

## **B. SUMMARY OF FOREIGN LAWS AND REGULATIONS**

The Company is incorporated in the BVI as a BVI business company limited by shares on 26 June 2015 under the BVI Business Companies Act, 2004 (as amended) (**BVI BC Act**) and is subject to BVI law. The following is a summary of certain provisions of the BVI company law and general policy. 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 BVI company law or a comparison of provisions that may differ from the laws of other jurisdictions with which interested parties may be more familiar.

### **1. SHARES**

There is no concept of authorised share capital, or of share capital, under the BVI BC Act. The memorandum of association of a company limited by shares must set out:

- (i) either the maximum number of shares the company is authorised to issue or state that the company is authorised to issue an unlimited number of shares; and
- (ii) the classes of shares that the company is authorised to issue, and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares.

The BVI BC Act provides that, subject to the memorandum and articles of association of a company, a share may be issued with or without a par value. Where a company issues shares with par value, the consideration for a share shall not be less than the par value of the share. A share may be issued for consideration in any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.

Subject to the memorandum and articles of association of a company, its directors have the power to issue shares of the company from time to time.

Subject to the BVI BC Act and to a company's memorandum or articles of association, shares may be issued, and options to acquire shares in a company granted, at such times, to such persons, for such consideration and on such terms as the directors may determine.

The issue by a company of a share that (i) increases a liability of a person to the company, or (ii) imposes a new liability on a person to the company, is void if that person, or an authorised agent of that person, does not agree in writing to becoming the holder of that share. A share is deemed issued when the name of the member is entered in the company's register of members.

A company may, subject to its memorandum and articles of association, (a) divide its shares, including issued shares, into a larger number of shares; or (b) combine its shares, including issued shares, into a smaller number of shares. A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series. Where par value shares are divided or combined, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares. A company shall not divide its shares if it would cause the maximum number of shares that the company is authorised to issue by its memorandum of association to be exceeded.

## **2. MEMBERSHIP**

Under the BVI BC Act, the entry of the name of a person in the register of members as a holder of a share in a company is prima facie evidence that legal title in the share vests in that person. A company may treat the holder of a registered share as the only person entitled to: (a) exercise any voting rights attaching to the share; (b) receive notices; (c) receive a distribution in respect of the share; and (d) exercise other rights and powers attaching to the share.

## **3. PURCHASE OF SHARES AND WARRANTS BY A COMPANY AND ITS SUBSIDIARIES**

A BVI business company may purchase, redeem or otherwise acquire its own shares in accordance with either the provisions of the BVI BC Act or its memorandum or articles of association.

A company may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted by the BVI BC Act or any provision of its memorandum or articles of association to purchase, redeem or otherwise acquire the shares without that consent.

No purchase, redemption or other acquisition of a company's own shares may be made unless the directors are satisfied on reasonable grounds that the company will, immediately after the purchase, redemption or acquisition, satisfy the solvency test. A company satisfies the solvency test if: (i) the value of its assets exceeds its liabilities; and (ii) the company is able to pay its debts as they fall due. The BVI BC Act provides for certain situations where this solvency test is not mandatory prior to repurchase, redemption or acquisition being permitted. These are where: (a) the company redeems the share or shares under and in accordance with section 62 of the BVI BC Act; (b) the company redeems the share or shares pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company; (c) the company purchases, redeems or otherwise acquires the share or shares by virtue of the provisions of section 176 or 179 of the BVI BC Act; or (d) the company acquires its own fully paid share or shares pursuant to section 59(1A) of the BVI BC Act.

The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is:

- (a) an offer to all members to purchase, redeem or otherwise acquire shares issued by the company that:
  - (i) would, if accepted, leave the relative voting and distribution rights of the members unaffected; and
  - (ii) affords each member a reasonable opportunity to accept the offer; or
- (b) an offer to one or more members to purchase, redeem or otherwise acquire shares:
  - (i) to which all members have consented in writing; or
  - (ii) that is permitted by the memorandum or articles of association and is made in accordance with section 61 of the BVI BC Act.

Shares that are purchased, redeemed or otherwise acquired may be cancelled or held as treasury shares. A company may hold shares that have been purchased, redeemed or otherwise acquired as treasury shares if (i) the memorandum or articles of association of the company do not prohibit it from holding treasury shares; (ii) the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and (iii) the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares,

does not exceed 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled. All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

#### **4. DISTRIBUTIONS**

Subject to the BVI BC Act and its memorandum and articles of association, the directors of the company may, by resolution, authorize a distribution (which includes a dividend) by the company to its members if the directors are satisfied, on reasonable grounds, that immediately after the distribution satisfy the solvency test, that is: (a) the company will be able to pay its debts as they fall due; and (b) the value of our assets exceeds its liabilities.

A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the aforesaid solvency test may be recovered by the company from the member unless (a) the member received the distribution in good faith and without knowledge of our failure to satisfy the solvency test; (b) the member has altered his position in reliance on the validity of the distribution; and (c) it would be unfair to require repayment in full or at all.

If, after a distribution is authorised and before it is made, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised. A director is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members if the director (a) ceased, after authorization but before the making of the distribution, to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made; and (b) failed to take reasonable steps to prevent the distribution being made.

#### **5. PROTECTION OF MINORITIES**

The BVI BC Act provides that if a company or a director of a company engages in or has engaged in, or proposes to engage in, conduct that contravenes the BVI BC Act or the memorandum or articles of association of the company, the BVI High Court (Court) may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, the BVI BC Act or the memorandum or articles or association of the company.

The BVI BC Act also contains provisions allowing the Court, on the application of a member of a company, to grant leave to the member to (a) bring proceedings in the name and on behalf of that company; or (b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company. No proceedings brought by a member or in which a member intervenes with the leave of the Court may be settled or compromised or discontinued without the approval of the Court. Under the BVI BC Act, a member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

In the case where a member of a company brings proceedings against the company and other members that have the same or substantially the same interest in relation to the proceedings, the Court may appoint that member to represent all or some of the members having the same interest and may, for that purpose, make such order as it thinks fit, including an order (a) as to the control and conduct of the proceedings; (b) as to the costs of the proceedings; and (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

The BVI BC Act provides that a member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may make an application to the Court. If the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of the section 184I of the BVI BC Act, one or more of the following orders: (a) in the case of a member, requiring the company or any other person to acquire the member's shares; (b) requiring the company or any other person to pay compensation to the member; (c) regulating the future conduct of our affairs; (d) amending the memorandum or articles of association of the company; (e) appointing a receiver of the company; (f) appointing a liquidator of the company under section 159(1) of the BVI Insolvency Act on the grounds specified in section 162(1)(b) of that Act; (g) directing the rectification of the records of the company; or (h) setting aside any decision made or action taken by the company or its directors in breach of the BVI BC Act or the memorandum or articles of association of the company. None of the foregoing orders may be made against the company or any other person unless the company or that person is a party to the proceedings in which the application is made.

A member or the BVI Registrar of Corporate Affairs may apply to the Court ex parte or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies. If, upon such an application, it appears to the Court that: (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person; (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or (c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly, the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar of Corporate Affairs.

The BVI BC Act provides that a member of a company is entitled to payment of the fair value of his shares upon dissenting from any of the following:

- (1) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (2) a consolidation, if the company is a constituent company;
- (3) any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including:
  - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter,
  - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition, or
  - (iii) a transfer pursuant to the power described in section 28(2) of the BVI BC Act;
- (4) a redemption of his shares by the company pursuant to section 176 of the BVI BC Act; and
- (5) an arrangement, if permitted by the Court.

## **6. MANAGEMENT**

The BVI BC Act provides that, subject to the memorandum or articles of association of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance of the enforcement thereof, of more than 50% in value of the assets of the company (other than a transfer pursuant to a power described in section 28(3) of the BVI BC Act), if not made in the usual or regular course of business carried on by the company, must be approved by a resolution of members and in the manner provided in section 175 of the BVI BC Act.

A director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company. A director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes the BVI BC Act or the memorandum or articles of association of the company. A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation, (a) the nature of the company; (b) the nature of the decision; and (c) the position of the director and the nature of the responsibilities undertaken by him.

## **7. ACCOUNTING AND AUDITING REQUIREMENTS**

A BVI business company is required by the BVI BC Act to keep records that: (a) are sufficient to show and explain its transactions; and (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

## **8. TAXATION IN THE BVI**

A BVI business company is exempt from all provisions of the Income Tax Ordinance of the VI (including with respect to all dividends, interests, rents, royalties, compensations and other amounts payable by the company to persons who are not resident in the BVI). Capital gains realized with respect to any shares, debt obligations or other securities of the company by persons who are not resident in the BVI are also exempt from all provisions of the Income Tax Ordinance of the BVI.

No estate, inheritance, succession or gift tax is payable by persons who are not resident in the BVI with respect to any shares, debt obligations or other securities of the company, save for interest payable to or for the benefit of an individual resident in the European Union.

## **9. STAMP DUTY ON TRANSFER**

No stamp duty is payable in the BVI on a transfer of shares, debt obligations or other securities in a BVI business company which is not a land owning company. A company is a land owning company if it, or any of its subsidiaries, has an interest in any land in the BVI.

## **10. INSPECTION OF CORPORATE RECORDS**

A member of a company is entitled, on giving written notice to the company, to inspect the memorandum and articles of association, the register of members, the register of directors, and minutes of meetings and resolutions of members and of those classes of members of which he is a member, and to make copies of or take extracts from the documents and records maintained at the office of the registered agent of the company. Subject to the memorandum and articles of association of the company, its directors may, if they are satisfied that it would be contrary to the company's interests to allow the member to inspect the register of members, register of directors or minutes/resolutions of members or part of any such documents, refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records. The directors are required, as soon as reasonably practicable, to notify the member concerned. Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the Court for an order that he should be permitted to inspect the document or to inspect the document without limitation.

The BVI BC Act requires a business company to keep minutes of all meetings of directors, members, committees of directors and committees of members and copies of all resolutions consented to by directors, members, committees of directors, committees of officers and committees of members. The minutes of meetings and resolutions of members and of classes of members, and the minutes of meeting of directors and committees of directors are required by the BVI BC Act to be kept at the office of the company's registered agent or at such other places, within or outside the BVI, as the directors may determine. A company shall keep at the office of its registered agent the memorandum and articles of association of the company, the register of members (or a copy thereof), the register of directors (or a copy thereof) and copies of all notices and other documents filed by the company in the previous ten years. The BVI BC Act requires a company to have a common seal and an imprint of the seal shall be kept at the office of its registered agent.



A business company is required to keep a register of members containing the names and addresses of the persons who hold registered shares in the company, the number of each class and series of registered shares held by each member, the date on which the name of each member was entered in the register of members and the date on which any person ceased to be a member. The register of members may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents. The entry of the name of a person in the register of members as a holder of a share in a company is prima facie evidence that legal title in the share vests in that person.

The BVI BC Act requires a business company to keep a register known as a register of directors containing the particulars as prescribed under the BVI BC Act. The register of directors is prima facie evidence of any matters directed or authorised by the BVI BC Act to be contained therein. A company shall file for registration by the BVI Registrar of Corporate Affairs a copy of its register of directors. A company that has filed for registration by the BVI Registrar of Corporate Affairs a copy of its register of directors shall, within 30 days of any changes occurring, file the changes in the register by filing a copy of the register containing the changes.

## **11. LIQUIDATION**

### *(i) Where the business company is solvent*

Where it is proposed to liquidate a solvent business company (that is, the company either has no liabilities or it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities), the directors of the company shall (a) make a declaration of solvency in the approved form stating that, in their opinion, the company is and will continue to be able to discharge, pay or provide for its debts as they fall due and the value of its assets equals or exceeds its liabilities, and (b) approve a liquidation plan specifying: (i) the reasons for the liquidation of the company, (ii) their estimate of the time required to liquidate the company, (iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company, (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator, and (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions. In accordance with the memorandum and articles of association of the company, the directors and/or the members of the company will pass a

resolution to appoint a voluntary liquidator and will give notice to the selected liquidator of his appointment. The liquidation of a company commences at the time at which the notice of the voluntary liquidator's appointment is filed. A resolution to appoint a voluntary liquidator is void and of no effect unless the voluntary liquidator files notice of his appointment on or before the fourteenth day following the date of the resolution.

Within 14 days of the date of his appointment, the voluntary liquidator is required to file a notice of his appointment in an approved form, the declaration of solvency made by the directors and a copy of the liquidation plan, with the Registrar. He is also required, within 30 days of the commencement of the liquidation, to advertise notice of his appointment in the manner prescribed.

With effect from the commencement of the voluntary liquidation of a company, the voluntary liquidator has custody and control of the assets of the company.

However, the right of a secured creditor to take possession of and realize or otherwise deal with assets of the company over which the creditor has a security interest will not be affected.

The directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under Part XII of the BVI BC Act.

The directors, after the commencement of the voluntary liquidation, may authorize the liquidator to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company where the liquidation plan does not give the liquidator such authorization, and exercise such powers as the liquidator, by written notice, may authorize them to exercise.

The members of a company may, by resolution, appoint an eligible individual as an additional voluntary liquidator to act jointly with the voluntary liquidator or voluntary liquidators already appointed.

The Court may, at any time after the appointment of a voluntary liquidator, on application by a director, member or creditor of the company, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so. Where such an order is made, the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the BVI Registrar of Corporate Affairs shall strike the company off the BVI Register of Companies and issue a certificate of dissolution in the approved form certifying that the company has been dissolved. The dissolution of the company is effective from the date of the issue of the certificate.

Immediately following the issue by the BVI Registrar of Corporate Affairs of a certificate of dissolution, the person who, immediately prior to the dissolution, was the voluntary liquidator of the company shall cause to be published in the Gazette, a notice that the company has been struck off the BVI Register of Companies and dissolved.

*(ii) Where the business company is insolvent*

If at any time the voluntary liquidator of a company in voluntary liquidation is of the opinion that the company is insolvent (that is to say, either the value of the company's liabilities exceeds, or will exceed, its assets or, the company is, or will be, unable to pay its debts as they fall due), he shall forthwith send a written notice to the Official Receiver in the approved form.

The voluntary liquidator shall then call a meeting of creditors of the company to be held within twenty one days of the date of the aforesaid notice to the Official Receiver. The said creditors meeting shall be treated as if it were the first meeting of the creditors of a company called under section 179 of the BVI Insolvency Act by a liquidator appointed by the members of a company and, sections 179 and 180 of the BVI Insolvency Act shall apply to the calling and holding of such a meeting.

Where a voluntary liquidator is not an eligible licensed insolvency practitioner with respect to the company, the Official Receiver may apply to the Court ex parte for the appointment of himself or an eligible licensed insolvency practitioner as the liquidator of the company and the Court may make the appointment subject to such conditions as it considers appropriate.

From the time that an appointed liquidator first becomes aware that the company is not, or will not be, able to pay its debts he shall conduct the liquidation as if he had been appointed liquidator under the BVI Insolvency Act.

The BVI Insolvency Act will apply to the liquidation of the company subject to such modifications as are appropriate and the liquidation of the company shall be deemed to have commenced on the date of the appointment of the voluntary liquidator.

## **12. RECONSTRUCTION**

There are statutory provisions which facilitate arrangements which involve a plan of arrangement being approved by a resolution of directors of the company and application being made to the Court for approval of the proposed arrangement. Upon approval by the Court, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto and give notice to the persons whom the order of Court requires notice to be given and submit the plan of arrangement to those persons for such approval, if any, as the Court order requires.

After the plan of arrangement has been so approved, articles of arrangement shall be executed by the company. The articles of arrangement shall contain the plan of arrangement, the order of the Court approving the plan of arrangement and the manner in which the plan of arrangement was approved (if approval was required by the order of the Court). The articles of arrangement shall be filed with the BVI Registrar of Corporate Affairs who shall register them. Upon registration of the articles of arrangement, the Registrar shall issue a certificate in the approved form certifying that the articles of arrangement have been registered.

An arrangement is effective on the date the articles of arrangement are registered by the BVI Registrar of Corporate Affairs or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

## **13. COMPULSORY ACQUISITION**

Subject to the memorandum or articles of association of a company, members of the company holding 90% of the votes of the outstanding shares entitled to vote on a merger or consolidation, and members of the company holding 90% of the votes of the outstanding shares of each class of shares entitled to vote as a class, may give a written instruction to the company directing the company to redeem the shares held by the

remaining members. Upon receipt of the written instruction, the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable. The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

#### **14. INDEMNIFICATION**

Section 132 of the BVI BC Act provides that subject to the memorandum or articles of association of a company, the company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company, or (b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, provided that the said person had acted honestly and in good faith and in what he believed to be in the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful. Any indemnity given in breach of the foregoing proviso is void and of no effect.

Expenses, including legal fees, incurred by a director or a former director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director or the former director, as the case may be, to repay the amount if it shall ultimately be determined that the director is not entitled to be indemnified by the company. In the case of a former director, the undertaking to be furnished by such former director may also include such other terms and conditions as the company deems appropriate.

A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 132 of the BVI BC Act.