

## PB2019-18

### Shadow Board – Shetland Merger Project

<b>Committee</b>	Shadow Board
<b>Subject</b>	Report from Project Manager on options for adopting a Memorandum and Articles of Association for the new college.
<b>Action requested</b>	<input type="checkbox"/> For information only <input type="checkbox"/> For discussion <input checked="" type="checkbox"/> For recommendation
<b>Brief summary of the paper</b>	The adoption of a new Memorandum and Articles of Association will be required before vesting. This report outlines the process and implications of adoption.
<b>Resource implications</b> [if yes, please provide detail]	Yes Legal expenses and Companies House registration fees
<b>Risk implications</b> [if yes, please provide detail]	Yes See risk assessment
<b>Date paper prepared</b>	21-Jun-19
<b>Date of committee meeting</b>	26-Jun-19
<b>Author</b>	Project Manager Merger Project
<b>Equality and diversity</b>	No
<b>Status</b>	Non-confidential
<b>Freedom of Information</b> Can this paper be included in 'open' business?*	Yes
<b>Status following the meeting</b>	

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<b>1. Background</b>	
<b>1.1</b>	<p>The merged Shetland College will require a robust Memorandum and Articles of Association (Mem &amp; Arts). The terms of this must be suitable for the new college to be assigned to UHI, and to be accepted as a fundable body by Scottish Funding Council. The new college will also be in the best position to secure investment from philanthropic sources (trusts, foundations and individual donors) if it has charitable status.</p> <p>It has already been agreed by previous iterations of the Programme Board that the new college should be unincorporated.</p>
<b>1.2</b>	<p>The timing of the adoption of the Mem &amp; Arts is that it must be done before vesting. But it can be done as soon as a Mem &amp; Arts is agreed.</p> <ul style="list-style-type: none"><li>• Legal advice may take time, although when/if the service is requested from a provider, a timescale can be requested that suits the Shadow Board. If legal advice is requested on an already robust agreed draft Mem &amp; Arts, particularly if this is modelled on similar Mem &amp; Arts for other UHI colleges, this should be quick and inexpensive.</li><li>• Registration with Companies House is usually straightforward, achieved in weeks, not months.</li><li>• Registration with OSCR (the charities regulator) is slower. Again, this will be non-contentious if the Mem &amp; Arts is modelled on existing, accepted college charities. However, this can take up to three months.</li></ul>
<b>1.3</b>	<p>From adoption of a new Mem &amp; Arts:</p> <ul style="list-style-type: none"><li>• A Chairperson and Office Bearers will be required, with directors and ordinary members. These people must then work to governance framework of the new Mem &amp; Arts – which they will do for the new college anyway.</li><li>• The number of staff representatives on the formalised Board would reduce to two (one teaching and one non-teaching). However, co-opting additional members for the period before vesting is an option.</li><li>• Adoption changes the status of the Shadow Board. The Shadow Board could remain in place whilst new directors are sought. Or, Shadow Board members could transfer to the new Board, with some adjustments to the roles as required (a single Chair is the main consideration). The Board would remain in charge of the new college only. It takes no responsibility for NAFC or Shetland College which remain the responsibility of their respective Boards until they formally transfer their undertakings (at vesting).</li><li>• A new company could become an employer or begin to process financial transactions (e.g. open a bank account for the new company). However, it is then also liable, as an employer with regards to employment law, and for accounting and reporting under company and charity law. Policies and procedures allowing the company to operate would be needed quickly if any functions were undertaken by it.</li><li>• The Shetland Fisheries Training Centre Trust must make a decision to dissolve and at that stage, the transfer of its assets and liabilities to a new body can only take place if it is charitable and if the Mem &amp; Arts of that charity are deemed to reflect those of SFTC by OSCR.</li></ul>
<b>1.4</b>	<p>It is possible for the Company to be functioning, pending charitable status. However, there are a number of considerations which inform the recommendation to proceed with securing charitable status at an early stage:</p> <ul style="list-style-type: none"><li>• Seeking additional external investment for the new college will have a significant lead time even with charitable status. However, the sooner it is a charity, the sooner applications and proposals can be made.</li><li>•</li></ul>

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2. Report authors	
2.1	Project Manager, Merger Project
3. Partners / stakeholders	
3.1	Shetland Fisheries Training Centre Trust – the transfer of their assets is a decision for the Trust Board in consultation with OSCR. They will need at least three months to prepare for this.
3.2	<b>Students</b> – no impact, although the Mem & Arts must be designed to serve their interests (and needs to be in their interests anyway to be considered charitable)
3.3	<b>Funders/sponsors</b> – some impact. Any existing charitable funders with grants in place at the time of transferring assets/liabilities (i.e. on vesting), must be consulted with a view to transferring grant agreements and the associated obligations. This should be done in advance of vesting so that there is a smooth transition.
3.4	<b>EIS members</b> – the national EIS position is that colleges should become incorporated bodies. The EIS will talk to this point at the meeting.

4. Shadow Board focus	
4.1 Financial	<ul style="list-style-type: none"> <li>The adoption of Mem &amp; Arts begins the obligation of financial reporting (and registration of Directors) to Companies House, even if income and expenditure is zero.</li> <li>If expenditure is any more than zero, this will need to be subject to an appropriate level of external audit.</li> </ul>
4.2 Strategic	<ul style="list-style-type: none"> <li>Links to all other policies the Board may develop. The Mem &amp; Arts is a key governance document.</li> <li>Ensures recognition by OSCR, UHI, SFC.</li> </ul>
4.3 HR	
4.4 Legal / regulatory	<ul style="list-style-type: none"> <li>Is they key legal framework for the new college, to be compliant with Company and Charity law</li> </ul>
5. Other	

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### 6. Draft Memorandum and Articles of Association

This draft has been based on the working Memorandum and Articles of Association of West Highland College. Sections are presented here alongside the existing Trust Deeds for the SFTCT. There is no comparable governance document for Shetland College as an entity of SIC.

Note that Trusts are a different legal form than companies with charitable status. Therefore, matters of governance proposed below have reflected the legal form of a company with charitable status. The sections below and the numbering are not in the format of a final document.

Section	Recommended draft text based on West Highland College	Relevant SFTCT section
<p>Objects</p> <p>Note, these are stated in words very similar to those stated by OSCR as being charitable objects. Using similar terms usually helps OSCR to agree the objects are charitable.</p>	<ol style="list-style-type: none"> <li>1. To advance education, and primarily further and higher education of people within the Shetland Islands (“the Operating Area”), and the provision of training in skills of all kinds (particularly such skills as will assist the participants in obtaining paid employment) including all aspects of the Shetland Fishing Industry, marine and coastal industries, and other local industries;</li> <li>2. To promote research relevant to local industry, community development, the protection and sustainability of marine and coastal environments, arts, heritage and culture; and to make available evidence to educate, provide training and promote best practice;</li> <li>3. To promote, protect, conserve, rehabilitate and improve the marine and coastal environment, including all animal and plant life, in the Shetland Islands and elsewhere;</li> <li>4. To prevent and relieve poverty, and in particular, among residents of the Operating Area;</li> <li>5. To relieve unemployment particularly among residents of the Operating Area for the public benefit in such ways as may be thought fit, including assistance to find employment;</li> </ol>	<p>To secure the establishment, maintenance and management of a Shetland Fisheries Training Centre to provide formal and informal education and training in all aspects of the Shetland Fishing Industry including fish catching, fish processing, fish farming, marine engineering, navigation, seamanship, research and all related and ancillary activities;</p> <p>To educate the public generally and those involved in the marine environment in particular with regard to seamanship and navigation, the skills required by both the Shetland fishing industry, particularly in relation to sustainable fishing, and by those involved with the sea adjacent to Shetland islands and elsewhere;</p> <p>To promote scientific research into the marine environment, marine renewables and a sustainable fishing industry and to use the results thereof to provide training and to promote best practice;</p> <p>To promote, protect, conserve, rehabilitate and improve the marine environment, including its</p>

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	<ol style="list-style-type: none"><li>6. To advance citizenship and community development (including through the promotion of trade and commerce) and, in particular, among residents of the Operating Area;</li><li>7. To advance the arts, heritage and culture; of all aspects of island and sea-going life, and</li><li>8. To promote, establish, operate and/or support other similar schemes and projects which further charitable purposes;</li><li>9. To act as an Academic Partner with UHI as Regional Strategic Body.</li></ol>	<p>animal and plant life, in the sea adjacent to the Shetland Islands and elsewhere;</p> <p>To promote and preserve the heritage of both the Shetland fishing industry and those involved with the sea adjacent to the Shetland Islands and elsewhere;</p> <p>To hold the Trust Fund at the Trustees' sole discretion to make grants, loans or payments out of the income or capital of the Trust Fund for these objects or any of them or for such other purpose or purposes charitable in law solely for the benefit of the Shetland Islands or of the inhabitants of those islands as the Trustees shall determine: Declaring that such grants or loans may be made on such terms and subject to such conditions as the Trustees may think fit and in the case of loans with or without security and upon such terms as to interest, if any, and repayment as the Trustees in their sole discretion think proper; Declaring further that not act of the Trustees shall be deemed to be ultra vires by reason only that persons who are not inhabitants of the Shetland Islands may or will benefit indirectly by such act, and</p> <p>To undertake such other purpose or purposes charitable in law solely for the benefit of the Shetland Islands or the inhabitants of those islands as the Trustees may from time to time determine.</p>
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<p>Powers</p> <p><i>I have grouped these for ease of discussion. The groupings may be removed in the formal document.</i></p>	<p>In pursuance of the company's objects (but not otherwise) the company shall have the following powers:</p> <p><b>Learning/education/training powers</b></p> <ol style="list-style-type: none"><li>10. To establish and operate colleges and/or other learning centres in the Operating Area.</li><li>11. To establish and administer educational programmes within the Operating Area.</li><li>12. To promote links between the community, potential employees and employers.</li><li>13. To assist individuals in finding paid employment and to liaise with potential employers with a view to developing vocational and other training schemes which are aligned with the requirements of businesses.</li><li>14. To promote, support (whether financially or otherwise) and/or conduct educational and training courses, programmes. Conferences, seminars, workshops and events.</li><li>15. To design, prepare, publish and/or distribute printed, digital and media content of any kind for sharing information.</li><li>16. To carry on any other activity which may appropriately be carried on in connection with any of the objects of the company.</li></ol> <p><b>Research / consultancy powers</b></p> <ol style="list-style-type: none"><li>17. To provide and/or assist in the provision of information, advisory, support and/or consultancy services which advance any of the aims of the company.</li></ol> <p><b>Powers concerning relationships with other agencies/organisations</b></p> <ol style="list-style-type: none"><li>18. To liaise with international, UK, Scottish and local government authorities and agencies, further or higher education establishments, economic development agencies, voluntary sector bodies and others, all with a view to maximising the effectiveness if the company in pursuing its objectives.</li></ol>	<p>The Trustees shall have the fullest powers of administration and management of the Trust Fund and in particular and without prejudice to these general powers the Trustees shall have the powers specifically in the Schedule of Powers annexed (<i>not available at time of drafting</i>)</p>
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	<p>19. To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of activities of the company and to obtain from any such organisation, government or authority any right, privilege or concession.</p> <p>20. To enter into any arrangement for co-operation or mutual assistance with any charity, whether incorporated or unincorporated.</p> <p><b>Powers enabling income generation/fundraising</b></p> <p>21. To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust, for any of the objects of the company.</p> <p>22. To take such steps (by way of personal or written appeals, public meetings or otherwise) as may be deemed expedient for the purpose of procuring contributions to the funds of the company, whether by way of subscriptions, grant, loans, donations or otherwise.</p> <p>23. To carry out any of these objects in any part of the world as principal, agent, contractor, sub-contractor, trustee or any person acting in any other capacity and either alone or in conjunction with others.</p> <p><b>Powers relating to potential subsidiary companies</b></p> <p>24. To promote companies whose activities may further one or more of the above objects or may generate income to support the activities of the company, acquire and hold shares, stocks, debentures and other interests in such companies and carry out in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company.</p> <p>25. To acquire and take over the whole or any part of the undertaking and liabilities of any person entitled to any property or rights suitable for the objects of the company.</p> <p><b>Property powers</b></p> <p>26. To purchase, lease, hire, take in exchange, and otherwise acquire any property and rights which may be advantageous for the purposes of the activities of the company.</p>	
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	<p>27. To improve, manage, enhance, develop, turn to account and otherwise deal with all or any part of the undertaking, property and rights of the company.</p> <p>28. To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the undertaking, property and rights of the company.</p> <p><b>Financial powers</b></p> <p>29. To lend money and give credit to any person, with or without security, and to grant guarantees and contracts of indemnity on behalf of any person;</p> <p>30. To borrow money and give security for the payment of money by, or the performance of other obligations of, the company or any other person.</p> <p>31. To draw, make, accept, endorse, discount, negotiate, execute and issue cheques and other negotiable financial instruments.</p> <p>32. To invest in funds not immediately required for the purposes of the company's activities in such investments and securities (including land in any part of the world) and that in such a manner as may from time to time be considered advantageous (subject to compliance with any applicable legal requirement) and to dispose of and vary such investments and securities.</p> <p>33. To establish and support any association or other unincorporated body having objects altogether or in part similar to those of the company and to promote any company or other incorporated body formed for the purpose of carrying on any activity which the company is authorised to carry on.</p> <p>34. To subscribe and make contributions to or otherwise support charities, whether incorporated or unincorporated, and to make donations for any charitable purpose connected with the activities of the company or with the furtherance of its objects.</p> <p><b>Powers in relation to employees and pensions</b></p> <p>35. To remunerate any individual in the employment of the company and to establish, maintain and contribute to any pension or</p>	
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	<p>superannuation fund for the benefit of, and to give or procure the giving of any donation, pension, allowance or remuneration to and to make any payment for and towards the insurance of, any individual who is, or was, at any time in the employment of the company and the spouse, widow/er, relatives and dependants of any such individual; to establish, subsidise and subscribe to any institution, association, club and fund which may benefit any such person.</p> <p><b>General powers</b></p> <p>36. To oppose or object to any application or proceedings which may prejudice the company's interests.</p> <p>37. To effect insurance against risks of all kinds.</p> <p>38. To do anything which may be incidental or conducive to the attainment of any of the objects of the company.</p>	
<p>Application of income and property</p> <p><i>These clauses are important to demonstrating charity requirements are met.</i></p>	<p>39. The income and property of the company shall be applied solely towards the promotion of its objects.</p> <p>40. No part of the income of the property of the company shall be paid or transferred (directly or indirectly) to the members of the company by way of dividend, bonus or otherwise.</p> <p>41. No director of the company (other than Executive Directors and Staff Representative Directors) shall be appointed as a paid employee of the company; no director (other than Executive Director and Staff Representative Directors) shall hold any office under the company for which a salary or fee is payable.</p> <p>42. No benefit (whether in money or in kind) shall be given by the company to any director except:</p> <ul style="list-style-type: none"> <li>○ Repayment of out of pocket expenses</li> <li>○ In the case of the Chair, an annual amount (to be decided upon from time to time by the Board) to cover various incidental costs that cannot be covered in the clause above, or</li> </ul>	<p>Chair may be paid an honorarium.</p>

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	<ul style="list-style-type: none"> <li>○ Reasonable payment in return for particular services (not being of a management nature) actually rendered to the company, or</li> <li>○ In the case of Executive Directors and Staff Representative Directors only, reasonable remuneration, and reasonable pension and/or other benefits, paid or provided to her/him in her/his capacity as an employee of the company.</li> </ul>	
<p>Limit on members' liability</p> <p><i>Note that this does not protect members in cases where there has been negligence or questionable decision making.</i></p> <p><i>Insurance can provide further indemnity but again will not cover negligence or questionable decision making.</i></p>	<p>43. The liability of members is limited.</p> <p>44. Each member undertakes that if the company is wound up while she/he is a member (or within one year after she/he ceases to be a member), she/he will contribute – up to a maximum of £1 – to the assets of the company, to be applied towards:</p> <ul style="list-style-type: none"> <li>○ Payment of the company's debts and liabilities contracted before she/he ceases to be a member;</li> <li>○ Payment of the costs, charges and expenses of winding up; and</li> <li>○ Adjustment of the rights of contributories among themselves.</li> </ul>	
<p>Structure of the Company</p>	<p>44. The structure of the company consists of:</p> <ul style="list-style-type: none"> <li>● The MEMBERS – who have the right to attend the annual general meeting (and any extraordinary general meeting) and have important powers under the articles of association and the Companies Act; in particular, the members take decisions in relation to changes to the articles themselves</li> <li>● The DIRECTORS – who hold regular meetings during the period between annual general meetings, and generally control and</li> </ul>	

	<p>supervise the activities of the company; in particular, the directors are responsible for monitoring the financial position of the company.</p> <p><b>Members</b></p> <p>45. The members of the company shall consist of such individuals as are admitted to membership from time to time under the following clauses:</p> <p>46. A member may not transfer her/his membership to any other individual or body.</p> <p>47. No employee of the company (other than the Executive Director and the Staff Representative Directors) may become a member; a person (other than the Executive Director and the Staff Representative Directors) ceases to be a member if she/he becomes an employee of the company.</p> <p>48. Qualifications for membership: Membership is open to:</p> <ul style="list-style-type: none"><li>○ The individual holding the post of Principal of the College;</li><li>○ The staff representatives as elected</li><li>○ The student representative, as elected</li><li>○ The directors appointed</li></ul> <p>49. Application for membership:</p> <ul style="list-style-type: none"><li>• Any individual eligible for membership who wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require), signed by him/her.</li><li>• An individual eligible for membership shall automatically become a member of the company immediately on receipt by the company of a signed application for membership.</li></ul> <p>50. Membership subscription For the avoidance of doubt no member shall require to pay a membership subscription, either at the time of admission as a member or on any annual or other periodic basis.</p> <p>51. Register of members</p>	
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	<p>The directors shall maintain a register of members, setting out the full name and address of each member, the date on which she/he was admitted to membership, and the date on which any individual ceased to be a member.</p> <p>52. Cessation of membership</p> <ul style="list-style-type: none"><li>• Membership shall cease on death</li><li>• An individual admitted to membership shall automatically cease to be a member of she/he (for whatever reason) ceases to be a director of the company</li><li>• Any individual who wishes to withdraw from membership shall lodge with the company a written notice of retiral (in such form as the directors require), signed by her/him; on receipt of the notice by the company, she/he will cease to become a member.</li></ul>	
General meetings	<p>53. The directors shall convene an annual general meeting in each year.</p> <p>54. Not more than 15 months shall elapse between one annual general meeting and the next.</p> <p>55. The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Companies Act) or a requisition by a resigning auditor (under section 518 of the Companies Act).</p> <p>56. Subject to the provisions of article x, the directors may call general meetings at any time.</p> <p>Notice of general meetings</p> <p>57. At least 14 days' clear notice of a general meeting must be given to all the members and directors and (if auditors are in office at the time) to the auditors.</p> <p>58. The reference to "clear days" means that the period of notice does not include the day after the notice is posted nor the day of the meeting.</p> <p>59. A notice calling a meeting shall specify the time, date and place of the meeting, and:</p> <ul style="list-style-type: none"><li>• Indicate the general nature of any business to be dealt with at the meeting;</li></ul>	

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	<ul style="list-style-type: none"> <li>• If a special resolution (or a resolution requiring special notice under the Companies Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution; and</li> <li>• Contain a statement informing members of their right to appoint a proxy.</li> </ul> <p>60. Notice of annual general meetings shall specify the meeting is to be an annual general meeting.</p> <p>61. Notice of every general meeting shall be given in electronic form, except where members specifically request hard copy form.</p>	
<p>Special Resolutions and Ordinary Resolutions</p>	<p>Special Resolutions</p> <p>62. A “special resolution means a resolution of the members, which is either:</p> <p>a) passed by 75% or more of the votes cast in favour of the resolution at a general meeting (with no account taken of abstentions or members absent from the meeting who have not appointed a proxy), providing proper notice of the meeting and if the intention to propose the resolution has been given in accordance with correct procedure or</p> <p>b) b) passed by members representing not less than 75% of the total voting rights of eligible members, where passed by way of written resolution.</p> <p>63. The provisions of the Companies Act allows the company, by special resolution, to:</p> <ul style="list-style-type: none"> <li>• Alter its name</li> <li>• Alter any provision of these articles or adopt new articles of association.</li> </ul> <p>Ordinary resolutions</p> <p>64. An ordinary resolution is either:</p> <p>a) Passed by majority vote in favour of the resolution, providing proper notice of the meeting and if the intention to propose the resolution has been given in accordance with correct procedure or</p>	

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	<p>c) Passed by members representing a simple majority of the total voting rights of eligible members, where passed by way of written resolution.</p>	
<p>Proceedings at general meetings</p>	<p>65. No business shall be transacted at any general meeting unless a quorum is present; the quorum shall be six members, present in person or represented by proxy.</p> <p>66. If the quorum required is not present within half an hour of the appointed time for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting; if, at the adjourned meeting, a quorum is not present within half an hour of the appointed time for the meeting, the members present shall form a quorum.</p> <p>67. The Chair of the company shall (if present and willing to act as a chairperson) preside as chairperson of each general meeting; if the Chair is not present and willing to act as chairperson within 15 minutes of the appointed time for the meeting, the Vice Chair shall (if present and willing to act as chairperson) preside as chairperson of the meeting.</p> <p>68. If neither the Chair nor the Vice Chair of the company is present and willing to act as chairperson within 15 minutes of the appointed time for the meeting, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.</p> <p>69. The chairperson may, with the consent of the majority of members present at the meeting (and must, if a majority of members present at the meeting request her/him to do so), adjourn the meeting but not for a period in excess of thirty days; no notice need be given of an adjourned meeting.</p> <p>70. A resolution put to the vote of a meeting shall be decided on a show of hands unless, before the show of hands, or immediately after the result of a show of hands is declared, a secret ballot is demanded by</p>	

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	<p>the chairperson or by any other person present at the meeting and entitled to vote (whether as a member or proxy member).</p> <p>71. If a secret ballot is demanded in accordance with the clause above, it shall be taken at once and shall be conducted in such a manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.</p>	
Voting at general meetings	<p>72. Every member shall have one vote (whether by show of hands or secret ballot) which may be given in person or by proxy.</p> <p>73. A member who wishes to appoint a proxy to vote on his/her behalf at any general meeting shall lodge with the company, at the company's registered office or electronic address, a written or electronic instrument of proxy (in such a form as the directors require), signed by him/her.</p> <p>74. The instrument of proxy must be received not less than 48 hours before the time for holding the meeting. In calculating the 48 hour period, no account shall be taken of non-working days.</p> <p>75. A proxy need not be a member of a company.</p> <p>76. A member shall not be entitled to appoint more than one proxy to attend the same general meeting.</p> <p>77. A proxy appointed to attend and vote at any general meeting instead of a member shall have the same right as the member who appointed her/him to speak at the meeting.</p> <p>78. The chairperson of a general meeting shall not be entitled to a casting vote if an equality of votes arises in relation to any resolution.</p> <p>79. No objection may be raised as to the validity of any vote tendered at a general meeting, except at the meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid; any such objection shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.</p>	
Written resolutions	<p>80. A written resolution can be passed by the members of the company (having been proposed by either the members or the directors in</p>	

	<p>accordance with the procedures detailed in Chapter 2 of Part 13 of the Companies Act) and will have effect as if passed by the members of the company in general meeting; a written resolution is passed when the required majority of eligible members have signified their agreement to it by sending to the company (in hard copy or electronic form) an authenticated document which identifies the resolution to which it relates and which indicates the members' agreement to it (which agreement cannot thereafter be revoked).</p> <p>81. For the purposes of the preceding article:</p> <ul style="list-style-type: none"><li>• The reference to “eligible members” is to those members who would have been entitled to vote on the resolution on the circulation date of the resolution (which is either (a) the date on which copies of the written resolution are sent or submitted to the members in accordance with the procedures detailed in Chapter 2 of Part 13 of the Companies Act; or (b) if copies are sent or submitted to members on different days, the first of those dates);</li><li>• The reference to “required majority” is to the majority required to pass an ordinary or special resolution under the Companies Acts and follows:<ul style="list-style-type: none"><li>○ In order to pass an ordinary resolution by way of written resolution, it must be passed (in accordance with Article 80) by members representing a simple majority of the total voting rights of eligible members;</li><li>○ In order to pass a special resolution by way of written resolution, it must be passed (in accordance with Article 80) by members representing not less than 75% of the total voting rights of eligible members and the resolution must specifically state that it was proposed as a special resolution.</li></ul></li></ul> <p>82. A resolution to remove a director (under section 168 of the Companies Act) or a resolution to remove an auditor (under section</p>	
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	<p>510 of the Companies Act) cannot be proposed as a written resolution under article 80.</p> <p>83. For the purposes of article 80 a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the circulation date (as defined in article 81), and the agreement of any member to a written resolution will be ineffective if signified after the expiry of that period.</p>	
<p>Categories of director</p>	<p>84. For the purposes of these articles:</p> <ul style="list-style-type: none"> <li>• “Executive Director” means a director appointed in pursuance of article x</li> <li>• “Staff Representative Director” means a director appointed in pursuance of article x</li> <li>• “Student Representative Director” means a director appointed in pursuance of article x</li> <li>• “Independent Director” means a non-executive director appointed in pursuance of article x</li> </ul>	
<p>Number of directors</p>	<p>85. The maximum number of directors shall be 18</p> <p>86. Subject to any vacancies which may exist from time to time, the composition of the board of directors shall be as follows:</p> <ul style="list-style-type: none"> <li>• Executive Director (being the Principal of the College) 1</li> <li>• Staff Representative Directors (one teaching and one non-teaching) 2</li> <li>• Student Representative Director 1</li> <li>• Independent Directors up to 12</li> </ul>	
<p>Appointment, vacating office</p>	<p>87. Executive Director</p> <ul style="list-style-type: none"> <li>• The Directors shall (subject to article 86), at the first meeting of the Directors which is held after the appointment of any individual to the post of Principal of the College, appoint that individual as an Executive Director of the company; she/he will then be entitled to apply for membership.</li> <li>• An Executive Director shall continue to hold office as a director of the company unless and until she/he ceases (for whatever reason) to</li> </ul>	

	<p>hold the post of Principal of the College (and will thus also cease to be a member).</p> <p>88. Staff Representative Director</p> <ul style="list-style-type: none"><li>• The Directors shall (subject to article 86), at the first meeting of the Directors which is held after the election held by employees of the company of any employee of the company to serve on the Board as an employee representative, appoint that individual as a Staff Representative Director of the company; she/he will then be entitled to apply for membership.</li><li>• A Staff Representative Director shall continue to hold office as a director of the company until the conclusion of the second annual general meeting which follows the date on which she/he was appointed, and will thus also cease to be a member. A Staff Representative Director shall be eligible for re-appointment; if re-appointed shall hold office until the conclusion of the fourth annual general meeting which follows.</li><li>• A Staff Representative Director who has held office for a period of four years shall automatically vacate office at the expiry of that four year period and shall not be eligible to hold office again as a Staff Representative Director until a period of one year has elapsed.</li><li>• The Directors shall, in advance of the annual general meetings referred to (and allowing a reasonable time for completion of the election process) arrange for a ballot of employees of the company to elect the individuals to be appointed or reappointed as the Staff Representative Director; the rules relating to the election process shall be described in the Standing Orders issued by Directors from time to time.</li><li>• The period on which an individual becomes a Staff Representative Director and the annual general meeting which follows shall be deemed to be a period of one year unless it is of less than six months' duration, in which case it will be disregarded.</li><li>• If a Staff Representative Director ceases to hold office as a director and becomes a Staff Representative Director once more within a</li></ul>	
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	<p>period of less than six months, she/he will be deemed to have held office as Staff Representative Director continuously.</p> <ul style="list-style-type: none"><li>• In the even of any vacancy occurring at any time in the office of Staff Representative Director, the Directors shall, as soon as is reasonably practicable, arrange for a ballot of the employees of the company to elect individual(s) to be appointed as the Staff Representative Director(s) to fill the vacancy.</li></ul> <p>89. Student Representative Director</p> <ul style="list-style-type: none"><li>• The Directors shall (subject to article 86), at the first meeting of the Directors which is held after the election held by the students of the college of any student of the college to serve on the Board as a student representative, appoint that individual as a Student Representative Director of the company; she/he will then be entitled to apply for membership.</li><li>• A Student Representative Director shall continue to hold office as a director of the company until the conclusion of the annual general meeting which follows the date on which she/he was appointed, and will thus also cease to be a member. A Student Representative Director shall be eligible for re-appointment.</li><li>• A Student Representative Director who has held office for a period of three years shall automatically vacate office at the expiry of that three-year period and shall not be eligible to hold office again as a Student Representative Director until a period of one year has elapsed.</li><li>• The period on which an individual becomes a Student Representative Director and the annual general meeting which follows shall be deemed to be a period of one year unless it is of less than six months' duration, in which case it will be disregarded.</li><li>• If a Student Representative Director ceases to hold office as a director and becomes a Student Representative Director once more within a period of less than six months, she/he will be deemed to have held office as Student Representative Director continuously.</li></ul>	
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	<ul style="list-style-type: none"><li>• The Directors shall, in advance of the annual general meetings referred to (and allowing a reasonable time for completion of the election process) consult with the students' association in place in the college at the time to seek the individual to be appointed or reappointed as the Student Representative Director.</li><li>• In the event of any vacancy occurring at any time in the office of Student Representative Director, the Directors shall, as soon as is reasonably practicable, consult with the students' association in place in the college at the time to seek the individual to be appointed to fill the vacancy.</li></ul> <p>90. Independent Directors</p> <ul style="list-style-type: none"><li>• The Directors may at any time appoint any individual who they consider has the skills and/or experience which would be of assistance to the Board, to be an Independent Director, provided she/he is willing so to act; she/he will then be entitled to apply for membership.</li><li>• At the conclusion of every second annual general meeting, one third of the Independent Directors shall vacate office as directors (and will thus cease to become members).</li><li>• The Independent Directors to vacate office shall be those who have been longest in office as directors (disregarding (a) any period prior to the adoption of these Articles; (b) any period prior to any occasion on which she/he previously vacated office and (c) any period which preceded a gap of six months or more when she/he was not in office as a director); if two or more Independent Directors have been in office for the same period (calculated on that basis), the question of which of them is to retire shall be determined by random method.</li><li>• Immediately following each annual general meeting at which an Independent Director vacates office, the directors may re-appoint any person who, as an Independent Director, vacated office under the preceding article at the conclusion of that annual general meeting; the directors may alternative appoint someone in her/his place or resolve not to fill the vacancy.</li></ul>	
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	<ul style="list-style-type: none"><li>• An Independent Director who has held office for a period of 8 years shall automatically vacate office at the expiry of that 8-year period, and shall not be eligible to hold office again until a period of 1 year has elapsed.</li><li>• Provisions above relating to the interpretation of the period of 1 year shall apply to Independent Directors as it does to Staff Representative Directors and Student Directors.</li><li>• No Independent Director shall serve concurrently as an Independent Governor of the Court of UHI.</li><li>• The directors shall be guided by the Nominations Committee of the Board in relation to the selection of all other individuals for appointment as Independent Directors.</li></ul>	
Disqualification and Removal of Directors	<p>91. A Director shall automatically vacate office if:</p> <ul style="list-style-type: none"><li>• She/he ceases to be a director by virtue of any provision of the Companies Act or becomes prohibited by law from being a director or charity trustee (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005);</li><li>• She/he is sequestered;</li><li>• She/he becomes incapable for medical reasons of fulfilling the duties of her/his office and such incapacity is expected to continue for a period of more than six months;</li><li>• She/he ceases (for whatever reason) to become a member of the company;</li><li>• In the case of an Independent Director, she/he becomes an employee of the company;</li><li>• In the case of an Executive Director, she/he ceases to hold the post of Principal of the College;</li><li>• In the case of Staff Representative Director, she/he ceases to be an employee of the company;</li><li>• In the case of Student Representative Director, she/he ceases to be a student of the college;</li></ul>	

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	<ul style="list-style-type: none"><li>• She/he resigns office by notice to the company;</li><li>• She/he is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove her/him for office;</li><li>• She/he is removed from office by resolution of the directors on the grounds she/he is considered to have committed a material breach of the code of conduct for directors in force at the time;</li><li>• She/he is removed from office by resolution of the directors on the grounds she/he is considered to have been in serious or persistent breach of her/his duties under section 66(1) or (2) of the Charities and Trustees Investment (Scotland) Act 2005; or</li><li>• She/he is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Companies Act.</li><li>• The resolutions above shall only be valid if:<ul style="list-style-type: none"><li>○ The director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for removal is to be proposed;</li><li>○ The director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and</li><li>○ At least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.</li></ul></li></ul>	
Appointments to office	<p>92. The Directors shall elect from among themselves a Chair, Vice Chair and other such office bearers (if any) they consider appropriate.</p> <p>93. A Director shall not be eligible for appointment as Chair if she/he is an Executive Director, Staff Representative Director or a Student Representative Director.</p> <p>94. The office of Chair shall be held for a period of four years, but on the basis that a director vacating office as Chair may be re-appointed as Chair for a further four-year term.</p>	

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	<p>95. A director who has held office as Chair for a period of 8 years shall automatically vacate office at the expiry of that 8-year period, and shall not be eligible to hold office again as Chair until a period of one year has elapsed.</p> <p>96. For the purposes above:</p> <ul style="list-style-type: none"><li>• The period between the date on which a director is appointed as Chair and the annual general meeting which follows shall be deemed to be a period of one year unless it is of less than six months in duration (in which case it will be disregarded);</li><li>• The period between one annual general meeting and another shall be deemed to be a period of one year;</li><li>• If a director ceases to hold office as Chair and is re-appointed as Chair within a period of less than six months, she/he shall be deemed to have held office continuously.</li></ul> <p>97. Each office, other than the office of Chair, shall be held until the conclusion of the annual general meeting; a director whose period of office expires under this article may be re-appointed to that office (provided she/he is willing to act).</p> <p>98. The appointment of any director to an office shall terminate if she/he ceases to be a director of the company or if she/he resigns from that office by notice to the company.</p> <p>99. If the appointment of a director to any office terminates, the directors shall appoint another director in her/his place.</p>	
Directors' interests	<p>100. Subject to the provisions of the Companies Act and of the Charities and Trustee Investment (Scotland) Act 2005 and of these articles of association, and provided that she/he has disclosed to the directors the nature and extent of any personal interest which she/he has (unless immaterial) a director (notwithstanding her/his office):</p> <ul style="list-style-type: none"><li>• May be a party to, or have some other personal interest in, any transaction or arrangement with the company or associated company</li></ul>	

	<ul style="list-style-type: none"><li>• May be a party to, or have some other personal interest in, any transaction or arrangement in which the company or associated company has an interest;</li><li>• May be a director, or a secretary of, or employed by, or have some other personal interest in, any associated company;</li><li>• In the case of an Executive Director or Staff Representative Director only, may be an employee of the company; and</li><li>• Shall not, because of her/his office, be accountable to the company for any benefit which she/he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such company;</li></ul> <p>And no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit (see also article 128 in respect of voting when there is an interest).</p> <p>101. For the purposes of the preceding article, an interest of which a director has not knowledge and of which it is unreasonable to expect her/him to have knowledge shall not be treated as an interest of hers/his; the references to “associated company” shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.</p> <p>102. The directors shall be entitled, for the purposes of section 175 of the Companies Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.</p> <p>103. For the purposes of articles above, a “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest</p>	
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	<p>that conflicts, or possibly might conflict, with the interests of the company, such that:</p> <ul style="list-style-type: none"> <li>• The situation and matters that fall within this definition may include (without limitation) (a) a situation where a director of the company becomes an employee, director, member of the management committee, officer or elected representative of a body which is a party to a significant contract with the company (or which is competing with the company in the context of any grant application) and (b) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);</li> <li>• “Conflict of interest”, for this purpose, includes a conflict of interest and duty, and a conflict of duties.</li> </ul> <p>104. For the avoidance of doubt, these articles shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provision of articles above and to the articles governing code of conduct.</p>	
<p>Conduct of Directors</p>	<p>105. It is the duty of each director of the company to take decisions (and exercise her/his other powers and responsibilities as a director) in such a way as she/he considers it will be in the best interests of the company and will promote the success of the company in furthering its objects, and irrespective of any office, post, engagement or other connection which she/he may have with any other body which may have an interest in the matter in question.</p> <p>106. Without prejudice to the principle above, each of the directors shall have the duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:          Seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;</p>	

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	<p>Act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; In circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director, put the interests of the company before that of the other party; Where any other duty prevents her/him from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question; Ensure the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.</p> <p>107. Each of the directors shall comply with a code of conduct (incorporating detailed rules of conflict of interest, and on sanctions available to the board of directors for breach of the code) prescribed by the board of directors from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force at the time.</p>	
Directors remuneration and expenses	<p>108. No director may serve as an employee of the company, and no director may be given any remuneration by the company for carrying out her/his duties as a director or as the holder of any office.</p> <p>109. For the avoidance of doubt, Executive Directors and Staff Representative Directors will be employees of the company, and will be entitled to retain all remuneration, pension and/or other benefits, paid or provided to them in their capacity as employees of the company.</p> <p>110. The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at</p>	

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	<p>meetings of directors, general meetings or meetings of committees of directors, or otherwise in connection with the carrying out of their duties.</p> <p>111. The Chair may be paid appropriate expenses as described in article 42.</p>	
Powers of Directors	<p>112. Subject to provisions of the Companies Act and these articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company.</p> <p>113. No alteration of the memorandum of association or these articles and no direction given by special resolution shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given.</p> <p>114. The powers conferred by the above articles shall not be limited by any special power conferred on the director by these articles.</p> <p>115. A meeting of directors at which a quorum is present may exercise all powers exercisable by directors.</p>	
Proceedings of directors	<p>116. Subject to the provisions of these articles, and the Scheme of Delegation (incorporating the Terms of Reference and Standing Orders), the directors may regulate their proceedings as they think fit.</p> <p>117. Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.</p> <p>118. Questions arising at a meeting of directors shall be decided by a majority of votes; in the case of an equality of votes, the Chairperson shall have a second or casting vote (except in the case of a general meeting resolution as described in article 78) – but, subject to that, every director present or otherwise participating in a meeting of directors shall have one vote in relation to each matter which is put to a vote at the meeting.</p> <p>119. The quorum for the transaction of the business of the directors is six.</p>	

	<p>120. A director may participate in a meeting of the directors or a meeting of a committee of directors by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in a meeting in this manner can be deemed to be present in person at the meeting.</p> <p>121. The continuing directors or a sole continuing director may act notwithstanding vacancies but if the number of remaining directors is less than the number fixed as the quorum, they or she/he may act only for the purpose of filling vacancies or of calling a general meeting.</p> <p>122. Unless she/he is unwilling to do so, the Chair shall preside as chairperson at every meeting of directors at which she/he is present; if the Chair is unwilling to act as chairperson or is not present within 15 minutes after the time appointed for the meeting, the Vice Chair will preside as chairperson of the meeting.</p> <p>123. If neither the Chair nor the Vice Chair of the company is present and willing to act as chairperson within 15 minutes of the appointed time for the meeting, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.</p> <p>124. The directors may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the directors; for the avoidance of doubt, any such person who is invited to attend a directors' meeting shall not be entitled to vote.</p> <p>125. A person invited to attend a meeting of the directors under the preceding article shall not be entitled to exercise any powers as a director, and shall not be deemed to constitute a director for the purpose of the Companies Act or any provision of these articles.</p> <p>126. All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered there was a defect in the appointment of any director or that any of them was disqualified</p>	
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	<p>from holding office or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.</p> <p>127. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee if directors, shall be as valid and effectual as if it had been passed at a meeting of directors or a committee of directors duly convened and held; it may consist of several documents in the same form, each signed by one or more directors.</p> <p>128. A director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which she/he has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.</p> <p>129. For the purposes of the above articles:</p> <ul style="list-style-type: none"><li>• An interest if a person who is taken to be connected with a director under section 252 of the Companies Act shall be treated as a personal interest of a director;</li><li>• A director shall be deemed to have a personal interest in relation to a particular matter if a body in relation to which she/he is an employee, director, member of the management committee, officer or elected representative has a personal interest in that matter.</li></ul> <p>130. For the avoidance of doubt, an Executive Director or Staff Representative Director shall not be entitled to vote in relation to any matter concerning her/his terms and conditions of employment.</p> <p>131. A director shall not be counted in the quorum present at the meeting in relation to a resolution on which she/he is not entitled to vote.</p> <p>132. The company may (subject to the Charities and Trustee Investment (Scotland) Act 2005 by ordinary resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of articles 128 to 131.</p>	
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	<p>133. If a question arises at a meeting of directors or at a meeting of a committee of directors as to the right of the director to vote, the question may, before the conclusion of the meeting, be referred to the chairperson of the meeting; her/his ruling in relation to any director other than herself/himself shall be final and conclusive.</p>	
<p>Delegation to committees of directors and holders of office</p>	<p>134. The directors may put in place a structure of committees and may delegate any of their powers to any committee consisting of <b>one or more directors</b>; they may also delegate to the chair or director holding any office such of their powers as they consider appropriate.</p> <p>135. Any delegation of powers under the preceding article may be made subject to such conditions as the directors may impose, such as through a Scheme of Delegation, and may be revoked or altered.</p> <p>136. Subject to any condition imposed in pursuance of the preceding article, the proceedings of a committee consisting of two or more directors shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.</p> <p>137. In addition to their powers to designate committees, the directors may delegate their powers to any committee consisting of one or more directors and such other individuals (who need not be directors or employees of the company) as the directors may consider appropriate; the provisions of articles 135 and 136 shall apply to such committees, subject to the qualification that the role of any committee formed under the preceding provisions of this article shall be limited (except to the extent that the directors otherwise determine) to the issue of reports and recommendations for consideration by the board of directors.</p>	
<p>Nominations committee</p>	<p>138. The directors shall establish a committee (referred to in these articles as the Nominations Committee, to guide the directors in relation to the selection of appropriate individuals as Independent Directors.</p> <p>139. The Nominations Committee shall comprise the Chair of the company and <b>number of</b> further individuals (who can be directors of</p>	

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	<p>the company or non-directors of the company) appointed by the board of directors.</p> <p>140. Subject to the above article, the composition and proceedings of the Nominations Committee shall be governed by such Standing Orders as may be issued by the directors from time to time.</p> <p>141. In carrying out its functions, the Nominations Committee shall give effect to the following principles:</p> <ul style="list-style-type: none"><li>• The Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;</li><li>• Nominations for directors falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;</li><li>• All expressions of interest should be considered by the Nominations Committee; and</li><li>• The Nominations Committee should maintain a register of suitable candidates for future reference.</li></ul>	
Audit Committee	<p>142. The directors shall establish a committee referred to as the “Audit Committee” to assist the Board of directors in fulfilling its responsibilities with regard to oversight of (a) the company’s financial statements and auditing, accounting and related reporting processes and (b) the company’s systems of internal control regarding finances, accounting and financial reporting.</p> <p>143. The Audit Committee shall comprise the chair of the Audit Committee as appointed by the board (who should not be the Chair of the board of directors) and at least two other individuals (who need not be directors of the company) appointed by the board of directors.</p>	

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	<p>144. The composition and proceedings of the Audit Committee shall be governed by such standing orders as may be issued by the directors from time to time.</p>	
Secretary	<p>145. The directors shall (notwithstanding the provisions of the Companies Act) appoint a Company Secretary, and on the basis of the term of office, remuneration (if any) and other terms and conditions attaching to the appointment of the company secretary shall be determined by the directors; the Company Secretary may be moved by the directors at any time.</p>	
Minutes	<p>146. The directors shall ensure the minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors, and meetings of committees of directors; a minute of a meeting of the directors present or otherwise participating in the meeting, and the minutes of each meeting shall be signed by the chairperson of that meeting.</p> <p>147. The directors shall ensure proper accounting records are maintained in accordance with all applicable statutory requirements.</p> <p>148. No member shall (unless she/he is a director) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.</p>	
Notices	<p>149. Any notice to be given in pursuance of these articles shall be in writing; the company may give any such notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at her/his registered address or by leaving it at that address; alternatively, at the member's electronic address to be used for this purpose.</p> <p>150. Any notice sent by post shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice has been given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.</p>	
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