursuant to article 39.2) is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the Transmittee's (or transferee's) name has been entered in the register of members.

Dividends and other distributions

41. **PROCEDURE FOR DECLARING DIVIDENDS**

41.1 The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

41.2 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.

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

41.4 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 which rank for the dividend on the date of the resolution or decision to declare or pay it.

41.5 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.

41.6 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.

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

42. **PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

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

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

- (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
- (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

42.2 In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable:

- (a) the holder of the share; or
- (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

43. **NO INTEREST ON DISTRIBUTIONS**

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

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of that share and the company.

44. **UNCLAIMED DISTRIBUTIONS**

44.1 All dividends or other sums which are:

- (a) payable in respect of shares; and
- (b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

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

44.3 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.

45. **NON-CASH DISTRIBUTIONS**

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

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

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

46. **WAIVER OF DISTRIBUTIONS**

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

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

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

47. **DISTRIBUTION IN SPECIE ON WINDING UP**

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

Capitalisation of profits

48. **AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

48.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:

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

48.2 Capitalised sums must be applied:

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

- 48.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.5 Subject to the articles the directors may:
- (a) apply capitalised sums in accordance with articles 48.3 and 48.4 partly in one way and partly in another;
 - (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
 - (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

Part 4

Decision-making by shareholders

Organisation of general meetings

49. NOTICE OF GENERAL MEETINGS

- 49.1 Notice of general meetings need not be given to members who, under the provisions of these articles or the terms of issue of the shares they hold, are not entitled to receive such notices from the company.
- 49.2 A member present, either in person or by proxy, at any meeting of the company or of the holders of any class of shares in the company shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.
- 49.3 Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been duly given to a person from whom he derives his title.

50. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 50.1 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.

50.2 At any general meeting the business of which includes the consideration of any such resolution as is mentioned in Article 29.2 a quorum shall not be present for any purpose unless the Golden Shareholder is present either by proxy or representative appointed in accordance with section 323 of the Act.

- 50.3 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.

50.4 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.

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

50.6 Two or more persons who are not in the same place as each other attend a general meeting if they are able to exercise any rights they have to speak or vote at that meeting.

51. QUORUM FOR GENERAL MEETINGS

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

51.2 For all purposes of these articles, a quorum shall be present at a general meeting of the company or of the holders of any class of its shares (a) as provided in the Act; or (b) if one person being a duly authorised representative of two or more corporations each of which is a member entitled to vote upon the business to be transacted is present.

52. CHAIRING GENERAL MEETINGS

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

52.2 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 (including a proxy or a corporate representative) to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

52.3 The person chairing a meeting in accordance with this article is referred to as "the **chairman of the meeting**".

53. ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS

53.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

53.2 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.

54. **ADJOURNMENT**

- 54.1 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.
- 54.2 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.
- 54.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 54.4 When adjourning a general meeting, the chairman of the meeting must 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.
- 54.5 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.
- 54.6 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

55. **VOTING: GENERAL**

- 55.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- 55.2 The voting entitlements of members are subject to any rights or restrictions attached to shares held by them, whether or not such rights or restrictions are set out in the articles.

56. **ERRORS AND DISPUTES**

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

57. **POLL VOTES**

- 57.1 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.

57.2 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;
- (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; or
- (e) a person or persons holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right.

A demand for a poll by a proxy counts, for the purposes of paragraph (c) above, as a demand by a member, for the purposes of paragraph (d) above, as a demand by a member representing the voting rights that the proxy is authorised to exercise, and, for the purposes of paragraph (e) above, as a demand by a member holding the shares to which those rights are attached.

57.3 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.

57.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

58. **CONTENT OF PROXY NOTICES**

Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:

- (a) states the name and address of the shareholder appointing the proxy;
- (b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate,

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

58.3 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.

58.4 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.

59. DELIVERY OF PROXY NOTICES

59.1 The proxy notice must:

- (a) in the case of a proxy notice which is in hard copy form, be received at the registered office (or at such other place or by such person as may be specified or agreed by the directors) not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote (or such later time up to and including at the meeting or adjourned meeting as the directors may agree) together with (if required by the directors) any authority under which it is made or a copy of such authority, certified notarially or in some other manner approved by the directors; or
- (b) in the case of a proxy notice made by electronic means, be received at the address specified by the company for the receipt of proxy notices by electronic means not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote (or such later time up to and including at the meeting or adjourned meeting as the directors may agree). Any authority pursuant to which a proxy notice made by electronic means is made or a copy of such authority, certified notarially or in some other manner approved by the directors, must, if required by the directors, be received at the registered office (or at such other place or by such person as may be specified or agreed by the directors) not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote (or such later time up to an including at the meeting or adjourned meeting as the directors may agree).

59.2 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 notice has been delivered to the company by or on behalf of that person.

59.3 An appointment under a proxy notice may be revoked by delivering to the company, in the same manner as the proxy notice that is being revoked was delivered under article 59.1 or in such other manner as the directors may agree, a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

59.4 A notice revoking a proxy appointment only takes effect if it is delivered not less than 48 hours before the start of the meeting or adjourned meeting to which it relates or (if agreed by the directors) such later time up to and including at the meeting or adjourned meeting itself.

59.5 A vote given or poll demanded by a proxy or by the duly authorised representative of a corporate member shall be valid notwithstanding the previous revocation of the authority of the person voting or demanding a poll unless:

- (a) in the case of a proxy appointment, notice of the revocation was delivered in accordance with articles 59.3 and 59.4 above; or

- (b) in the case of the authority of an authorised representative of a corporate member, notice of a revocation was delivered as if it were notice of the revocation of a proxy appointment in accordance with articles 59.3 and 59.4 above.

60. **AMENDMENTS TO RESOLUTIONS**

60.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
- (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

60.2 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.

60.3 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.

61. **CLASS MEETINGS**

All the provisions of these articles relating to general meetings of the company apply with any necessary changes to a separate meeting of shareholders of any class of shares in the company in connection with the variation of rights attached to a class of shares.

62. **MENTAL DISORDER**

A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the registered office, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

Part 5

Administrative Arrangements

63. MEANS OF COMMUNICATION TO BE USED

- 63.1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
- 63.2 Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- 63.3 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.

64. TIME OF SERVICE

- 64.1 Any notice, document or other information:
- (a) if sent by the company by post to an address within the United Kingdom or if sent to the company from within the United Kingdom, shall be deemed to have been received on the day following that on which it was put in the post if first class post was used or 48 hours after it was posted if first class post was not used and, in proving such service or delivery, it shall be sufficient to prove that the notice, document or other information was properly addressed, prepaid and put in the post;
 - (b) if sent by the company using a reputable international courier service to an address outside the United Kingdom or if sent to the company from outside the United Kingdom using a reputable international courier, shall be deemed to have been received 48 hours after it was sent provided that delivery within 48 hours was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider;
 - (c) not sent by post but left at an address (other than an address for the purposes of communications by electronic means) shall be deemed to have been served or delivered when it was so left or sent;
 - (d) sent or supplied using electronic means shall be deemed to be received on the day on which it was sent or supplied and, in proving such service or delivery, it shall be sufficient to prove that the notice, document or other information was properly addressed;
 - (e) made available by the company on a website shall be deemed to have been received on the day on which the notice, document or other information was first made available on the website or, if later, when a notice of availability is received or deemed to have been received pursuant to this article; and
 - (f) served, sent or supplied by any other means authorised in writing by the recipient shall be deemed to have been served, sent or supplied when the sender has carried out the action it has been authorised to take for that purpose.

64.2 For the purposes of calculating a time period in articles 64.1(a) and 64.1(b) no account shall be taken of any part of a day which is not a working day.

65. COMPANY SEALS

65.1 Any common seal may only be used by the authority of the directors.

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

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

65.4 For the purposes of this article, an authorised person is:

- (a) any director of the company;
- (b) the company secretary (if any); or
- (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

65.5 The company may exercise all the powers conferred by the Act with regard to having any official seal and such powers shall be vested in the directors. Subject to the provisions of the Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, as the directors may from time to time determine.

66. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

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

67. PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

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

68. INDEMNITY AND EXPENSES

68.1 Subject to article 68.4, a relevant director of the company or an associated company may be indemnified out of the company's assets against:

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;
- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act); and

- (c) any other liability incurred by that director as an officer of the company or an associated company.

68.2 The company may fund a relevant director's expenditure for the purposes permitted under the Act and may do anything to enable a relevant director to avoid incurring such expenditure as provided in the Act.

68.3 No relevant director shall be accountable to the company or the members for any benefit provided pursuant to this article and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the company.

68.4 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

68.5 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.

69. INSURANCE

69.1 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.

69.2 In this article:

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

Schedule 4

To: The Directors
[insert name of mission locked entity]

2015

Dear Sirs

[insert name of mission locked entity] (company number *) (the “Company”)**

We hereby apply for the allotment to us of 1 (one) Guardian Share of £[1.00] in the capital of the Company for cash, at par, subject to the articles of association of the Company.

We have today remitted, by way of cash to the Company, the sum of £[1.00] being payment in full for the share applied for.

Conditionally upon allotment to us of the share, we request and authorise you to enter our name in the Company’s register of members as holder of the share allotted to us and to send us a share certificate pursuant to this application.

This letter is governed by and shall be construed in accordance with English law. The courts of England and Wales shall have exclusive jurisdiction to settle any contractual and non-contractual dispute arising out of or in connection with this letter.

Yours faithfully

For and on behalf of [insert name of golden shareholder]

Schedule 5

BOARD MINUTES

[] (the "Company")

(Registered number: [])

Minutes of a meeting of the board of directors

held at [] on [] at [] [am/pm]

PRESENT: *[List directors, indicating chairman and other offices in brackets after the name. Also note in brackets after the name if a particular director cannot count in the quorum or vote.]*

IN ATTENDANCE: *[List attendees, and note their firm/organisation and any other relevant information (eg "solicitor").]*

1. [Chairman,]notice and quorum

[[Name] was appointed chairman.] Notice of the meeting had been given in accordance with the Company's articles and a quorum was present.

2. **BACKGROUND AND PURPOSE OF THE MEETING**

The meeting had been called to consider and if thought appropriate, to approve the documents relating to the subscription by the Company for [one] golden share in capital of *[insert name of mission locked entity]* for a total subscription price of £[1.00] (the "**Transaction**").

3. Declaration(s) of interest

3.1 *[Director's name]* declared that he was interested in the Transaction for the purposes of [section 177] of the Companies Act 2006, article [] of the Company's articles and *[any residual common law duty to disclose]* due to [his position as a director of []]*[other description of the nature and extent of the interest]*. The other directors confirmed that they had no interest (direct or indirect) in the Transaction which they were required by [section 177] of the Companies Act 2006, by article [] of the Company's articles or otherwise to disclose [other than those matters which had already been disclosed as follows:

(a) *[director's name]* had declared that he was interested in the Transaction for the purposes of [section 177] of the Companies Act 2006, article [] of the Company's articles and *[any residual common law duty to disclose]* due to *[description of the nature and extent of the interest]* by means of a notice in writing dated [] in accordance with section 184 of the Companies Act 2006;

OR

[director's name] had declared that he was interested in the Transaction for the purposes of [section 177] of the Companies Act 2006, article [] of the Company's articles and *[any residual common law duty to disclose]* due to *[description of the*

nature and extent of the interest] by means of a general notice dated [] in accordance with section 185 of the Companies Act 2006. [*Director's name*] read out the general notice as follows: [*insert text of the general notice, in accordance with section 185(4)(b)*];

OR

[*director's name*] had declared that he was interested in the Transaction for the purposes of [section 177] of the Companies Act 2006, article [] of the Company's articles and [*any residual common law duty to disclose*] due to [*description of the nature and extent of the interest*] by means of a general notice dated [] in accordance with section 185 of the Companies Act 2006;

(c) [*repeat sub-paragraph (a) as required*]].

3.2 [In accordance with article [] of the Company's articles, [*director's name*] did not form part of the quorum or vote in relation to the Transaction.]

4. DOCUMENTS

4.1 The following documents (the "**Documents**") were produced to the meeting:

- (a) a draft subscription letter pursuant to which the Company would apply for the allotment to it of [one] golden share in the capital of [*insert name of mission locked entity*] ("**Subscription Letter**");
- (b) a copy of the articles of association of [*insert name of mission locked entity*] setting out the rights and restrictions attached to the golden share.

5. CONSIDERATION OF THE DOCUMENTS

5.1 The directors considered the Documents and the following points:

- (a) *that the rights attaching to the golden share would allow the Company certain rights in connection with the mission lock contained in article [●] of the articles of association of [*insert name of mission locked entity*] "**Mission Lock**";*
- (b) *that the Mission Lock was aligned with the objectives of the Company; and*
- (c) *that the holding of the golden share would enable the Company to act as guardian of the Mission Lock; and*
- (d) *that should the Company [cease to be a charity registered with the Charity Commission]/[other] then the Company would be required to transfer the golden share to another [charity registered with the Charity Commission]/[other].*

6. RESOLUTIONS

6.1 The directors resolved that:

- (a) the subscription by the Company for the golden share would promote its success for the benefit of its members as a whole;
- (b) the Documents were approved;

- (c) [any director] was authorised to approve any amendments which he considers in his absolute discretion to be necessary or appropriate.
- (d) [any director] or, where appropriate, [any two directors, any director and the company secretary or any director in the presence of an attesting witness] were authorised to execute the Documents (in each case incorporating any amendments made pursuant to paragraph 7(c)) on the Company's behalf; and
- (e) [any director] was authorised to [negotiate, settle and] execute any other agreement, letter or other document on the Company's behalf, [and any two directors, any director and the company secretary or any director in the presence of an attesting witness] were authorised to [negotiate, settle and] execute any other deed on the Company's behalf,) and [in both cases] generally to do anything else which that director [or those directors] decides is necessary or appropriate in connection with any of the Documents or the Transaction.

7. FILING

The chairman instructed [the company secretary/[name]] to make all the necessary and appropriate entries in the Company's books and registers and to arrange for the necessary documents and forms to be filed with the Registrar of Companies.

8. CONCLUSION OF MEETING

No other business was considered and the meeting ended.

Chairman of the meeting

www.hoganlovells.com

Hogan Lovells has offices in:

Alicante	Dusseldorf	Los Angeles	New York	Shanghai
Amsterdam	Frankfurt	Luxembourg	Northern Virginia	Silicon Valley
Baltimore	Hamburg	Madrid	Paris	Singapore
Beijing	Hanoi	Mexico City	Perth	Sydney
Brussels	Ho Chi Minh City	Miami	Philadelphia	Tokyo
Budapest*	Hong Kong	Milan	Rio de Janeiro	Ulaanbaatar
Caracas	Houston	Minneapolis	Riyadh*	Warsaw
Colorado Springs	Jeddah*	Monterrey	Rome	Washington DC
Denver	Johannesburg	Moscow	San Francisco	Zagreb*
Dubai	London	Munich	São Paulo	

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, see www.hoganlovells.com. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

©Hogan Lovells 2015. All rights reserved.

*Associated offices