

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.**

**If you are in any doubt about the action you should take, you are recommended to seek your own independent financial advice from your stockbroker, bank manager, solicitor, accountant or other independent financial adviser authorised under the Financial Services and Markets Act 2000 if you are in the United Kingdom, or, if not, from another appropriately authorised financial adviser. If you have sold or otherwise transferred all your Ordinary Shares of 25 pence each in Shaftesbury PLC, please forward this document, together with the accompanying documents at once to the purchaser or transferee, or to the stockbroker, bank or other agent through whom the sale or transfer was effected for transmission to the purchaser or transferee.**

19 December 2008

## Shaftesbury PLC

**To Shareholders and for information purposes to Debenture Holders and participants in the Group's share schemes**

**Dear Shareholder**

### **Notice of Annual General Meeting**

Our Annual General Meeting ("AGM") will be held in The Committee Room, The Royal Automobile Club, 89 Pall Mall, London SW1Y 5HS on Wednesday 11 February 2009 at 11.00 am. The formal Notice of Meeting is enclosed herewith. If you would like to vote on the resolutions but cannot come to the AGM, please fill in the proxy form sent to you with this Notice and return it to our registrars as soon as possible. They must receive it by no later than 48 hours before the meeting.

### **New Articles of Association**

This year, in addition to the usual business of the AGM (which is set out fully in the Notice of AGM), we are asking shareholders to approve a number of amendments to our Articles of Association, primarily to reflect the Companies Act 2006. As implementation of the Companies Act 2006 is phased, we are proposing to seek shareholder approval (Resolution 15) to adopt new Articles of Association with effect from the conclusion of the AGM, principally to reflect certain provisions of the Companies Act 2006 currently in force, including the new provisions on directors' conflicts of interest which came into force on 1 October 2008. It is possible that we will be proposing further changes to our Articles of Association at a future AGM to deal with future implementation of Companies Act 2006 provisions.

The Companies Act 2006 received Royal Assent on 8 November 2006. The Companies Act 2006 repeals and restates the majority of existing companies legislation, and makes various changes. The Companies Act 2006 is being implemented in stages and a number of provisions have already come into force. The Companies Act 2006 will be fully implemented by October 2009.

A more detailed explanation of the changes we are proposing to make to our Articles of Association at this year's AGM is contained in the explanatory notes.

The Directors consider that all the resolutions to be put to the meeting are in the best interests of the Company and its shareholders as a whole. Your Board will be voting in favour of them and unanimously recommends that you do so as well.

Yours sincerely



**P J Manser**  
Chairman

# Notice of annual general meeting

**Notice Is Hereby Given** that the Twenty-third Annual General Meeting of Shaftesbury PLC (the "Company") will be held in the Committee Room, the Royal Automobile Club, 89 Pall Mall, London SW1Y 5HS on Wednesday 11 February 2009 at 11.00 am for the following purposes:

## Ordinary Business

As ordinary business of an Annual General Meeting to consider and, if thought fit, to pass the following resolutions as ordinary resolutions:

- 1 To receive and adopt the audited financial statements for the year ended 30 September 2008, and the reports of the Directors and auditors.
- 2 To approve the report on Directors' Remuneration for the year ended 30 September 2008.
- 3 To declare a final dividend for the year ended 30 September 2008 of 6.0p per Ordinary Share payable on 20 February 2009 to holders of Ordinary Shares registered at the close of business on 30 January 2009.
- 4 To re-elect P J Manser as a Director of the Company.
- 5 To re-elect W G McQueen as a Director of the Company.
- 6 To re-elect J S Lane as a Director of the Company.
- 7 To re-elect S J Quayle as a Director of the Company.
- 8 To elect P J Wheatcroft as a Director of the Company.
- 9 To re-appoint PricewaterhouseCoopers LLP as auditors of the Company from the end of the Meeting until the end of the next general meeting at which financial statements are laid before the Company.
- 10 To authorise the Directors to agree the remuneration of the auditors.

## Special Business

As special business, to consider and, if thought fit, to pass the following resolutions as ordinary resolutions in the case of resolutions 11 and 14 and as special resolutions in the case of resolutions 12, 13 and 15:

### Authority to allot shares

- 11 THAT, in substitution for all previous authorities pursuant to section 80 of the Companies Act 1985 (the "1985 Act"), which are hereby revoked, but without prejudice to any allotment of securities pursuant thereto, the Directors be and they are hereby generally and unconditionally authorised in accordance with section 80 of the 1985 Act to exercise all powers of the Company to allot relevant securities as defined in section 80(2) of the 1985 Act up to an aggregate nominal amount of £11,250,000 consisting of 45,000,000 Ordinary Shares of 25 pence each. Such authority shall expire at the conclusion of the next Annual General Meeting or 15 months from the passing of this resolution if earlier save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the Directors may allot relevant securities in pursuance of such offer or agreement as if the authority conferred hereby had not expired.

### Authority to disapply pre-emption rights

- 12 THAT, the Directors be and they are hereby empowered pursuant to section 95 of the 1985 Act to allot equity securities (within the meaning of section 94 of the 1985 Act);
- a. for cash pursuant to the authority conferred by Resolution 11; or
  - b. by way of the sale of treasury shares (within the meaning of section 162A of the 1985 Act), for cash, as if, in either case, subsection (1) of section 89 of the 1985 Act did not apply to any such allotment provided that this power shall be limited to the allotment of equity securities:
    - i in connection with a rights issue or open offer or other issue or offer to ordinary shareholders (other than the Company) on the Company's Register of Members on a fixed record date in proportion (as nearly as may be) to the respective numbers of Ordinary Shares of 25 pence each held by them subject to such exclusion or other arrangement as the Directors may deem necessary or expedient in relation to fractional entitlements or legal or practical problems under the laws of, or requirements of any recognised regulatory body or any stock exchange, in any territory; and
    - ii otherwise than pursuant to subparagraph (i) above up to an aggregate nominal value of £1,675,000 consisting of 6,700,000 Ordinary Shares of 25 pence each,

and shall expire at the conclusion of the next Annual General Meeting of the Company or 15 months from the passing of this resolution if earlier save that the Company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the Directors may allot equity securities in pursuance of such offer or agreement as if the power conferred hereby had not expired. This power is in substitution of all unexercised existing powers given for the purposes of section 95(1) of the 1985 Act.



### Authority to make market purchases

- 13** THAT the Company is hereby unconditionally and generally authorised to make market purchases (as defined in section 163(3) of the 1985 Act) of Ordinary Shares of 25 pence each in the capital of the Company provided that:
- i the maximum number of Ordinary Shares of 25 pence each hereby authorised to be purchased is 13,500,000 (representing 10 per cent. of the issued share capital of the Company as at 28 November 2008);
  - ii the minimum price, exclusive of expenses, which may be paid for each such Ordinary Share is £0.25;
  - iii the maximum price, exclusive of expenses, which may be paid for each such Ordinary Share is an amount equal to not more than 5 per cent. above the average of the middle market quotations for such share as derived from the Daily Official List of the London Stock Exchange for the five business days immediately preceding the day on which the share is contracted to be purchased;
  - iv unless previously renewed, varied or revoked, the authority hereby conferred shall expire at the conclusion of the next Annual General Meeting of the Company or 15 months from the passing of this resolution if earlier; and
  - v the Company may make a contract to purchase its own shares under the authority hereby conferred prior to the expiry of such authority which will or may be executed wholly or partly at the expiry of such authority, and may make a purchase of its own shares in pursuance of any such contract

### Authority to make political donations

- 14** THAT the Company and any company which is or becomes a subsidiary of the Company during the period to which this resolution relates be and is hereby authorised pursuant to Section 366 of the Companies Act 2006 (the "2006 Act") to make:
- i. donations to EU political organisations not exceeding £100,000 and
  - ii. to incur EU political expenditure not exceeding £100,000;
- provided that any such donations and/or EU political expenditure made or incurred by the Company does not exceed an aggregate of £100,000 in the period ending at the conclusion of the Company's next Annual General Meeting or 15 months from the passing of this resolution if earlier; provided further that the Company shall not use the authority granted other than in continuation of its business activities and that the Company's policy of making no direct contributions to political parties shall remain unchanged.

### New Articles of Association

- 15** THAT the Articles of Association produced to the meeting and initialled by the Chairman of the meeting for the purpose of identification be adopted as the Articles of Association of the Company in substitution for, and to the exclusion of, the existing Articles of Association.

By Order of the Board

**Penny Thomas**

Secretary

19 December 2008

Pegasus House, 37/43 Sackville Street, London W1S 3DL

## Notes to the Notice of Annual General Meeting

### Entitlement to attend and vote

- 1** The Company, pursuant to Regulation 41 of the Uncertificated Securities Regulations 2001, specifies that only those shareholders registered in the Register of Members of the Company as at 6.00 p.m. on 9 February 2009 (or, in the event of any adjournment, 6.00 p.m. on the day which is two days before the time of the adjourned meeting) shall be entitled to attend and vote at the Annual General Meeting in respect of the number of shares registered in their name at that time. Changes to entries on the Register of Members after the relevant deadline shall be disregarded in determining the rights of any person to attend or vote at the Meeting.

### Appointment of Proxies

- 2** Members are entitled to appoint a proxy to exercise all or any of their rights to attend and to speak and vote on their behalf at the meeting. A shareholder may appoint more than one proxy in relation to the Annual General Meeting provided that each proxy is appointed to exercise the rights attached to a different share or shares held by that shareholder. If more than one proxy is appointed, the appointment of each proxy must specify the shares held by the shareholder in respect of which each proxy is to vote. A proxy need not be a shareholder of the Company. A proxy form which may be used to make such appointment and give proxy instructions accompanies this notice. If you do not have a proxy form and believe that you should have one, or if you require additional forms, please contact the Registrars.
- 3** The return of a completed proxy form, other such instrument or any CREST Proxy Instruction (as described below) will not prevent a shareholder attending the Annual General Meeting and voting in person if he/she wishes to do so.
- 4** To be valid, the form of proxy, together with any power of attorney or other authority under which it was signed (or a notarially certified copy of duly certified copy thereof), must be lodged with the Registrar not less than 48 hours before the Annual General Meeting.

### Appointment of Proxies through CREST

- 5 CREST members who wish to appoint a proxy or proxies through the CREST electronic proxy appointment service may do so for the Annual General Meeting to be held on 11 February 2009 and any adjournment(s) thereof by using the procedures described in the CREST Manual. CREST Personal Members or other CREST sponsored members, and those CREST members who have appointed a voting service provider(s), should refer to their CREST sponsor or voting service provider(s), who will be able to take the appropriate action on their behalf.
- 6 In order for a proxy appointment or instruction made using the CREST service to be valid, the appropriate CREST message (a "CREST Proxy Instruction") must be properly authenticated in accordance with CRESTCo's specifications and must contain the information required for such instructions, as described in the CREST Manual. The message, regardless of whether it constitutes the appointment of a proxy or to an amendment to the instruction given to a previously appointed proxy must, in order to be valid, be transmitted so as to be received by the issuer's agent (ID RA19) by the latest time(s) for receipt of proxy appointments specified in the notice of meeting. For this purpose, the time of receipt will be taken to be the time (as determined by the timestamp applied to the message by the CREST Applications Host) from which the issuer's agent is able to retrieve the message by enquiry to CREST in the manner prescribed by CREST. After this time any change of instructions to proxies appointed through CREST should be communicated to the appointee through other means.

CREST members and, where applicable, their CREST sponsors or voting service providers should note that CRESTCo does not make available special procedures in CREST for any particular messages. Normal system timings and limitations will therefore apply in relation to the input of CREST Proxy Instructions. It is the responsibility of the CREST member concerned to take (or, if the CREST member is a CREST personal member or sponsored member or has appointed a voting service provider(s), to procure that his CREST sponsor or voting service provider(s) take(s) such action as shall be necessary to ensure that a message is transmitted by means of the CREST system by any particular time. In this connection, CREST members and, where applicable, their CREST sponsors or voting service providers are referred, in particular, to those sections of the CREST Manual concerning practical limitations of the CREST system and timings.

The Company may treat as invalid a CREST Proxy Instruction in the circumstances set out in Regulation 35(5)(a) of the Uncertificated Securities Regulations 2001.

### Corporate Representatives

- 7 In order to facilitate voting by corporate representatives at the meeting, arrangements will be put in place at the meeting so that (i) if a corporate shareholder has appointed the Chairman of the meeting as its corporate representative with instructions to vote on a poll in accordance with the directions of all of the other corporate representatives for that shareholder at the meeting, then on a poll those corporate representatives will give voting directions to the Chairman and the Chairman will vote (or withhold a vote) as corporate representative in accordance with those directions; and (ii) if more than one corporate representative for the same corporate shareholder attends the meeting but the corporate shareholder has not appointed the Chairman of the meeting as its corporate representative, a designated corporate representative will be nominated, from those corporate representatives who attend, who will vote on a poll and the other corporate representatives will give voting directions to that designated corporate representative. Corporate shareholders are referred to the guidance issued by the Institute of Chartered Secretaries and Administrators on proxies and corporate representatives – [www.icsa.org.uk](http://www.icsa.org.uk) – for further details of this procedure. The guidance includes a sample form of representation letter if the Chairman is being appointed as described in (i) above.

### Documents for Inspection

- 8 The Register of Directors' Interests in the Company kept under section 809 of the 2006 Act, copies of Directors' contracts of service and the proposed Articles of Association may be inspected at the Company's registered office during normal business hours on weekdays (public holidays excepted) from the date of this notice until the conclusion of the Annual General Meeting and at the place of Annual General Meeting of the Company from 10.30 am on 11 February 2009 until conclusion of the meeting.

### Total Voting Rights

- 9 As at 28 November 2008 (being the latest practicable date prior to the publication of this Notice), the Company's issued share capital consists of 135,363,421 Ordinary Shares of 25 pence each, carrying one vote each. There are no treasury shares. Therefore total voting rights in the Company at this date are 135,363,421.

### General

- 10 Biographical details of the Directors standing for re-election and election are set out in the Annual Report 2008.
- 11 The "Vote Withheld" option on the Form of Proxy is provided to enable a member to abstain on any particular resolution. It should be noted that an abstention is not a vote in law and will not be counted in the calculation of the proportion of votes "for" or "against" a particular resolution.



# Explanatory Notes on the Resolutions

## Resolution 11 –

### Authority to allot shares

This resolution authorises the Board, for a period of 15 months from the passing of the resolution or, if earlier, to the end of the next Annual General Meeting, to allot Ordinary Shares of 25 pence each up to an aggregate nominal value of £11,250,000, consisting of 45,000,000 Ordinary Shares of 25 pence each and which is equal to approximately 33 per cent. of the total ordinary share capital in issue on 28 November 2008 (the last practicable date prior to the publication of this document). The Company does not currently hold any shares as treasury shares within the meaning of Section 162A of the 1985 Act ("Treasury Shares"). Save in respect of the issue of new Ordinary Shares pursuant to the share incentive schemes, the Directors currently have no present intention to allot relevant securities but the Directors believe it to be in the interests of the Company for the Board to be granted this authority to enable the Board to take advantage of appropriate opportunities which may arise in the future.

## Resolution 12 –

### Authority to disapply pre-emption rights

This resolution, which will be proposed as a special resolution, seeks to disapply the pre-emption right provisions of Section 89 of the 1985 Act in respect of the allotment of equity securities (including a sale of treasury shares) pursuant to rights issues and other pre-emptive issues or offers and in respect of other issues of equity securities (including sales of treasury shares) for cash up to an aggregate nominal value of £1,675,000, being approximately 5 per cent. of the issued ordinary share capital on 28 November 2008 (the last practicable date prior to the publication of this document). If approved by shareholders, this power will expire 15 months after the passing of this resolution or, if earlier, at the end of the next Annual General Meeting. The Directors have no present intention of exercising their authority pursuant to this disapplication, but, as in previous years, they consider it desirable that they have the flexibility to act in the best interests of the Company when opportunities arise. There is no current intention to issue more than 7.5 per cent of the Company's share capital on this basis over 3 years in line with ABI guidelines.

## Resolution 13 –

### Authority to make market purchases

This resolution, which will be proposed as a special resolution, seeks authority for the Directors to purchase the Company's own shares. The Directors are of the opinion that it would be advantageous for the Company to be in a position to purchase its own shares through the London Stock Exchange, should market conditions and price justify such action. The proposed authority would enable the Company to purchase up to a maximum of 13,500,000 Ordinary Shares of 25 pence each, being 10 per cent. of the issued ordinary share capital on 28 November 2008 (the latest practicable date prior to the publication of this document), with a stated upper limit on the price payable which reflects the requirements of the Listing Rules of the Financial Services Authority. Purchases would only be made after the most careful consideration, where the Directors believe that an increase in earnings or net assets per share would result and where purchases were, in the opinion of the Directors, in the best interests of the Company and its shareholders. The Directors consider that it is prudent to obtain the proposed authority, although the Board does not have any current intention to use this authority.

The total number of options to subscribe for equity shares that are outstanding on 28 November 2008 (the latest practicable date prior to the publication of this

document) is 2,557,527. This represents 1.89 per cent. of the issued share capital of the Company at that date. If the Company were to purchase the maximum number of Ordinary Shares of 25 pence each permitted pursuant to the authority under this resolution, then these options would represent 2.10 per cent. of the reduced issued share capital (excluding any treasury shares).

The 1985 Act permits companies to hold shares acquired by way of market purchases (as described above) in treasury, rather than having to cancel them. The Company would consider holding any of its own shares that it purchased pursuant to the authority conferred by this resolution as treasury shares. This would give the Company the ability to re-issue treasury shares quickly and cost effectively, and would provide the Company with additional flexibility in the management of its capital base.

No dividends would be paid on shares whilst held in treasury and no voting rights would attach to treasury shares.

## Resolution 14 –

### Authority to make political donations

This resolution authorises the Board to make donations under Section 366 of the 2006 Act. Any donations to political organisations or political expenditure by a company in excess of an aggregate of £5,000 must be authorised by the Company's shareholders. There is no present intention to make cash donations to any political party. The Company as part of its normal business activity may wish to have contact with political parties to ensure that they are aware of the key business issues affecting its business. Under the 2006 Act, the definition of political expenditure is extremely wide and may be construed as covering such areas of the Company's normal business activities. It is therefore considered appropriate that a resolution be put to shareholders in general terms. The Company will disclose in its annual report, in compliance with the 2006 Act, any expenditure or donations in excess of £2,000 which is within the ambit of the definitions of the 2006 Act.

## Resolution 15 –

### New Articles of Association

This resolution, which will be proposed as a special resolution, seeks to adopt new Articles of Association ("New Articles") with effect from the conclusion of the Annual General Meeting, principally to reflect certain provisions of the 2006 Act currently in force. In addition to changes to reflect the new provisions of the 2006 Act, it is proposed that some other amendments are made to the Company's existing Articles of Association ("Current Articles") to update them in line with common listed company practice. As the proposed changes affect various provisions in the Current Articles, it is considered more practical to seek to replace the Current Articles in full rather than to seek approval for numerous individual amendments.

The principal changes introduced in the New Articles are described in the Appendix. Other changes, which are of a minor, technical or clarifying nature, and also some more minor changes which merely reflect statutory provisions, have not been separately noted. In a number of places, the numbering in the New Articles varies from the numbering in the Current Articles (in part because the order of some of the articles has been changed for the sake of a more logical progression). The number identifying each article principally affected by the amendment corresponds to the numbering in the New Articles (unless otherwise indicated).

A copy of the New Articles is available for inspection as set out in Note 8 of the Notes to the Notice of Annual General Meeting.

# Appendix:

## Explanatory notes of principal changes to the Company's Articles of Association

### 1 Articles which duplicate statutory provisions

Provisions in the Current Articles which replicate provisions contained in the 2006 Act are in the main amended to bring them in line with the provisions of the 2006 Act currently in force. The main examples of provisions of this type are detailed below, including provisions as to the form of resolutions, the variation of class rights, the convening of general meetings and proxies. References in the Current Articles to statutory provisions in the 1985 Act have also been amended to reflect the new statutory references under the 2006 Act where they are already in force.

### 2 Form of shareholder resolution (article 2.4)

The Current Articles contain a provision that, where for any purpose an ordinary resolution is expressed to be required, a special or extraordinary resolution is also effective and that, where for any purpose an extraordinary resolution is expressed to be required, a special resolution is also effective. This provision and other provisions in the Current Articles that refer to extraordinary resolutions are being amended as the concept of extraordinary resolutions has not been retained under the 2006 Act. Broadly, special resolutions will be used in place of extraordinary resolutions.

### 3 Variation of class rights (article 16)

The Current Articles contain provisions regarding the variation of class rights. Certain requirements for a meeting to vary class rights (including the quorum requirements) are laid down in the 2006 Act and the relevant provisions will be amended in the New Articles in order to reflect those requirements.

### 4 Convening and notice of general meetings (articles 56 to 58)

The provisions in the Current Articles dealing with convening general meetings and the length of notice required to convene general meetings are to be amended to reflect new provisions in the 2006 Act. The New Articles reduce the minimum period for general meetings (other than annual general meetings) from 21 days to 14 days, even where a special resolution is to be considered, in line with what is permitted by the 2006 Act. Annual General Meetings must now generally be held within six months following the end of the financial year and the New Articles will reflect this shorter timetable. Consistent with the terminology in the 2006 Act, the New Articles no longer use the term "extraordinary general meeting" to describe general meetings that are not annual general meetings.

### 5 Quorum at general meetings (article 67)

As in the Current Articles, the quorum for a general meeting is two persons, each of whom is a member, a proxy or a corporate representative, but the New Articles clarify (in line with the position in the 2006 Act) that a person who is a proxy for the same member, or a representative for the same corporation may be counted only once for the purpose of calculating the quorum.

### 6 Amendments to resolutions (article 70)

The New Articles update the provisions on amendments to resolutions to clarify the situations in which resolutions may be amended and to bring them more in line with current market practice among listed companies and case law on this subject.

### 7 Proxies (articles 58 and 86 to 91)

In line with the 2006 Act, the New Articles will give proxies the right to vote at a general meeting on a show of hands as well as on a poll, whereas under the Current Articles, a proxy is only entitled to vote on a poll. The New Articles will also give proxies the right to speak at general meetings, again reflecting the 2006 Act. The enhanced rights of proxies under the 2006 Act affect a number of provisions in the New Articles.

The New Articles will specify that in order to be valid a proxy appointment must be received: (a) not less than 48 hours (or such shorter time as the Board decides) before the time appointed for holding the meeting; or (b) in the case of a poll taken more than 48 hours after the meeting, not less than 24 hours (or such shorter time as the Board decides) before the time appointed for taking the poll; or (c) in the case of a poll taken following the conclusion of the meeting, or adjourned meeting, at which it was demanded but 48 hours or less after it was demanded, before the end of the meeting at which it was demanded (or such later time as the Board decides). Consistent with the 2006 Act, the Company may, in setting the deadline for receipt of proxies, exclude non-working days, so that the time before a meeting or a poll by which a proxy must be received may, in certain cases, be greater than 48 or 24 hours. The latest time by which a proxy appointment may validly be revoked will also be updated in the New Articles to reflect what is permitted in the 2006 Act (the New Articles will provide that the Company must receive notice of the revocation by no later than the last time by which proxy notices can be received).

To reflect relevant new requirements of the Listing Rules, the New Articles state that a form of proxy sent by the Company to each member must provide for three-way voting on all resolutions, rather than the current provision for two-way voting.

The Current Articles provide that if the Company receives more than one proxy appointment in respect of the same shares, the appointment received last revokes each earlier appointment. The New Articles retain this concept, but provide that the Company may use a different method for determining which appointment is valid, if it thinks that it is more appropriate. This is in line with the suggestion made by the Institute of Chartered Secretaries and Administrators (ICSA) that articles may need to provide greater flexibility in this regard in light of the ability of members to appoint multiple proxies.

### 8 Corporate representatives (article 92)

In line with the 2006 Act, a member which is a corporation may appoint multiple representatives to act (subject to the 2006 Act) at a meeting of the Company.

### 9 Certificated shares - Share certificates (article 22), warrants (articles 13 and 22) and share transfers (article 49)

Under the Current Articles, the Company is entitled to charge for share certificates when a person is entered on the register. In keeping with common listed company practice and to lead to greater consistency with other provisions in the Current Articles, the New Articles will provide that when a person (other than a financial institution or any other person to whom the Company is not required by law to issue a share certificate) first becomes a holder of certificated shares, or subsequently receives more certificated shares, he is entitled to a share certificate free of charge.

In line with the new provisions in the 2006 Act on the issue of share certificates upon the surrender of a



share warrant to bearer, it is proposed that the New Articles will clarify that in fixing the terms on which a warrant is issued, the Board can specify the terms on which the share certificate for the relevant underlying shares will be delivered upon surrender of the warrant. It is also proposed that the New Articles will provide that the Company will issue the relevant share certificate within one month after lodgement of the warrant for cancellation or as is otherwise provided by the terms of issue of the warrant.

From 6 April 2008, the 2006 Act has provided that if a company refuses to register a share transfer it must give reasons and notify the transferee as soon as practicable and in any event within two months. The Company proposes to amend the New Articles to reflect these requirements (previously, the Company did not have to provide reasons if it exercised its right to refuse to transfer a certificated share).

### **10 Directors' retirement age limit (article 107 of the Current Articles)**

The provisions relating to the 70 year age limit for directors in the 1985 Act were repealed in April 2007. Accordingly the provisions in the Current Articles that deal with this are no longer necessary and will be deleted from the New Articles.

### **11 Directors' conflicts of interest (articles 125 to 130)**

The 2006 Act sets out directors' general duties which largely codify the existing law but with some changes. Under the 2006 Act, from 1 October 2008 a director must avoid a situation where he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the company's interests. The requirement is very broad and could apply, for example, if a director becomes a director of another company or a trustee of another organisation. The 2006 Act allows directors of public companies to authorise conflicts and potential conflicts where the articles of association contain a provision to this effect. The 2006 Act also allows the articles of association to contain other provisions for dealing with directors' conflicts of interest to avoid a breach of duty. The amendments to the Current Articles give the directors authority to approve such conflict situations and include other provisions to allow conflicts of interest to be dealt with in a similar way to the current position.

There are safeguards which will apply when directors decide whether to authorise a conflict or potential conflict. First, only directors who have no interest in the matter being considered will be able to take the relevant decision, and second, in taking the decision the directors must act in a way they consider, in good faith, will be most likely to promote the Company's success. The directors will be able to impose limits or conditions when giving authorisation if they think this is appropriate.

It is also proposed to include provisions relating to confidential information, attendance at Board meetings and availability of Board papers to protect a director being in breach of duty if a conflict of interest or potential conflict of interest arises. These provisions will only apply where the position giving rise to the potential conflict has previously been authorised by the directors. It is the Board's intention to report annually on the Company's procedures for ensuring that the Board's powers to authorise conflicts are operated effectively or otherwise to follow developing best practice as regards process and reporting in relation to the Board's powers to authorise conflicts.

Under the 2006 Act, directors are under a duty to declare the nature and extent of their direct or indirect interests in transactions and arrangements with the Company which are proposed but which have not yet been entered into and also in existing transactions and other arrangements that the Company has already entered into. The New Articles update the existing provisions in the Current Articles dealing with disclosure of directors' interests to bring the notification procedures in line with those in the 2006 Act.

### **12 Non Companies Act 2006 amendments relating to directors (articles 94 to 142)**

In addition to the changes referred to in 10 and 11 above, which are motivated by the 2006 Act, we propose to take this opportunity to make certain other amendments to Part IV of the Current Articles, which deals with directors.

We propose to increase the limit on the amount that the Board has the power to borrow in the New Articles to ten times the Company's adjusted capital and reserves, from two times the Company's adjusted capital and reserves in the Current Articles. The reason for this proposed change in borrowing powers reflects the higher borrowing powers of other listed companies in the real estate sector and to give the Company sufficient flexibility in its financial arrangements for the future.

We also propose to make the following changes with the intention of improving the clarity and usefulness of the New Articles and to ensure consistency with common listed company practice, and none could be described as significant. The principal changes are noted below:

- a** categories of directors: the New Articles will include a new definition of "Non-executive Director", and draw a clearer distinction between executive and non-executive directors;
- b** the New Articles include updated wording which expand the circumstances in which a director will cease to be a director if he becomes mentally ill. Under the new provisions, a director must vacate office if a registered medical practitioner is of the opinion that he has become mentally incapable of acting as a director and may remain so for more than three months or if he becomes a patient for the purposes of any statute relating to mental health and, in each case, the Board decides that his office be vacated;
- c** the Board may decide that a director must cease to be a director if he is absent from Board meetings for six consecutive months, except where an alternate director appointed by him attends in his place. This is a change from the Current Articles, which provide that the right to decide that a director should vacate his office only arises if neither the director nor his alternate director attend meetings during that period.
- d** effect of ceasing to be a director: when a person ceases to be a director, the New Articles make clear that he automatically ceases to be a member of any board committee;
- e** alternate directors: the appointment of an alternate director terminates (in addition to the other grounds set out in the Current Articles) if an event occurs in respect of the alternate director, which, if it happened to the appointing director would result in his appointment being terminated;
- f** notice of Board meeting: notice need not be in writing;
- g** directors' written resolution: a director who is not entitled to vote on a Board resolution (for example because he is interested in a transaction) is not required to agree to a written resolution in order for it to be effective;
- h** delegation of directors' powers: the New Articles adopt the approach suggested in the draft statutory model articles for public companies and restate in a more simple way the broad power of the Board to delegate any of its powers to a committee, local board or one or more individuals;
- i** director's power to make further procedural rules: the New Articles give the directors power to make further rules regarding how the Board takes, records and communicates decisions; and
- j** common seal: the New Articles will make it clear that the Board may make regulations to set the number and identity of persons in whose presence the common seal is affixed, and that this need not necessarily include a director where the Board agrees.

### **13 Dividends and distributions** *(articles 148, 149 and 152)*

Relatively minor changes are proposed to the section in the Current Articles dealing with dividends and distributions. These are not driven by the 2006 Act, but are intended to clarify certain points. The principal changes are:

- a** the Board may retain a dividend payable to a person entitled to a share by transmission (for example following the death or bankruptcy of a member) until he has produced to the Company satisfactory evidence of his right to receive the payment;
- b** in line with the existing provisions in the Current Articles, the New Articles make it clear that no interest is payable by the Company on any dividend unless otherwise provided by the terms on which the share was issued or allotted or in an agreement between the shareholder and the Company; and
- c** a dividend recipient may waive his entitlement to a dividend payment by giving written notice to the Company, although the Company is not bound to act on such a notice.

### **14 Annual accounts and reports** *(articles 168 and 169)*

For the sake of completeness, the New Articles restate the statutory position (broadly unchanged by the 2006 Act) on the Company's obligation to send a copy of its annual accounts and reports to members, debenture holders and other persons entitled to receive notice of general meetings at least 21 days before the shareholder meeting at which they are to be considered. The New Articles also restate the statutory position (also unchanged by the 2006 Act) that persons in the categories described above to whom summary financial statements are sent are entitled to request a copy of the full annual accounts and reports.

### **15 Sending of notices, documents etc (including electronic and web communications) (articles 174 to 189)**

The New Articles contain detailed provisions as to how notices, documents and other information may be sent to or by the Company and extend the new company communication provisions of the 2006 Act to any document or information sent by the Company. Provisions in the 2006 Act, which came into force in January 2007, enable companies to communicate with shareholders by electronic and website communications. The New Articles continue to allow communications by the Company to shareholders in electronic form (provided that the shareholder has agreed, generally or specifically, to this) and, in addition, they also permit the Company to take advantage of the new provisions relating to website communications. As provided by the 2006 Act, before the Company can communicate with a shareholder by means of a website, the shareholder must be asked individually by the Company to agree that the Company may send or supply documents or information to him by means of a website and the Company must either have received a positive response or have received no response within 28 days (in which case the Company may take that as consent by the member to receive communications in this way). When the Company makes a document or information available on its website, it must notify the shareholder of this. A shareholder who has received a document or information by electronic form or by website can always request a hard copy of the document or information.

In line with the position in the Current Articles and the 2006 Act, a shareholder may communicate with the Company by electronic communication if the Company has agreed that the document or information can be sent or supplied in electronic form (but then only in the type of electronic form that the Company has agreed to). In certain circumstances, the 2006 Act will deem the Company to have agreed that

shareholders may send documents or other information electronically.

The changes proposed to be made to the Current Articles to reflect the new company communications regime of the 2006 Act require a number of conforming changes in the New Articles, including in the Interpretation section.

Article 189 sets out when notices, documents and other information given or sent by the Company to its shareholders are deemed to be received. A document or information sent by electronic means is deemed to have been received on the same day as it is sent (notwithstanding a failure in transmission) and a document or information made available on a website is deemed to have been received when first made available on the website or, if later, when the intended recipient receives notice of its availability on the website.

Article 183.2 of the New Articles provides that anything to be agreed or specified in relation to a document or information to be sent to the holder of a share that is held by joint holders (this would include, for example, agreement to receive electronic communications) may be agreed or specified by the first named holder on the register, and that this will be binding on all other joint holders.

Article 184 of the New Articles clarifies that a shareholder who has no registered address in the United Kingdom is not entitled to have a document or other information sent to him unless he provides the Company with a postal address in the United Kingdom or the Company and the shareholder agree to the use of electronic communications and the shareholder provides the Company with an address for that purpose. However, the Company is not obliged to agree to provide electronic communications to a shareholder, and may, for example, refuse to do so where it is concerned that the sending of the document or information to such address using electronic means would or might cause legal or practical problems arising in respect of the laws of, or the requirements of a regulatory body or stock exchange or other authority in, any territory.

Article 186 is a new provision which sets out how the Company will deal with the sending of notices, documents and other information to untraced shareholders. This provision is not primarily driven by the 2006 Act, but is a provision commonly included in listed company articles and will assist with company administration.

### **16 Registers and records (articles 191 and 194)**

The provisions in the Current Articles dealing with the maintenance and availability of Company registers for inspection will be simplified in the New Articles to ensure consistency with the 2006 Act (including the repeal in April 2007 of provisions in the 1985 Act relating to the register of directors' interests in shares).

New provisions will be added in the New Articles relating to the retention and destruction of old documents.

### **17 Indemnities (article 197)**

The 2006 Act has in some respects widened the scope of the powers of a company to indemnify directors. In particular, a director of a pension trustee company can be indemnified against liability incurred in connection with that company's activities as trustee of the scheme, by the pension trustee company itself or by an associated company. The indemnity cannot extend to liabilities to pay criminal or regulatory fines or to defending criminal proceedings in which the director is convicted. Article 197 of the New Articles updates the indemnity provisions in the Current Articles by providing that the Company may indemnify each officer of the Company or an associated company to the extent permissible by the 2006 Act. The provisions in the New Articles also amend the current articles by clarifying that the Company has the power, but not the obligation, to indemnify directors.