

## 1. MEMORANDUM OF CONTINUANCE

The Memorandum of Continuance states, among other things, that the liability of members of the Company is limited to the amount, if any, for the time being unpaid on the shares held by the members and that the Company is an exempted company as defined in the Companies Act. The Memorandum of Continuance also sets out the powers of the Company and the objects for which the Company was formed, including acting as a holding and investment company. As an exempted company, the Company will be carrying on business outside Bermuda from a place of business in Bermuda.

In accordance with and subject to section 42A of the Companies Act, the Memorandum of Continuance of the Company empowers it to purchase its own shares and this power is exercisable by the Board of Directors (the "Board") upon such terms and subject to such conditions as it thinks fit.

## 2. BYE-LAWS

The Bye-laws of the Company were adopted on 25 November 2013, with effect from the Listing Date. The following is a summary of certain provisions of the Bye-laws.

### a. Shares

#### (i) *Classes of Shares*

The share capital of the Company consists of ordinary shares.

#### (ii) *Share Certificates*

Every certificate for shares, warrants or debentures or representing any other form of securities of the Company shall be issued under the seal of the Company, which for this purpose may be a securities seal. In relation to the use of the securities seal for sealing certificates for shares or other securities of the Company, no signature of any Director, officer or other person and no mechanical reproduction thereof shall be required on any such certificates or other document and any such certificates or other document to which such securities seal is affixed shall be valid and deemed to have been sealed and executed with the authority of the Board notwithstanding the absence of any such signature or mechanical reproduction as aforesaid.

The Company shall not be bound to register more than four persons as joint holders of any share.

### b. Directors

#### (i) *Power to allot and issue shares*

Without prejudice to any special rights or restrictions for the time being attaching to any shares or any class of shares, any share may be issued upon such terms and conditions and with such preferred, deferred or other special rights, or such restrictions, whether as regards dividend, voting, return of capital or otherwise, as the Company may from time to time by ordinary resolution determine (or, in the absence of any such determination or so far as the same may not make specific provision, as the Board may determine) and any preference share may, subject to the Companies Act and with the sanction of a special resolution, be issued on terms that it is liable to be redeemed upon the happening of a specified event or upon a given date and either at the option of the Company or, if so authorised by the Memorandum of Continuance of the Company, at the option of the holder.

The Board may, subject to the approval by the members in general meeting, issue warrants to subscribe for any class of shares or securities of the Company on such terms as the Board may from time to time determine. Where warrants are issued to bearer, no certificate thereof shall be issued to replace one that has

been lost unless the Board is satisfied beyond reasonable doubt that the original certificate thereof has been destroyed and the Company has received an indemnity in such form as the Board shall think fit with regard to the issue of any such replacement certificate.

Subject to the provisions of the Companies Act and the Bye-laws, and to the permission of the Bermuda Monetary Authority being obtained, all unissued shares in the Company shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times, for such consideration and generally on such terms as it shall in its absolute discretion think fit, but so that no shares shall be issued at a discount.

*(ii) Power to dispose of the assets of the Company or any subsidiary*

There are no specific provisions in the Bye-laws relating to the disposal of the assets of the Company or any of its subsidiaries although the Board may exercise all powers and do all acts and things which may be exercised or done or approved by the Company and which are not required by the Bye-laws or the statutes to be exercised or done by the Company in general meeting.

*(iii) Compensation or payments for loss of office*

Payments to any Director or past Director of the Company of any sum by way of compensation for loss of office or as consideration for or in connection with his retirement from office (not being a payment to which the Director is contractually entitled) must be approved by the Company in general meeting.

*(iv) Loans to Directors*

There are no provisions in the Bye-laws relating to the making of loans to Directors. However, the Companies Act contains restrictions on companies making loans to their directors, the relevant provisions of which are summarised in section 4(n) of this Appendix.

*(v) Financial assistance to acquire shares of the Company*

- (aa) Subject, where applicable, to the rules of any relevant stock exchange, the Company may in accordance with an employees' share scheme approved by the members in general meeting provide money on such terms as the Board thinks fit for the acquisition of fully or partly paid shares in the Company or its holding company. An employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in the Company by or for the benefit of the bona fide employees or former employees (including, notwithstanding section 96 of the Companies Act, any such bona fide employee or former employee who is or was also a Director) of the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company, or the wives, husbands, widows, widowers or children or step-children under the age of twenty-one of such employees or former employees;
- (bb) Subject, where applicable, to the rules of any relevant stock exchange, the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company may make loans to persons (including, notwithstanding section 96 of the Companies Act, any such bona fide employee or former employee who is or was also a Director) employed in good faith by the Company with a view to enabling those persons to acquire fully or partly paid shares in the Company or its holding company to be held by them by way of beneficial ownership; and
- (cc) The conditions subject to which money and loans are provided may include a provision to the effect that when an employee ceases to be employed by the Company, the shares acquired with such financial assistance shall or may be sold to the Company or such other company on such terms as the Board thinks fit.

*(vi) Disclosure of interests in contracts with the Company or any of its subsidiaries*

Subject to the Companies Act, a Director may hold any other office or place of profit with the Company (except that of Auditor) in conjunction with his office of Director for such period and upon such terms as the Board may determine, and may be paid such extra remuneration therefor (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine. A Director of the Company may be or become a director or other officer of, or be otherwise interested in, any company promoted by the Company or any other company in which the Company may be interested, and shall not be liable to account to the Company or the members for any remuneration, profit or other benefit received by him as a director or officer of or from his interest in such other company. The Board may also cause the voting power conferred by the shares in any other company held or owned by the Company to be exercised in such manner in all respects as it thinks fit, including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors or officers of such other company, or voting or providing for the payment of remuneration to the directors or officers of such other company. A Director shall not vote or be counted in the quorum on any resolution of the Board concerning his own appointment as the holder of any office or place of profit with the Company or any other company in which the Company is interested (including the arrangement or variation of the terms thereof, or the termination thereof).

Subject to the provisions of the Companies Act and the Bye-laws, no Director or proposed or intended Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatsoever, nor will any such contract or any other contract or arrangement in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or the fiduciary relationship thereby established. A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company must declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested.

Except as otherwise provided by the Bye-laws, a Director shall not vote (nor shall he be counted in the quorum) on any resolution of the Board in respect of any contract or arrangement in which he or any of his associates has a material interest, and if he does so his vote shall not be counted, but this prohibition will not apply to any of the following matters namely:

- (aa) any contract or arrangement for the giving by the Company of any security or indemnity to the Director or his associate(s) in respect of money lent or obligations incurred or undertaken by him or any of them at the request of or for the benefit of the Company and any of its subsidiaries;
- (bb) any contract or arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the Director or his associate(s) has himself/themselves assumed responsibility or guaranteed or secured in whole or in part whether solely or jointly;
- (cc) any proposal concerning an offer of the shares, debentures or other securities of or by the Company or any other company which the Company may promote or be interested in for subscription or purchase where the Director or his associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;
- (dd) any contract or arrangement in which the Director or his associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the Company by virtue only of his/their interest in shares or debentures or other securities of the Company;

- (ee) any proposal concerning any other company in which the Director or his associate(s) is/are interested only, whether directly or indirectly, as an officer or executive or member or in which the Director or his associate(s) is/are beneficially interested in shares of that company;
- (ff) any proposal or arrangement for the benefit of employees of the Company or its subsidiaries including the adoption, modification or operation of a pension fund or retirement, death or disability benefit scheme which relates both to Directors, his associate(s) and employees of the Company or any of its subsidiaries and does not give the Director or his associate(s), as such any privilege not generally accorded to the class of persons to whom such scheme or fund relates; and
- (gg) any proposal or arrangement concerning the adoption, modification or operation of any employee's share scheme involving the issue or grant of options over shares or other securities by the Company to, or for the benefit of, the employees of the Company or its subsidiaries under which the Director or his associate(s) may benefit.

(vii) *Remuneration*

The Directors shall be entitled to receive by way of remuneration for their services such sum as is from time to time determined by the Company in general meeting, such sum (unless otherwise directed by the resolution by which it is voted) to be divided amongst the Directors in such proportions and in such manner as the Board may agree, or failing agreement, equally, except that in such event any Director holding office for less than the whole of the relevant period in respect of which the remuneration is paid shall only rank in such division in proportion to the time during such period for which he has held office. The foregoing provisions shall not apply to a Director who holds any salaried employment or office in the Company except in the case of sums paid in respect of Directors' fees. The Directors shall also be entitled to be repaid all travelling, hotel and other expenses reasonably incurred by them respectively in or about the performance of their duties as Directors, including their expenses of travelling to and from board meetings, committee meetings or general meetings, or otherwise incurred whilst engaged on the business of the Company or in the discharge of their duties as Directors. The Board may grant special remuneration to any Director, who being called upon, performs any special or extra services to or at the request of the Company. Such special remuneration may be made payable to such Director in addition to or in substitution for his ordinary remuneration as a Director, and may be made payable by way of salary, commission or participation in profits or otherwise as the Board may determine. Notwithstanding the foregoing the remuneration of a managing director, joint managing director, deputy managing director or other executive director or a Director appointed to any other office in the management of the Company may be fixed from time to time by the Board and may be by way of salary, commission or participation in profits or otherwise or by all or any of those modes and with such other benefits (including pension (and/or gratuity) and/or other benefits on retirement) and allowances as the Board may from time to time decide. Such remuneration is in addition to his remuneration as a Director.

The Board also has power to establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or superannuation funds for the benefit of, or to give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, any persons who are or were at any time in the employment or service of the Company, or of any company which is a subsidiary of the Company, or is allied or associated with the Company or with any such subsidiary company, or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, and holding or who have held any salaried employment or office in the Company or such other company, and the spouses, widows, widowers, families and dependents of any such persons and may make payments for or towards the insurance of any such persons. Any Director holding any such employment or office is entitled to participate in and retain for his own benefit any such donation, gratuity, pension, allowance or emolument.

*(viii) Retirement, appointment and removal*

At each annual general meeting one-third of the Directors for the time being (or if their number is not three or a multiple of three, then the number nearest one-third) will retire from office by rotation. The Directors to retire in every year will be those who have been longest in office since their last election but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree between themselves) be determined by lot.

No person, other than a retiring Director, shall, unless recommended by the Board for election, be eligible for election to the office of Director at any general meeting, unless notice in writing of the intention to propose that person for election as a Director and notice in writing by that person of his willingness to be elected shall have been lodged at the head office or at the registration office at least seven days before the date of the general meeting.

*(ix) Directors of the Company are entitled to attend and speak at all general meetings.*

The number of Directors shall not be less than two. A Director may be removed by an ordinary resolution of the Company before the expiration of his period of office (but without prejudice to any claim which such Director may have for damages for breach of any contract of service between him and the Company). The Company may from time to time in general meeting by ordinary resolution elect any person to be a Director either to fill a casual vacancy or as an addition to the Board.

There is no shareholding qualification for Directors nor is there any specified age limit for Directors.

The Board may from time to time entrust to and confer upon a managing director, joint managing director, deputy managing director or executive director all or any of the powers of the Board that it may think fit provided that the exercise of all powers by such Director shall be subject to such regulations and restrictions as the Board may from time to time make and impose. The Board may delegate any of its powers to committees consisting of such member or members of its body and such other persons as the Board thinks fit, and it may from time to time revoke such delegation or revoke the appointment of and discharge any such committees either wholly or in part, and either as to persons or purposes, but every committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Board.

*(x) Borrowing powers*

Subject to the provisions of the Companies Act, the Board may from time to time at its discretion exercise all the powers of the Company to raise or borrow or to secure the payment of any sum or sums of money for the purposes of the Company and to mortgage or charge its undertaking, property and uncalled capital or any part thereof. The Board may raise or secure the payment or repayment of such sum or sums in such manner and upon such terms and conditions in all respects as it thinks fit and in particular by the issue of debentures, debenture stock, bonds or other securities of the Company, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

**c. Alterations to Constitutional Documents**

The Memorandum of Continuance of the Company may, with the consent of the Minister of Finance of Bermuda (the "Minister") (if required), be altered by the Company in general meeting. The Bye-laws may be amended by the Directors subject to the approval of the Company in general meeting. The Bye-laws state that a special resolution is required to alter the Memorandum of Continuance, to approve any amendment of the Bye-laws or to change the name of the Company.

**d. Alterations of Capital**

The Company may from time to time by ordinary resolution:

- (i) increase its share capital by the creation of new shares;
- (ii) consolidate or divide all or any of its share capital into shares of larger amount than its existing shares; on any consolidation of fully paid shares into shares of larger amount, the Board may settle any difficulty which may arise as it thinks expedient and in particular (but without prejudice to the generality of the foregoing) may, as between the holders of the shares to be consolidated, determine which particular shares are to be consolidated into each consolidated share, and if it shall happen that any person shall become entitled to fractions of a consolidated share or shares, such fractions may be sold by some person appointed by the Board for that purpose and the person so appointed may transfer the shares so sold to the purchaser thereof and the validity of such transfer shall not be questioned, and so that the net proceeds of such sale (after deduction of the expenses of such sale) may either be distributed among the persons who would otherwise be entitled to a fraction or fractions of a consolidated share or shares ratably in accordance with their rights and interests or may be paid to the Company for the Company's benefit;
- (iii) divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions;
- (iv) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled;
- (v) sub-divide its shares or any of them into shares of smaller amount than is fixed by the Memorandum of Continuance, subject nevertheless to the Companies Act, and so that the resolution whereby any shares is sub-divided may determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred or other special rights over, or may have such deferred rights or be subject to any such restrictions as compared with the others as the Company has power to attach to unissued or new shares;
- (vi) change the currency denomination of its share capital; and
- (vii) subject to applicable regulatory requirements, make provision for the issue and allotment of shares which do not carry any voting rights.

The Company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account or other undistributable reserve in any manner authorised and subject to any conditions prescribed by law.

**e. Variation of Rights of Existing Shares or Classes of Shares**

If at any time the capital is divided into different classes of shares, all or any of the special rights (unless otherwise provided for by the terms of issue of that class) attached to any class may, subject to the provisions of the Companies Act, be varied or abrogated either with the consent in writing of the holders of not less than three-fourths in nominal value of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. To every such separate general meeting the provisions of the Bye-laws relating to general meetings will mutatis mutandis apply, but so that the necessary quorum is not less than two persons holding or representing by proxy one-third in nominal value of the issued shares of the class, and that any holder of shares of the class present in person or by proxy or by a duly authorised corporate representative may demand a poll.

**f. Special Resolutions – Majority Required**

A special resolution of the Company must be passed by a majority of not less than three-fourths of the votes cast of such members as, being entitled so to do, vote in person or, where a corporate representative is allowed, by a duly authorised corporate representative or, where proxies are allowed, by proxy at a general meeting which shall be called by notice of at least 21 days. The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of that business. However, a meeting of the Company shall notwithstanding that it is called by shorter notice than that specified in this Bye-laws be deemed to have been duly called if it is so agreed (i) in the case of a meeting called as the annual general meeting, by all the shareholders entitled to attend and vote thereat; and (ii) in the case of any other meeting, by a majority in number of the shareholders having a right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of issued shares giving that right.

**g. Voting Rights and Right to Demand a Poll**

Subject to any special rights, privileges or restrictions as to voting for the time being attached to any class or classes of shares, at any general meeting on a show of hands every member who is present in person or by a duly authorised corporate representative or by proxy shall have one vote and on a poll, every member present in person or by a duly authorised corporate representative or by proxy shall have one vote for every share of which he is the holder which is fully paid up or credited as fully paid (but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share). On a poll, a member entitled to more than one vote need not use all his votes or cast all the votes in the same way.

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands or on the withdrawal of any other demand for a poll) demanded by (i) the Chairman of the meeting; or (ii) by at least three members present in person or by proxy or by a duly authorised corporate representative for the time being entitled to vote at the meeting; or (iii) by any member or members present in person or by proxy or by a duly authorised corporate representative and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or (iv) by a member or members present in person or by proxy or by a duly authorised corporate representative and holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

**h. Requirements for Annual General Meetings**

An annual general meeting must be held once in every year and within not more than fifteen months after the last preceding annual general meeting.

**i. Accounts and Audit**

The Board shall cause true accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place, and of the property, assets, credits and liabilities of the Company and of all other matters required by the Companies Act affecting the Company or necessary to give a true and fair view of the state of the Company's affairs and to show and explain its transactions.

The books of account are to be kept at the head office or at such other place as the Board thinks fit and shall always be open to the inspection of the Directors provided that such records as are required by the Companies Act shall also be kept at the registered office. No member (not being a Director) or other person has any right to inspect any account or book or document of the Company except as conferred by the Companies Act or ordered by a court of competent jurisdiction or authorised by the Board or by the Company in general meeting.

The Board shall from time to time cause to be prepared and laid before the Company at its annual general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are required by the Companies Act. Every balance sheet of the Company shall be signed on behalf of the Board by two Directors and a copy of every balance sheet (including every document required by law to be comprised therein or attached or annexed thereto) and profit and loss account which is to be laid before the Company at its annual general meeting, together with a copy of the Directors' report and a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting, be sent to every member of, and every holder of debentures of, the Company and every other person entitled to receive notices of general meetings of the Company under the Companies Act or of the Bye-laws. If all or any of the shares or debentures of the Company are for the time being (with the consent of the Company) listed or dealt in on any stock exchange, there shall be forwarded to the appropriate officer of such stock exchange such number of copies of such documents as may for the time being be required under its regulations or practice.

Auditors shall be appointed and their duties regulated in accordance with the Companies Act. Subject as otherwise provided by such provisions the remuneration of the auditors shall be fixed by or on the authority of the Company at each annual general meeting, but in respect of any particular year, the Company in general meeting may delegate the fixing of such remuneration to the Board.

**j. Notices of Meetings and Business to be Conducted Thereat**

An annual general meeting or special general meeting at which a special resolution is to be proposed shall be convened on at least 21 days notice and that extraordinary general meetings at which an ordinary resolution is to be proposed shall be convened on at least 14 days notice. The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of that business.

Any notice or document to be given to or by any person pursuant to these Bye-laws may be served on or delivered to any shareholder of the Company either personally or by sending it through the post in a prepaid envelope or wrapper addressed to such shareholder at his registered address as appearing in the register or by leaving it at that address addressed to the shareholder or by any other means authorised in writing by the shareholder concerned or (other than share certificates) by publishing it by way of advertisement in at least one English language newspaper and one Chinese language newspaper circulating generally in Hong Kong. In case of joint holders of a share, all notices shall be given to that one of the joint holders whose name stands first in the register and notice so given shall be sufficient notice to all the joint holders. Without limiting the generality of the foregoing but subject to the applicable laws of Bermuda and any rules prescribed by The Stock Exchange of Hong Kong Limited from time to time, a notice or document may be served or delivered by the Company to any shareholder by electronic means to such address as may from time to time be authorised by the shareholder concerned or by publishing it on a website and notifying the shareholder concerned, in such manner as he may from time to time authorise, that it has been so published.

**k. Transfer of Shares**

All transfers of shares must be effected by transfer in writing in the usual or common form or in any other form acceptable to the Board and may be under hand or by means of mechanically imprinted signatures or such other manner as the Board may from time to time approve. An instrument of transfer must be executed by or on behalf of the transferor and by or on behalf of the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

The Board may, in its absolute discretion, at any time and from time to time transfer any share upon the principal register to any branch register or any share on any branch register to the principal register or any other branch register.

Unless the Board otherwise agrees, no shares on the principal register shall be transferred to any branch register nor shall shares on any branch register be transferred to the principal register or any other register. All transfers and other documents of title must be lodged for registration and registered, in the case of shares on a branch register, at the relevant registration office and, in the case of shares on the principal register, at the transfer office in Bermuda.

The Board may in its absolute discretion and without assigning any reason therefore, refuse to register any transfer of any shares (not being fully paid shares) to a person of whom it does not approve and it may refuse to register the transfer of any shares (not being fully paid shares) on which the Company has a lien. The Board may also refuse to register a transfer of shares (whether fully paid or not) in favour of more than four persons jointly. If the Board refuses to register a transfer, it will within two months after the date on which the transfer was lodged with the Company send to the transferor and transferee notice of the refusal.

The Board may decline to recognise any instrument of transfer unless a fee of such sum as the Stock Exchange may determine to be payable or such lesser sum as the Board may from time to time determine is paid to the Company in respect thereof has been paid, the shares are free of any lien in favour of the Company, the instrument of transfer is properly stamped, is in respect of only one class of share and is lodged at the relevant registration or transfer office accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do). Where applicable, the permission of the Bermuda Monetary Authority with respect thereto shall be obtained.

The registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine and either generally or in respect of any class of shares. The register of members shall not be closed for more than thirty days in any year.

**l. Power for the Company to Purchase its Own Shares**

The Bye-laws give the Board the power to determine the terms and conditions subject to which this power is to be exercised.

**m. Power of any Subsidiary of the Company to Own Shares in the Company**

There are no provisions in the Bye-laws relating to ownership of the Company by a subsidiary.

**n. Dividends and Other Methods of Distribution**

The Company may by an ordinary resolution declare dividends or make distributions out of assets or funds of the Company legally available therefor, including distributions out of contributed surplus, to the shareholders in any currency, but no such dividends or distributions shall exceed the amount recommended by the Board. The Board may from time to time make distributions out of assets or funds of the Company legally available therefor, including distributions out of contributed surplus, to the shareholders.

Unless and to the extent that the rights attached to any shares or the terms of issue thereof otherwise provide, all dividends will be apportioned and paid pro rata according to the amounts paid or credited as paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. No amount paid upon a share in advance of calls will for this purpose be treated as paid up on the shares. The Board may retain any dividends or other moneys payable on or in respect of a share upon which the Company has a lien, and may apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists. The Board may deduct from any dividend or bonus payable to any member all sums of money (if any) presently payable by him to the Company on account of calls, instalments or otherwise.

Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared on the share capital of the Company, the Board may further resolve either (a) that such dividend be satisfied wholly or in part in the form of an allotment of shares credited as fully paid up, provided that the members entitled thereto will be entitled to elect to receive such dividend (or part thereof) in cash in lieu of such allotment, or (b) that the members entitled to such dividend will be entitled to elect to receive an allotment of shares credited as fully paid up in lieu of the whole or such part of the dividend as the Board may think fit. The Company may also upon the recommendation of the Board by a special resolution resolve in respect of any one particular dividend of the Company that it may be satisfied wholly in the form of an allotment of shares credited as fully paid up without offering any right to members to elect to receive such dividend in cash in lieu of such allotment.

Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared or a distribution be made, the Board may further resolve that such dividend or distribution be satisfied wholly or in part by the distribution of specific assets of any kind.

The Board may, if it thinks fit, receive from any member willing to advance the same, and either in money or money's worth, all or any part of the money uncalled and unpaid or instalments payable upon any Shares held by him, and in respect of all or any of the moneys so advanced may pay interest at such rate (if any) not exceeding 20% per annum, as the Board may decide but a payment in advance of a call shall not entitle the member to receive any dividend or to exercise any other rights or privileges as a member in respect of the Share or the due portion of the Shares upon which payment has been advanced by such member before it is called up.

All dividends or bonuses unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and the Company shall not be constituted a trustee in respect thereof. All dividends or bonuses unclaimed for six years after having been declared may be forfeited by the Board and shall revert to the Company.

The Company may exercise the power to cease sending cheques for dividend entitlements or dividend warrants by post if such cheques or warrants have been left uncashed on two consecutive occasions or after the first occasion on which such a cheque or warrant is returned undelivered.

#### **o. Proxies**

Any member of the Company entitled to attend and vote at a meeting of the Company or a meeting of the holders of any class of shares in the Company is entitled to appoint another person as his proxy to attend and vote instead of him. Votes, whether on a show of hands or on a poll may be given either personally or by a duly authorised corporate representative or by proxy. A member holding two or more shares may appoint more than one proxy to attend on the same occasion. A proxy need not be a member of the Company.

The instrument appointing a proxy, shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.

The instrument appointing a proxy to vote at a general meeting shall: (i) be deemed to confer authority upon the proxy to demand or join in demanding a poll and to vote on any resolution (or amendment thereto) put to the meeting for which it is given as the proxy thinks fit. Provided that any form issued to a member for use by him for appointing a proxy to attend and vote at a special general meeting or at an annual general meeting at which any business is to be transacted shall be such as to enable the member, according to his intentions, to instruct the proxy to vote in favour of or against (or, in default of instructions, to exercise his discretion in respect of) each resolution dealing with any such business; and (ii) unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

Where that member is a recognised clearing house within the meaning of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), it may appoint such person or persons as it thinks fit to act as its proxy or proxies or as its corporate representative or representatives, to the extent permitted by the Companies Act, at any members' general meeting or any meeting of any class of members provided that if more than one proxy or corporate representative is so appointed, the appointment shall specify the number and class of shares in respect of which each such proxy or corporate representative is to be appointed. The person so appointed will be entitled to exercise the same powers on behalf of the clearing house (or its nominee) which he represents as that clearing house (or its nominee) could exercise as if it were an individual member of the Company including the right to vote individually on a show of hands. The number of persons a clearing house may appoint to act as its corporate representative or representatives shall not exceed the number of shares held by the clearing house (or its nominee), being shares in respect of which there is an entitlement to attend and vote at the relevant meeting.

In addition, a proxy or proxies representing either an individual member or a member which is a corporation, shall be entitled to exercise the same powers on behalf of the member which he or they represent as such member could exercise including the right to vote individually on a show of hands.

**p. Calls on Shares and Forfeiture of Shares**

The Board may from time to time make such calls as it may think fit upon the members in respect of any monies unpaid on the shares held by them respectively (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. A call may be made payable either in one sum or by instalments. If the sum payable in respect of any call or instalment is not paid on or before the day appointed for payment thereof, the person or persons from whom the sum is due shall pay interest on the same at such rate not exceeding 20% per annum as the Board shall fix from the day appointed for the payment thereof to the time of actual payment, but the Board may waive payment of such interest wholly or in part. The Board may, if it thinks fit, receive from any member willing to advance the same, either in money or money's worth, all or any part of the money uncalled and unpaid or instalments payable upon any shares held by him, and upon all or any of the monies so advanced the Company may pay interest at such rate (if any) not exceeding 20% per annum as the Board may decide.

If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and which may still accrue up to the date of actual payment. The notice will name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and it will also name the place where payment is to be made, such place being either the registered office of the Company, or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture will include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.

A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of forfeiture, were payable by him to the Company in respect of the shares together with (if the Board shall in its discretion so require) interest thereon from the date of forfeiture until payment at such rate not exceeding 20% per annum as the Board may prescribe.

**q. Inspection of Register of Members**

There are no provisions in the Bye-laws relating to inspection of the register of members.

**r. Quorum for Meetings**

For all purposes the quorum for a general meeting shall be two members present in person or by a duly authorised corporate representative or by proxy and entitled to vote. No business shall be transacted at any general meeting unless the requisite quorum shall be present at the commencement of the meeting.

**s. Rights of the Minorities in Relation to Fraud or Oppression**

There are no provisions in the Bye-laws relating to rights of minority members in relation to fraud or oppression. However, Bermuda company law provides for protection of minorities, as summarised in paragraph 4(o) of this Appendix.

**t. Procedures on Liquidation**

A resolution that the Company be wound-up by the court or be wound-up voluntarily must be a special resolution.

If the Company shall be wound-up, the surplus assets remaining after payment to all creditors are to be divided among the members in proportion to the capital paid up on the shares held by them respectively, and if such surplus assets shall be insufficient to repay the whole of the paid up capital, they are to be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up on the shares held by them respectively, all subject to the rights of any shares issued on special terms and conditions.

If the Company shall be wound-up (whether the liquidation is voluntary or by the court) the liquidator may, with the sanction of a special resolution, divide among the members in specie or kind the whole or any part of the assets of the Company and whether the assets consist of property of one kind or consists of properties of different kinds and the liquidator may, for such purposes, set such value as he deems fair upon any one or more class or classes of property to be divided as aforesaid and may determine how such division is to be carried out as between the members or different classes of members and the members within each class. Under the Companies Act the liquidator may, with the like sanction, vest any one or more class or classes of property and may determine how such division shall be carried out as between the members or different classes of members. Under the Companies Act, the liquidator may, with like sanction, vest any part of the assets in trustees upon such trusts for the benefit of members as the liquidator, with the like sanction shall think fit, but so that no member shall be compelled to accept any shares or other assets upon which there is a liability.

**u. Stock**

The Company may by ordinary resolution convert any fully paid up shares into stock, and may from time to time by like resolution reconvert any stock into fully paid up shares of any denominations. The holders of stock may transfer the same or any part thereof in the same manner, and subject to the same regulations as and subject to which the shares from which the stock arose might prior to conversion have been transferred or as near thereto as circumstances admit, but the Board may from time to time, if it thinks fit, fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose. No

warrants to bearer shall be issued in respect of any stock. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, participation in assets on a winding-up, voting at meetings and other matters, as if they held the shares from which the stock arose, but no such privilege of the Company shall be conferred by an amount of stock which would not, if existing in shares, have conferred such privilege or advantage. All such provisions of the Bye-laws as are applicable to paid up shares shall apply to stock, and the words "share" and "member" therein shall include "stock" and "stockholder".

**v. Untraceable Members**

The Company shall have the power to sell, in such manner as the Board thinks fit, any shares of a member who is untraceable, but no such sale shall be made unless:

- (i) all cheques or warrants, being not less than three in total number, for any sum payable in cash to the holder of such shares in respect of them sent during the relevant period in the manner authorised by the Bye-Laws of the Company have remained uncashed;
- (ii) so far as it is aware at the end of the relevant period, the Company has not at any time during the relevant period received any indication of the existence of the member who is the holder of such shares or of a person entitled to such shares by death, bankruptcy or operation of law;
- (iii) the Company has caused an advertisement to be inserted in the newspapers of its intention to sell such shares and a period of three months has elapsed since the date of such advertisement; and
- (iv) the Company has notified the Stock Exchange of its intention to effect such sale.

**w. Other Provisions**

The Bye-laws provide that, subject to the Companies Act, if any of the rights attached to any warrants issued by the Company shall remain exercisable and the Company does any act which would result in the subscription price under such warrants being reduced below the par value of a share, a subscription right reserve shall be established and applied in paying up the difference between the subscription price and the par value of a share on any exercise of the warrants.

**3. VARIATION OF MEMORANDUM OF CONTINUANCE AND BYE-LAWS**

The Memorandum of Continuance of the Company may be altered by the Company in general meeting and if the Company intends to carry on any "restricted business activity" for the purposes of the Companies Act, the prior consent of the Minister of Finance of Bermuda will also be required. The Bye-laws may be amended by the Board subject to the approval of the Company in general meeting. The Bye-laws state that a special resolution shall be required to alter provisions of the Memorandum of Continuance, to approve any amendment of the Bye-laws or to change the name of the Company. For these purposes a resolution is a special resolution if it has been passed by a majority of not less than three-fourths of the votes cast of such members of the Company as, being entitled so to do, vote in person or, by a duly authorised corporate representative or, where permitted, by proxy at a general meeting of which, if for an annual general meeting, it shall be called by notice of not less than 20 clear business days and for any special general meeting, it shall be called by notice of not less than 10 clear business days. The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of that business. However, a meeting of the Company shall notwithstanding that it is called by shorter notice than that specified in this Bye-laws be deemed to have been duly called if it is so agreed (i) in the case of a meeting called as the annual general meeting, by all the shareholders entitled to attend and vote thereat; and (ii) in the case of any other meeting, by a majority in number of the shareholders having a right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of issued shares giving that right.

#### 4. BERMUDIAN PROVISIONS

The summary does not purport to contain all applicable qualifications and exemptions and does not purport to be a complete review of all matters of Bermuda company law or a comparison of provisions that may differ from the laws of other jurisdictions, with which interested parties may be more familiar.

The company law of Bermuda is historically derived, for the most part, from the laws of England and is essentially embodied in the provisions of the Companies Act, most of which are drawn from the Companies Act 1948 of the United Kingdom, with certain reliance placed upon the laws of Ontario, Canada and, to some extent, upon the Companies Ordinance of Hong Kong. Other provisions are original Bermuda provisions endeavouring to cater to the specific circumstances of international business in Bermuda; these relate specifically to concepts not recognised in other jurisdictions (e.g. exempted as opposed to local companies) and contain particular emphasis on the restrictions imposed upon exempted companies with regard to what they may do in Bermuda as opposed to outside Bermuda from a place of business in Bermuda. The common law of England and Wales constitutes persuasive precedent and authority in the Bermuda courts.

##### a. Incorporation

The Company was incorporated in the British Virgin Islands on 9 July 1991 and continued into Bermuda as an exempted company with limited liability on 20 April 2000. The Company was brought into existence by depositing the Memorandum of Continuance with the Registrar of Companies in Bermuda (the "Registrar").

##### b. Constituent Documents

The business activities of the Company will be governed by the provisions of its Memorandum of Continuance which sets out, in detail, its specific business objects, and the powers that may be exercised in support of its principal business objects. Bermuda law distinguishes between objects and powers, the latter of which are regarded as supplemental to the principal business objects of the Company.

The Companies Act provides that the objects set out in the different paragraphs of the objects clause in the Memorandum of Continuance or included therein by reference shall not, unless otherwise stated, be limited or restricted in any way by reference to or inference from the terms of any other paragraph in the Memorandum of Continuance and such objects may be carried out in as full and ample a manner and construed in such a manner as if each paragraph defined the objects of a separate and independent company and each is construed as a primary object.

The Memorandum of Continuance may be altered under the provisions of the Companies Act and which alteration must also conform to Bermuda policy. It is required that the consent of the members of the Company in general meeting be given, following due notice of the intention of the meeting, before a Memorandum of Continuance may be altered. It is required that following the passage of a resolution of the members in general meeting approving the alteration, certain filings be made with the Registrar. Prior to taking formal steps in relation to the alteration of the Memorandum of Continuance, it will be necessary to obtain the Minister's consent if the Company carries on any "restricted business activity" within the definition of section 4A of the Companies Act.

The Bye-laws will govern the Company's administration and the relationship between its members and the Board of Directors. The Bye-laws are required, by Section 13 of the Companies Act, to make provision for a certain limited number of matters. It furthermore provides that certain additional matters may be included in the Bye-laws for the better regulation of the Company.

The members of the Company are entitled to receive copies of the Memorandum of Continuance and its Bye-laws upon request, which obligation is established by the provisions of the Companies Act. The Companies Act provides that all persons who agree to become members of the Company shall upon entry on the register of members, which shall include the branch register, be deemed to be members of the Company.

#### **c. Taxation**

In Bermuda there are no taxes on profits, income or dividends, nor is there any capital gains tax, estate duty or death duty. Profits can be accumulated and it is not obligatory for a company to pay dividends. The Company is required to pay an annual government fee (the "Government Fee"), which is determined on a sliding scale by reference to a company's authorised share capital and share premium account, with the minimum fee being BD\$1,995 and the maximum fee being BD\$31,120 (the Bermuda dollar is treated at par with the U.S. dollar). The Government Fee is payable at the end of January in every year and is based on the authorised share capital and share premium account as they stood at the 31st of August in the preceding year.

The Bermuda government has enacted legislation under which the Minister is authorised to give an assurance to an exempted company or a partnership that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, then the imposition of any such tax shall not be applicable to such entities or any of their operations. In addition, there may be included an assurance that any such tax or any tax in the nature of estate duty or inheritance tax, shall not be applicable to the shares, debentures or other obligations of such entities. This assurance has been obtained by the Company for the period ending 31 March 2035.

#### **d. Stamp Duty**

The law relating to stamp duties has been fundamentally changed as a result of the enactment of certain legislation that came into force on 1 April 1990. Stamp duty is no longer chargeable in respect of the incorporation, registration or licensing of an exempted company, nor, subject to certain minor exceptions, on their transactions. Accordingly, no stamp duty will be payable on the increase in or the issue or transfer of the share capital of the Company.

#### **e. Prospectus Issues and Public Offers**

The Companies Act regulates the issue of shares by way of public offer. It requires that no company shall offer shares to the public unless prior to such offer it publishes in writing a prospectus, and prior to or as soon as reasonably practicable after publication of such a prospectus, the company shall file with the Registrar, a copy signed by or on behalf of all of the directors or provisional directors of the company. However, it is not necessary to publish and file a copy of the prospectus with the Registrar where (i) the shares are listed on an appointed stock exchange or an application has been made for the shares to be so listed, and the rules of the appointed stock exchange do not require the company to publish and file a prospectus at such time or in such circumstances; (ii) the company is subject to the rules or regulations of a competent regulatory authority and such rules or regulations do not require the company to publish and file a prospectus at such time or in such circumstances, except where exemption from publication and filing of a prospectus is given by reason of the offer being made only to persons who are resident outside the jurisdiction of the authority; or (iii) an

appointed stock exchange or any competent regulatory authority has received or otherwise accepted a prospectus or other document in connection with the offer of shares to the public. The following are some of the stock exchanges or regulatory authorities approved by the Minister and designated as:

#### Appointed Stock Exchanges

Australian Stock Exchange Ltd.  
The Bermuda Stock Exchange  
The Bolsa de Madrid  
Boston Stock Exchange, Inc.  
Bourse de Montreal  
Bursa Malaysia Securities Berhad  
Canadian Dealing Network  
Canadian Venture Exchange  
The Commission de Surveillance du Secteur Financier  
The Euro MTF Market  
The Euronext Exchange  
European Association of Security Dealers Automated Quotation S.A. (EASDAQ)  
Frankfurt Stock Exchange  
Indonesia Stock Exchange  
The Irish Stock Exchange  
JASDAQ Market  
The Johannesburg Stock Exchange  
London Stock Exchange  
London Stock Exchange — Alternative Investment Market (AIM)  
Moscow Interbank Currency Exchange (A-1 Quotation List)  
NASDAQ Dubai  
The Nasdaq Stock Market, Inc.  
New York Stock Exchange, Inc.  
New Zealand Stock Exchange  
Nya Marknaden  
NYSE Euronext  
Oslo Axess  
Oslo Børs  
Paris Bourse  
PLUS Markets  
Qatar Exchange  
Sao Paulo Stock Exchange  
Shanghai Stock Exchange  
Singapore Exchange Securities Trading Limited  
Societe de la Bourse de Luxembourg S.A.  
Specialist Fund Market  
The Stock Exchange of Hong Kong Ltd.  
Stockholm Stock Exchange  
Swiss Exchange  
Taiwan Stock Exchange  
Tel Aviv Stock Exchange  
Tokyo Stock Exchange  
The Toronto Stock Exchange  
The TSX Venture Exchange  
Viennese Stock Exchange

**Competent Regulatory Authorities**

Australian Securities and Investments Commission  
Austrian Federal Ministry of Finance  
Bermuda Monetary Authority  
The Commission de Surveillance du Secteur Financier  
Dubai Financial Services Authority  
Financial Services Authority  
Hong Kong Securities and Futures Commission  
Japanese Financial Services Agency and its delegate, the Kanto Local Finance Bureau  
of the Ministry of Finance of Japan  
Luxembourg Commissariat aux Bourses  
The Monetary Authority of Singapore  
Ontario Securities Commission  
Securities and Exchange Commission of Brazil  
Securities Commission, Malaysia  
Swiss Exchange  
United States Securities and Exchange Commission

Accordingly, where an appointed stock exchange or any competent regulatory authority has received or otherwise accepted a prospectus as a basis for offering shares to the public, the Company need not comply with the requirements of the Companies Act as to the detailed content of the prospectus, nor set out the minimum subscription which must be raised by the issue of shares. If otherwise, then every prospectus shall contain particulars with regard to the minimum subscription which must be raised by the issue of shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:

- (i) the purchase price of any assets purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (ii) any preliminary expenses payable by the Company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or if he is procuring or agreeing to procure subscriptions for, any shares in the Company;
- (iii) the repayment of any monies borrowed by the Company in respect of any of the foregoing matters;
- (iv) working capital; and
- (v) the amount to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

Furthermore where any company continuously over a period offers shares to the public, it shall, when any of the particulars in a prospectus issued by that company ceases to be accurate in a material respect, as soon as reasonably practicable, publish supplementary particulars, file a copy thereof with the Registrar as well as give a copy of the same to each member of the company.

The Companies Act provides for both criminal offences in relation to the making of an untrue statement in a prospectus and civil liability for misstatements in a prospectus.

**f. Exchange Control**

Although incorporated in Bermuda, the Company has been classified as non-resident in Bermuda for exchange control purposes by the Bermuda Monetary Authority ("BMA"). Accordingly, the Company may convert currency (other than Bermudian currency) held for its account to any other currency without restriction.

Persons, firms or companies regarded as residents of Bermuda for exchange control purposes require specific consent under the Exchange Control Act 1972 of Bermuda, and regulations thereunder, to purchase or sell shares or warrants of the Company which are regarded as foreign currency securities by the BMA. Pursuant to Part I paragraph 1 of the public notice issued by the Bermuda Monetary Authority on 1 June 2005 (the "BMA Notice"), where any equity securities of a Bermuda company are listed on an Appointed Stock Exchange (as defined in the BMA Notice which includes The Stock Exchange of Hong Kong Limited), general permission is given for the issue and subsequent transfer of any securities of the company from and/or to a non-resident of Bermuda, for as long as any equity securities of the company remain so listed.

In granting such permission, the BMA accepts no responsibility for the financial soundness of any proposals or for the correctness of any statements made or opinions expressed in this document with regard to them.

**g. Share Capital**

The Companies Act provides that where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account, to be called "the share premium account" and the provisions of the Companies Act relating to a reduction of share capital of a company shall, except as provided in Section 40 of the Companies Act, apply as if the share premium account were paid up share capital of the company. An exception is made to this rule in the case of an exchange of shares where the excess value of the shares acquired over the nominal value of the shares being issued may be credited to a contributed surplus account of the issuing company. Contributed surplus is a North American concept recognised under the generally accepted accounting principles of the Canadian Institute of Chartered Accountants which accounting principles are applied in Bermuda.

The Companies Act permits a company to issue preference shares and under certain circumstances to convert those preference shares into redeemable preference shares.

**h. Alteration of Share Capital**

A company may if authorised by a general meeting of the members of the company and by its bye-laws, alter the conditions of its memorandum of continuance to increase its share capital, divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions, consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares, subdivide its shares or any of them into shares of a smaller amount than is fixed by the memorandum of continuance, make provision for the issue and allotment of shares which do not carry any voting rights, cancel shares which have not been taken or agreed to be taken by any person, diminish the amount of its share capital by the amount of the shares so cancelled and change the currency denomination of its share capital. With the exception of an increase of capital, cancellation of shares and redenomination of currency of capital, there are no filing requirements for any of the above-mentioned alterations.

Furthermore a company may, if authorised by a general meeting of the members, reduce its share capital. There are certain requirements, including a requirement prior to the reduction to publish a notice in an appointed newspaper stating the amount of the share capital as last determined by the company, the amount

to which the share capital is to be reduced and the date on which the reduction is to have effect. The Companies Act provides that the Company shall not reduce the amount of its share capital if on the date the reduction is to be effected there are reasonable grounds for believing that the Company is, and after the reduction would be, unable to pay its liabilities as they become due.

The Companies Act includes certain protections for holders of special classes of shares requiring their consent to be obtained before their rights may be varied.

The Companies Act requires that as soon as practicable after the allotment of any of its shares a company must complete and have ready for delivery share certificates in relation to those shares allotted unless the conditions of issue of the shares otherwise provide. A certificate under the common seal of the company shall be prima facie evidence of the title of the member to the shares. The Companies Act prohibits bearer shares.

#### **i. Purchase by the Company of its Own Shares**

The Companies Act permits the Company, if authorised to do so by its Memorandum of Continuance or by its Bye-laws, to purchase its own shares. It should be noted that the Company is authorised by its Bye-laws, subject to certain approvals, to purchase its own shares. Such purchases may only be effected out of the capital paid up on the purchased shares, profits otherwise available for dividend (see "Dividends" below) or out of the proceeds of a new issue of shares made for the purpose. Where the Company purchases for redemption a redeemable share, purchases not made through the market or by tender shall be limited to a maximum price, and if purchases are by tender, tenders shall be available to all shareholders alike. Any premium payable on a repurchase over the par value of the shares to be repurchased must be provided for out of the profits otherwise available for dividends, out of the Company's share premium account, or out of contributed surplus. A purchase by the Company of its own shares may be authorised by its Board of Directors or otherwise by or in accordance with the provisions of its Bye-laws. Further, the consideration payable to a member whose shares are repurchased may be satisfied by cash and/or the transfer of any part of the undertaking or property of the Company or a combination of the foregoing.

The Companies Act provides that no purchase by the Company of its own shares may be effected if, on the date on which the purchase is to be effected, there are reasonable grounds for believing that the Company is, or after the purchase would be, unable to pay its liabilities as they become due.

The shares purchased pursuant to the Companies Act shall be treated as cancelled and the amount of the Company's issued capital shall be diminished by the nominal amount of those shares accordingly. It shall not be taken as reducing the amount of the Company's authorised share capital.

The Company is not prevented from purchasing and may purchase its own warrants. There is no requirement of Bermuda law that the Memorandum of Continuance or the Bye-laws contain a specific enabling provision authorising any such purchase and the Directors may rely upon the general power to buy and sell and deal in personal property of all kinds.

A company has power to hold and purchase shares of its holding company. A distinction must be drawn between the purchase of shares in the holding company by the holding company itself and the purchase by a subsidiary. A holding company can only purchase its own shares in accordance with the provisions referred to above. When a subsidiary acquires shares in its holding company, the shares, once purchased, may be voted by the subsidiary for its own benefit.

#### **j. Transfer of Securities**

Title to securities of companies whose securities are traded or listed on an appointed stock exchange may, only with effect from the coming into operation of regulations made by the Minister, be evidenced and transferred without a written instrument either in accordance with regulations made by the Minister or by a person appointed by the Minister i.e. through the mechanism required or permitted by an appointed stock exchange.

**k. Dividends and Distributions**

The Companies Act provides that a company shall not declare or pay a dividend or make a distribution out of contributed surplus, if there are reasonable grounds for believing that (a) the company is, or would after the payment be, unable to pay its liabilities as they became due; or (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and its issued share capital and share premium accounts.

Contributed surplus for these purposes is defined as including proceeds arising from donated shares, credits resulting from the redemption or conversion of shares at less than the amount set up as nominal capital, the excess value of shares acquired over those issued in a share exchange should the Board elect to treat it as such and donations of cash and other assets to the company.

**l. Charges on the Assets of the Company**

The Companies Act established a register of charges at the office of the Registrar permitting any charges on the assets of a company to be registered. Registration is not mandatory but does govern priority in Bermuda, giving a registered charge priority over any subsequently registered charge and over all unregistered charges except for those in effect prior to the coming into effect of the Companies Act in July of 1983. The register of charges is available for inspection by members of the public. The Companies Act also makes provision for the registration of a series of debentures.

**m. Management and Administration**

The management and administration of a Bermuda company is essentially governed by Part VI of the Companies Act and provides that the management and administration of a Bermuda company shall be vested in the hands of not less than one director duly elected by the members.

The Companies Act requires that a Bermuda company maintains either:

- (a) a minimum of one director, other than an alternate director, who is ordinarily resident in Bermuda; or
- (b) a secretary that is (i) an individual who is ordinarily resident in Bermuda; or (ii) a company which is ordinarily resident in Bermuda; or
- (c) a resident representative that is (i) an individual who is ordinarily resident in Bermuda; or (ii) a company which is ordinarily resident in Bermuda.

The Companies Act contains no specific restrictions on the power of the Directors to resolve to dispose of assets of a company although it specifically requires that every officer (which includes a director and managing director and secretary) of a company, in exercising his powers and discharging his duties, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Furthermore it requires that every officer should comply with the Companies Act, regulations passed pursuant to the Companies Act and the Bye-laws.

**n. Loans to Directors**

The Companies Act prohibits the making of loans by the Company to any of its Directors or to their families or companies in which they hold a 20% interest, without the consent of members of the Company holding in the aggregate not less than nine-tenths of the total voting rights of all members having the right to

vote at any meeting of the members of the Company. These prohibitions do not apply to anything done to provide a Director with funds to meet expenditure incurred or to be incurred by him for the purposes of the Company, provided that the Company gives its prior approval at a general meeting or, if not, the loan is made on condition that it shall be repaid within six months of the next annual general meeting if the loan is not approved at such meeting. If the approval of the Company is not given for a loan, the Directors who authorised it will be jointly and severally liable for any loss arising.

**o. The Investigation of the Affairs of a Company and the Protection of Minorities**

The Companies Act makes specific provision with regard to the foregoing and provides that the Minister may, at any time of his own volition, appoint one or more inspectors to investigate the affairs of an exempted company and to report thereon in such manner as he may direct. The Companies Act requires that such an investigation be made in private unless the company requests that it be held in public. Furthermore any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Minister under the foregoing, the Registrar on behalf of the Minister, may make an application to the court by petition for an order that the company's affairs are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members and that to wind-up the company would unfairly prejudice that part of the members but otherwise the facts would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound-up. If the court is of this opinion, then it may, with a view to bringing to an end the matters complained of, make such order as it thinks fit whether for regulating the conduct of the company's affairs in future or for the purchase of shares of any members of the company by other members of the company or by the company and in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

Class actions and derivative actions are generally not available to members under the laws of Bermuda; however, the Bermuda courts ordinarily would expect to follow English case law precedent which would permit a member to commence an action in the name of the company to remedy a wrong done to the company where the act complained of is alleged to be beyond the corporate power of the company or is illegal or would result in the violation of a company's memorandum of continuance and bye-laws. Furthermore consideration would be given by the court to acts that are alleged to constitute a fraud against the minority members or, for instance, where an act requires the approval of a greater percentage of the company's members than that which actually approved it.

In addition to the above, members may be able to bring claims against a company; such claims must, however, be based on the general laws of contract or tort applicable in Bermuda.

A statutory right of action is conferred on subscribers to shares of a company against persons (including directors and officers) responsible for the issue of a prospectus in respect of damage suffered by reason of an untrue statement therein (see above) but this confers no right of action against the company itself. In addition, the company itself (as opposed to its members) may take action against the officers (including directors) for breach of their statutory and fiduciary duty to act honestly and in good faith with a view to the best interests of the company (as mentioned above). Furthermore, a subscriber is not debarred from obtaining damages or other compensation from the Company by reason only of his holding or having held shares in the Company or any right to apply or subscribe for shares or to be included in the Company's register of members in respect of shares.

**p. Inspection of Corporate Records**

Members of the general public have the right to inspect the public documents of the Company available at the office of the Registrar which will include the Company's Certificate of Incorporation, its Memorandum of Continuance (including its objects and powers) and any alteration to the Memorandum of Continuance and

documents relating to an increase or reduction of authorised capital. The members have the additional right to inspect the Bye-laws, minutes of general (i.e. members') meetings and audited financial statements of the Company, which must be presented to the Annual General Meeting of members. The Company is required to maintain its share register in Bermuda but may establish a branch register outside Bermuda. The register of members of the Company and any branch register are also open to inspection by members without charge, and to general members of the public for a fee. The Companies Act stipulates that where a member of the Company or other person requests a copy of the register of members or branch register of members, this must be provided within 14 days of the request. The Company is required to keep at its registered office a register of its Directors and Officers which is open for inspection by members of the public without charge. Bermuda law does not, however, provide a general right for members to inspect or obtain copies of any other corporate records.

**q. Restrictions on the Activities of Exempted Companies**

Unless specifically authorised by its memorandum of continuance, an exempted company shall not be permitted to:

- (i) acquire or hold land in Bermuda except land required for its business held by way of a lease or tenancy agreement for a term not exceeding fifty years;
- (ii) acquire or hold land that is designated as tourist accommodation or a hotel residence by regulations made under section 102D(1)(ba) of the Bermuda Immigration and Protection Act 1956 subject to certain exceptions;
- (iii) take any mortgage of land in Bermuda (subject to certain exceptions); and
- (iv) acquire any bonds or debentures secured on any land in Bermuda except bonds or debentures issued by the Government or a public authority in Bermuda.

Exempted companies are specifically permitted to carry on business with persons outside Bermuda or to do business in Bermuda with an exempted company in furtherance only of the business of the exempted company carried on exterior to Bermuda. It may buy, sell or otherwise deal in shares, bonds, debenture stock obligations, mortgages or other securities issued or created by an exempted undertaking or a local company or any partnership which is not an exempted undertaking. It may transact banking business with a bank licensed in Bermuda. It may effect or conclude contracts in Bermuda and exercise in Bermuda all other powers so far as may be necessary for carrying on its business with persons outside Bermuda. It may act as manager or agent for or consultant or adviser to the business of another exempted company, provided that the company has an object in its memorandum of continuance to enable it to carry on such type of business.

The Company has been incorporated as an "exempted company". Accordingly the Company is authorised to carry on business outside Bermuda from a place of business in Bermuda but may not, without a specific licence granted by the Minister, conduct business within Bermuda. The Company is, therefore, permitted to establish a place of business in Bermuda in order to conduct business outside Bermuda or with other exempted companies in Bermuda. However, it may not engage in trading or other business activities (e.g. the provision of services) in Bermuda. Furthermore, as an exempted company, the Company has been designated as "non resident" for exchange control purposes and is authorised to deal in any currency of its choosing, other than Bermuda dollars.

The Company will, under the provisions of the Companies Act, be required to file in January of every year a declaration in writing stating what is the principal business of the Company and to pay the Government Fee.

**r. Accounting and Auditing Requirements under the Companies Act**

The Companies Act requires that a company shall cause to be kept proper records of account with respect to:

- (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (ii) all sales and purchases of goods by the company; and
- (iii) the assets and liabilities of the company.

It furthermore requires that the records of account shall be kept at the registered office of the Company or at such other place as the Directors think fit and shall at all times be open to inspection by the Directors or by a resident representative. The Companies Act also requires that these records of account also be maintained at the office of the resident representative where the Company is listed on an appointed stock exchange and the Company has appointed a resident representative. There is a proviso in the Companies Act to the effect that if the records of account are kept at some place outside Bermuda, there shall be kept at an office of the Company in Bermuda such records as will enable the Directors or the resident representative to ascertain with reasonable accuracy the financial position of the Company at the end of each three-month period (or each six-month period, where the Company is listed on an appointed stock exchange). Power is vested in the courts of Bermuda to order the Company to make available the records of account to any of the Directors of the Company should the Company for some reason refuse to do so. Furthermore, the Companies Act imposes a fine in the event of failure to comply with the aforementioned requirements which fine is limited to the sum of BD\$500.00 (approximately equivalent in value to US\$500.00), for the time being.

**s. Auditing Requirements**

The Companies Act requires that the board of every company shall, at least once in every year, lay before the company in general meeting:

- (i) financial statements for the period, which shall include:
  - (aa) a statement of the results of operations for such period;
  - (bb) a statement of retained earnings or deficits;
  - (cc) a balance sheet at the end of such period;
  - (dd) a statement of changes in the financial position for the period;
  - (ee) notes to the financial statements;
  - (ff) such further information as required by the Companies Act and the company's memorandum of continuance and its bye-laws;
- (ii) the report of the auditor in respect of the financial statements described above based upon the results of the audit made in accordance with generally accepted accounting principles; and
- (iii) the notes referred to in paragraph (ee) above shall include a description of the generally accepted accounting principles used in the preparation of the financial statements and where the accounting principles used are those of a country or jurisdiction other than Bermuda the notes shall disclose this fact and shall name the country or jurisdiction.

Financial Statements to be laid before the members in general meeting shall be signed on the balance sheet by a director of the company.

If for some reason it becomes impossible, for reasons beyond the reasonable control of the directors, to lay the financial statements before the members, it shall be lawful for the Chairman to adjourn the meeting for a period of up to ninety days or such longer period as the members may agree.

All members of a company are entitled to receive a copy of the financial statements prepared in accordance with the aforementioned requirements, at least seven days before the general meeting of the company at which the financial statements would be tabled.

The Bermuda Act also provides that companies listed on an appointed stock exchange may send summarised financial statements instead of the unabridged financial statements mentioned above. Each member can elect to receive unabridged financial statements for that period and/or any subsequent period. The summarised financial statements together with the auditors' report and notice to elect to receive the unabridged financial statements must be sent to members twenty-one days before the general meeting. A company shall send the full financial statements to a member within seven days of receipt of the member's election to receive the full financial statements.

The summarised financial statements must be derived from the company's financial statements and shall include:

- (a) a summarised report of the unabridged financial statements;
- (b) such further information extracted from the financial statements as the board of directors considers appropriate; and
- (c) a statement that it is only a summarised version of the company's financial statements and does not contain sufficient information to allow as full an understanding of the financial position, results of operations or changes in financial position or cash flows of the company as would be provided by unabridged financial statements.

There are certain exceptions in the case of members not entitled to receive notices of general meetings, joint holders of shares or where the address for a person is not known to the company.

The Companies Act also makes provision vesting power in the members in general meeting to waive the laying of the financial statements and auditors' report and to waive the appointment of an auditor. In order to do so it is required that all members and directors of the company agree either in writing or at a general meeting, that in respect of a particular interval no financial statement or auditors' report thereon need be laid before a general meeting.

The Companies Act contains specific requirements in Section 89 in relation to the appointment and disqualification of an auditor.

By way of general reference, the provisions of Sections 83, 84, 87, 87A, 87C, 88, 89 and 90 govern the preparation and maintenance of accounting records and audited financial statements.

**t. Continuation and Discontinuation of Companies**

- (i) A company incorporated outside Bermuda may be continued in Bermuda as an exempted company to which the provisions of the Companies Act and any other relevant laws of Bermuda may apply. The consent of the Minister will be required if the Company's Memorandum of Continuance includes special objects enabling it to carry on any "restricted business activity" within the definition of section 4A of the Companies Act; and
- (ii) An exempted company may be continued in a country or jurisdiction outside Bermuda as if it had been incorporated under the laws of that other jurisdiction and be discontinued under the Companies Act, provided that, among other things, it is an appointed jurisdiction pursuant to the Companies Act, or has been approved by the Minister, upon application by the Company for the purpose of the discontinuance of the Company out of Bermuda.

**u. Winding-Up and Liquidation Provisions of Bermuda Legislation***(i) Introduction:*

The winding-up of Bermuda companies is governed by the provisions of the Companies Act and by the Companies (Winding-Up) Rules 1982 (the "Rules") and may be divided into the following two types:

- (aa) Voluntary winding-up which commences with the members' resolution or upon the happening of a specified event (fixed or limited life company) and which itself can be sub-divided into a members' voluntary winding-up and a creditors' voluntary winding-up; and
- (bb) Compulsory winding-up, by petition presented to the courts of Bermuda followed by winding-up order.

*(ii) Voluntary Winding-Up:*

- (aa) **Members' Voluntary Winding-up** – A members' voluntary winding-up is only possible if a company is solvent. A Statutory Declaration of Solvency to the effect that a company is able to meet its debts within 12 months from the date of the commencement of its winding-up is sworn by a majority of the company's directors and filed with the Registrar.

A general meeting of members is then convened which resolves that the company be wound-up voluntarily and that a liquidator (responsible for collecting in the assets of the company, determining its liabilities and distributing its assets amongst its creditors and the surplus to the members) be appointed.

Once the affairs of the company are fully wound-up the liquidator prepares a full account of the liquidation which he then presents to the company's members at a special general meeting called for that purpose. This special general meeting must be advertised in an appointed newspaper in Bermuda at least one month before it is held. Within one week after this special general meeting is held, the liquidator shall notify the Registrar that the company has been dissolved.

- (bb) **Creditors' Voluntary Winding-up** – A creditors' voluntary winding-up may occur where a company is insolvent and a Declaration of Solvency cannot be sworn.

A board meeting is convened which resolves to recommend to the members of the company that the company be placed into a creditors' voluntary winding-up. This recommendation is then considered and, if thought fit, approved at a special general meeting of the company's members and, subsequently, at a meeting of the company's creditors.

Notice of the creditors' meeting must appear in an appointed newspaper on at least two occasions and the Directors must provide this meeting with a list of the company's creditors and a full report of the position of the company's affairs.

At their respective meetings, the creditors and members are entitled to nominate a person or persons to serve as liquidator(s) and whose responsibilities include collecting in the assets of the company, ascertaining its liabilities and distributing its assets ratably amongst its creditors in accordance with their proofs of debt. In addition to the liquidator, the creditors are entitled to appoint a Committee of Inspection which, under Bermuda law, is a representative body of creditors who assist the liquidator during the liquidation.

As soon as the affairs of the company are fully wound-up, the liquidator prepares his final account explaining the liquidation of the company and the distribution of its assets which he then presents to the company's members in a special general meeting and to the company's creditors in a meeting. Within one week after the last of these meetings, the liquidator sends a copy of the account to the Registrar who proceeds to register it in the appropriate public records and the company is deemed dissolved three months after the registration of this account.

*(iii) Compulsory Winding-Up:*

The courts of Bermuda may wind-up a Bermuda company on a petition presented by persons specified in the Companies Act and which include the company itself and any creditor or creditors of the company (including contingent or prospective creditors) and any member or members of the company.

Any such petition must state the grounds upon which the Bermuda court has been asked to wind-up the company and may include either one of the following:

- (aa) that the company has by resolution resolved that it be wound-up by the Bermuda court;
- (bb) that the company is unable to pay its debts;
- (cc) that the Bermuda court is of the opinion that it is just and equitable that the company be wound-up.

The winding-up petition seeks a winding-up order and may include a request for the appointment of a provisional liquidator.

Prior to the Winding-up Order being granted and the appointment of the provisional liquidator, (who under Bermuda law, may or may not be the Official Receiver – a government appointed officer) an interim provisional liquidator may be appointed to administer the affairs of the company with a view to its winding-up until he is relieved of these duties by the appointment of the provisional liquidator. (Often, the interim provisional liquidator is appointed the provisional liquidator).

As soon as the Winding-up Order has been made, the provisional liquidator summons separate meetings of the company's creditors and members in order to determine whether or not he should serve as the permanent liquidator or be replaced by some other person who will serve as the permanent liquidator and also to determine whether or not a Committee of Inspection should be appointed and, if appointed, the members of that Committee. The provisional liquidator notifies the Court of the decisions made at these meetings and the Court makes the appropriate orders.

A permanent liquidator's powers are prescribed by the Companies Act and include the power to bring or defend actions or other legal proceedings in the name and on behalf of the company and the power to carry on the business so far as may be necessary for the beneficial winding-up of the company. His primary role and duties are the same as a liquidator in a creditors' voluntary winding-up, i.e. to distribute the company's assets ratably amongst its creditors whose debts have been admitted.

As soon as the affairs have been completely wound-up, the liquidator applies to the courts of Bermuda for an order that the company be dissolved and the company is deemed dissolved from the date of this order being made.

**v. General**

Appleby, the Company's legal adviser on Bermuda law, have sent to the Company a letter of advice summarising aspects of Bermuda company law. This letter, together with a copy of the Companies Act, is available for inspection as referred to in Appendix VIII. Any person wishing to have a detailed summary of Bermuda company law or advice on the differences between it and the laws of any jurisdiction with which he is more familiar is recommended to seek independent legal advice.