

**SAMPLE ARTICLES OF ASSOCIATION
FOR HONG KONG SOCIAL ENTERPRISES
FORMED AS COMPANIES LIMITED BY GUARANTEE**

Explanatory Notes:

This sample articles of association is prepared based on the Model Articles of Association prescribed in Schedule 3 of the Companies (Model Articles) Notice (Cap. 622H) for companies limited by guarantee. This document should not be used in its current form without due consideration to the specific circumstances of the relevant party wishing to adopt its own constitution. It is more than likely that a number of changes will need to be made to this document before it is suitable for use.

The mandatory articles that are required under sections 81, 83 and 84 of the Companies Ordinance (Cap. 622) are added before the contents of the Model Articles.

No company can be set up as a company limited by guarantee having a share capital. This type of entity is commonly used for non-profit making organisations that do not need initial working capital, and in situations where there is no intention to distribute the company's surplus to members.

The provisions **in red** are proposed language to be adopted by a social enterprise as it deems applicable and appropriate.

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THE COMPANIES ORDINANCE (CHAPTER 622)

**Company Limited by Guarantee
ARTICLES OF ASSOCIATION
OF**

[ENGLISH COMPANY NAME]
[CHINESE COMPANY NAME]

Part A Mandatory Articles

1. Company Name The name of the company is

“[ENGLISH COMPANY NAME]
[CHINESE COMPANY NAME]”

2. Members’ Liabilities

The liability of the members is limited.

3. Liabilities or Contributions of Members

Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within 1 year afterwards, for the payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding the amount specified below:

Class of Member

[Platinum]

Amount to be contributed by each of the members in this class

[HKD[●]]

Class of Member

[Diamond]

Amount to be contributed by each of the members in this class

[HKD[●]]

I/WE, the undersigned, wish to form a company and wish to adopt the articles of association as attached.

Name(s) of founder Members
[English name] [Chinese name]
[English name] [Chinese name]

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Part 1

General & Interpretation

1. General

The regulations contained in Tables C and D in the First Schedule to the predecessor Companies Ordinance (Cap. 32 of the Laws of Hong Kong) and in Schedule 3 to the Companies (Model Articles) Notice (Cap. 622H) and any similar regulations in any other legislation relating to companies do not apply to the Company.¹

2. Interpretation

(1) In these articles—

alternate (候補者) and *alternate director* (候補董事) mean a person appointed by a director as an alternate under article 26(1);

appointor (委任者)—see article 26(1);

articles (本《章程細則》) means the articles of association of the company;

associated company (有聯繫公司) means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

clear days means, in relation to a period of notice, that period excluding the day on which the notice is served or deemed to be served and the day for which it is given or on which it is to take effect;

mental incapacity (精神上無行為能力) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136);

mentally incapacitated person (精神上無行為能力者) means a person who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs;

Ordinance (《條例》) means the Companies Ordinance (Cap. 622);

proxy notice (代表通知書)—see article 48(1).

(2) Other words or expressions used in these articles have the same meaning as in the Ordinance as in force on the date these articles become binding on the company.

¹ Guidance Note: This article makes it clear that this set of articles are the Company's constitution and there is no need to refer to any other documents or regulations. The provisions of the Ordinance and other applicable legislation will still apply to the Company but otherwise, the articles are intended to be self-contained with respect to how the company is owned and managed.

- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

Part 1

Objects, Purpose and Powers²

1A. Objects, purpose and powers

- (1) In accordance with Section 116(1) of the Ordinance, the objects of the Company are restricted to those set out in the following provisions of this Article.
- (2) The Company is established for the following objects:
 - (a) *[Insert list of the Company's objects]*
 - (b) [to protect and safeguard [●] in Hong Kong, with a particular focus on [●];]
 - (c) [to educate and promote [●], by advocating and enabling [●];]
 - (d) [to raise general awareness and understanding of the public on: [●];] and
 - (e) [●].
- (3) In furtherance of the objects but not otherwise, the Company has the power:
 - (a) *[Insert detailed list of the Company's powers]*
 - (b) [to raise funds and other contributions in the form of donations, annual subscriptions, or otherwise, by personal or written appeals, public meetings or otherwise, as are expedient;]
 - (c) [to print and publish any newspapers, periodicals, books or leaflets;]
 - (d) [to enter into, make, perform and carry out any arrangements or contracts with any person, company, body corporate, association, organization, institution, or government authority for attainment and furtherance of the objects of the Company, to obtain from any such person, company, body corporate, association, organization, institution, or government authority any rights, licences, franchises, permits, privileges and concessions which the Company thinks desirable;]
 - (e) [to cooperate with and assist bodies, corporations, unincorporated associations, organizations and institutions with objects similar to the objects of the Company, cooperate with government, national and international organizations, institutions which are in any way related or concerned with objects of the Company;]
 - (f) [to accept any gift of property, whether subject to any special trust or not, for any purpose within the objects;]
 - (g) [to receive money on deposit or loan, and to borrow or raise money in such manner as the Company thinks fit, and to secure the repayment of any money

² Guidance note: A company's objects are unrestricted unless the company's articles provide otherwise. Where a company's constitution does state the objects of the company, the members have power to restrain the controllers of the company from exercising their powers for a purpose that is outside the stated objects. In drafting an objects clause, it may be useful to first consider the underlying social objectives of the Company. For example, improving the employability of deprived groups, fair-trading, raising public awareness on certain issues such as elder care, etc..

borrowed, raised or owing by mortgage, charge or lien upon all or any of the property or assets of the Company;]

- (h) [to invest and deal with any money of the Company not immediately required for any of its objects in and upon such investments, securities, deposits or property, and to vary or realize the same at any time and in a proper and prudent manner, as is from time to time determined by the Company;]
- (i) [to apply money for any of the objects hereof;]
- (j) [to draw, make, accept, endorse, discount, execute and issue promissory notes, checks, bills of exchange, debentures and other negotiable or transferable instruments;]
- (k) [to employ, hire, remunerate, provide benefits to, to dismiss and replace with other persons from time to time as the Company thinks fit, employees and staff to carry out the administration and objects of the Company, and lawyers, accountants, surveyors or other professional or non-professional advisors or consultants as are considered expedient;]
- (l) [to purchase, take on lease, hire or otherwise acquire, own, hold, use and occupy in Hong Kong or elsewhere any land or other real or personal property, or any right or interest therein, which the Company thinks necessary or convenient for the purposes or attainment and furtherance of its objects, and to work, improve, maintain, develop and turn to account, sell, let, surrender, mortgage, charge, dispose of, or other deal with the same or any other property of the Company;]
- (m) [to purchase, take on lease or in exchange, hire or otherwise acquire in any way any property such as equipment, plant, machinery, furniture, fixture, fittings, chattels and goods of any nature or description necessary or convenient to enable the Company to fulfil its objects, and to sell, dispose of, or otherwise deal with the same;]
- (n) [to commence, maintain, or as the case may require, oppose any proceedings, suits, actions or applications which are necessary to directly or indirectly benefit or protect the Company;] and
- (o) [to do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the objects.]

Part 1B

Asset Lock

1B. Asset Lock

No distribution shall be made or otherwise returned to the Members in cash or otherwise. Nothing in these Articles shall prevent any payment in good faith by the Company of:

- (a) reasonable and proper remuneration to any Member, officer or servant of the Company for any services rendered to the Company;
- (b) any interest on money lent by any Member or any director at a reasonable and proper rate;
- (c) reasonable and proper rent for premises demised or let by any Member or director; or
- (d) reasonable out-of-pocket expenses properly incurred by any director.

1C. Asset Lock on winding-up or dissolution of the Company

On the winding-up or dissolution of the Company, after provision has been made for all its debts and liabilities, any assets or property that remains available to be distributed or paid, shall not be paid or distributed to the Members (except to a Member that qualifies under this Article) but shall be transferred to another body (charitable or otherwise) with objects similar to those of the Company to the extent permissible under Hong Kong law. Such body is to be determined by resolution of the Members at or before the time of winding up or dissolution and, subject to any such resolution of the Members, may be made by resolution of the directors at or before the time of winding up or dissolution.

1D. Liabilities or contributions of Members

The liability of each Member is limited to HKD[●], being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before he ceases to be a Member,
- (b) payment of the costs, charges and expenses of the winding up, and
- (c) adjustment of the rights of the contributories among themselves.

Part 2

Directors and Company Secretary

Division 1—Directors' Powers and Responsibilities

3. **Directors' general authority**

- (1) Subject to the Ordinance and these articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.

- (4) A directors' meeting at which a quorum is present may exercise all powers exercisable by the directors.

4. Members' reserve power

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

5. Directors may delegate

- (1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—
 - (a) to any person or committee;
 - (b) by any means (including by power of attorney);
 - (c) to any extent and without territorial limit;
 - (d) in relation to any matter; and
 - (e) on any terms and conditions.
- (2) **[[Option A: The directors shall prepare and review, from time to time, a list of matters that should be reserved to the directors and which may not be delegated (“Non-Delegable Board Matters”). /**
[Option B: The following functions are reserved to the directors and may not be delegated (“Non-Delegable Board Matters”): [identify matters which should be reserved to the board].]³
- (3) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
- (4) The directors may—
 - (a) revoke the delegation wholly or in part; or
 - (b) revoke or alter its terms and conditions.

6. Committees

- (1) **[Without prejudice to the freedom of the directors to establish any other committees, there shall be established [an audit committee], [a nominations committee], [a remuneration committee], [a corporate governance committee] and [insert any other committees, as appropriate]].**
- (2) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.

³ Guidance Note: A social enterprise may wish to formalize the functions reserved to the board of directors. However, this may not be suitable for all companies. Option A is more appropriate than Option B if flexibility is required and/or if a social enterprise would like to avoid having to amend the articles (which require a special resolution of the shareholders) whenever there is a change to the list.

- (3) The committees must comply with the rules.

6A. Consideration of different stakeholders and the community

- (1) Consistent with the Company's objects and purposes described in Article 1A, in discharging their duties, the directors shall when exercising the powers of the Company, :
 - (a) the ability of the Company to accomplish its objects and purposes by way of such exercise;
 - (b) the impact of such exercise on the members of the Company;
 - (c) the impact of such exercise on the employees and workforce of the Company and its subsidiaries and suppliers;
 - (d) the interests of customers as beneficiaries of the general and specific purposes of the Company;
 - (e) community and societal considerations, including those of any community in which offices or facilities of the Company or its subsidiaries or suppliers are located;
 - (f) the impact of such exercise on the local and global environment; and
 - (g) the short-term and long-term interests of the Company, including benefits that may accrue to the Company from its long-term plans and the possibilities that these interests may be best vested by the continued independence of the Company.
- (2) The directors may also consider the resources, intent, and conduct (past, stated and potential) of any person seeking to acquire control of the Company, and any other pertinent factors or the interests of any other group that they deem appropriate, consistent with the Company, general and specific purposes described in Article 1A.

6B. Annual Purpose and Progress Review

- (1) The directors shall conduct an internal review and assessment of its overall performance and progress in relation to its objects and purposes as described in Article 1A on an annual basis (the "**Annual Purpose and Progress Review**").
- (2) The Annual Purpose and Progress Review may be drawn up by the directors based on any impact measurement matrix established by the directors which will take into account various factors, including, without limitation, the impact of the Company's actions on the stakeholders set out in Article 6A(1).
- (3) [The impact measurement matrix to be established by the directors shall include, without limitation, the following categories:
 - (a) [governance];
 - (b) [workers and employees];
 - (c) [community];
 - (d) [environment]; and

- (e) *[insert other relevant categories]*.⁴
- (4) [Each of [the audit committee], [the remuneration committee], [the nomination committee], [the corporate governance committee] and *[insert any other committees, as appropriate]*] shall prepare a written report (each, a “**Committee Report**”), to be appended to the Annual Purpose and Progress Review. The Committee Report shall include:
- (a) a summary of the relevant committee’s performance with respect to the Company’s impact measurement matrix and the committee’s progress in relation to its objects, goals and terms of reference; and
- (b) a summary of the relevant committee’s goals, plans and areas for improvement in the next twelve (12) months.
- (5) The Annual Purpose and Progress Review shall be presented to the members for review and discussion at each annual general meeting.
- (6) [The Company shall post a copy of the Annual Purpose and Progress Review to the public portion of its website, if any, within sixty (60) days of the annual general meeting except that [the compensation paid to directors, any financial or proprietary information and *[list other sensitive/confidential materials, if any]* included in the Annual Purpose and Progress Review may be omitted from the Annual Purpose and Progress Review as publicly posted.]⁵

Division 2—Decision-taking by Directors

7. Directors to take decision collectively

A decision of the directors may only be taken—

- (a) by a majority of the directors at a meeting; or
- (b) in accordance with article 8.

8. Unanimous decisions

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors’ meeting.

⁴ Guidance Note: This is based on the main categories set out in the B-Corp impact assessment: <http://bimpactassessment.net/how-it-works/assess-your-impact>. A social enterprise can use this as a starting point and tailor its impact measurement matrix accordingly.

⁵ Guidance Note: A social enterprise can consider public posting of its Annual Purpose and Progress Review for accountability and transparency.

- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

9. Calling directors' meetings

- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.
- (2) Notice of a directors' meeting must indicate—
 - (a) its proposed date and time; and
 - (b) where it is to take place; and
 - (c) if it is anticipated that the directors participating in that meeting will not be in the same place, the proposed means of communication for such meeting (e.g. via telephone or video conference) .
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing at least [three] ([3]) clear days before the date of the proposed meeting.
- (4) Other than in exceptional circumstances, notice of a directors' meeting should be accompanied by an agenda specifying in reasonable detail the matters, and copies of any papers, to be discussed at the meeting. Where such agenda is not provided with notice of a directors' meeting and provided the party calling a meeting provides a reasonable explanation for the failure to provide the agenda, failure to provide an agenda with the notice of a directors' meeting does not affect the validity of that meeting or of any business conducted at it.

10. Participation in directors' meetings

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
 - (a) the meeting has been called and takes place in accordance with these articles; and
 - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

11. Quorum for directors' meetings

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed is [2] / [a majority in number of the directors]⁶.
- (3) In the event that a quorum is not present at a duly convened meeting of the directors, that meeting shall be adjourned to the same time on the next day at the same place (or such other day and at such other time and place as the directors may agree in writing) and at such adjourned meeting the quorum shall be [[two] ([2])] / [those directors then present].

12. Meetings if total number of directors less than quorum

If the total number of directors for the time being is less than the quorum required for directors' meetings, the directors must not take any decision other than a decision—

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

13. Chairing of directors' meetings

- (1) The directors may appoint a director to chair their meetings.
- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to chair the meeting, the participating directors may appoint one of themselves to chair it.

14. Chairperson's casting vote at directors' meetings

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.
- (2) Paragraph (1) does not apply if, in accordance with these articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

15. Alternates voting at directors' meetings

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

16. Conflicts of interest

- (1) This article applies if—

⁶ Note: Although it is preferable from a corporate governance perspective to have at least a majority in number of the directors attend meetings, such a requirement may create difficulties for directors to act quickly when required, for example in an emergency scenario. Consider providing for adjournment and for a lower quorum to apply at the adjourned meeting – see proposed Article 11(3).

- (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
 - (b) the director's interest is material.
- (2) The director must declare the nature and extent of the director's interest to the other directors in accordance with section 536 of the Ordinance.
- (3) The director and the director's alternate must neither—
 - (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; nor
 - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Paragraph (3) does not preclude the alternate from—
 - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
 - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes paragraph (3)(a), the vote must not be counted.
- (6) Paragraph (3) does not apply to—
 - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
 - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security; or
 - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors.
- (7) A reference in this article to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.

17. Supplementary provisions as to conflicts of interest

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—

- (a) with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or
 - (b) as vendor, purchaser or otherwise.
- (3) The contract mentioned in paragraph (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in paragraph (2) or is interested in a transaction, arrangement or contract mentioned in paragraph (3) is not liable to account to the company for any profit realized by the transaction, arrangement or contract by reason of—
 - (a) the director holding the office; or
 - (b) the fiduciary relation established by the office.
- (5) Paragraph (1), (2), (3) or (4) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.
- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
 - (a) any company promoted by the company; or
 - (b) any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

18. Validity of acts of meeting of directors

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

19. Record of decisions to be kept

The directors must ensure that the company keeps a written record of every decision taken by the directors under article 6 for at least 10 years from the date of the decision.

20. Directors' discretion to make further rules

Subject to these articles, the directors may make any rule that they think fit about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

**Division 3—Appointment and Retirement of
Directors⁷**

21. Minimum Number of Directors

There shall be a minimum of [three] ([3]) directors on the Board.

22. Appointment and retirement of directors

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
 - (a) by ordinary resolution; or
 - (b) by a decision of the directors.
- (2) Unless otherwise specified in the appointment, a director appointed under paragraph (1)(a) [holds office for an unlimited period of time] / [shall retire at the [third] annual general meeting following their election by ordinary resolution. A retiring director shall be eligible for re-election.]
- (3) An appointment under paragraph (1)(b) may only be made to—
 - (a) fill a casual vacancy; or
 - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under paragraph (1)(b) must—
 - (a) retire from office at the next annual general meeting following the appointment; or
 - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire from office before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

23. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

⁷ Guidance note: Public companies and companies limited by guarantee must have at least two (2) directors. It is possible to provide for a higher minimum number of directors in the articles of association. It is also possible to set out director eligibility requirements of being a director and special requirements for board composition. For example, a company listed on the Stock Exchange of Hong Kong must have at least three (3) independent non-executive directors, one of whom must possess appropriate professional qualifications, or accounting or related financial management expertise and must have independent non-executive directors representing at least one-third of its board.

24. Composite resolution

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.
- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

25. Termination of director's appointment

A person ceases to be a director if the person—

- (a) ceases to be a director under the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally incapacitated person;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance;
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

26. Directors' remuneration

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
 - (a) take any form; and
 - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

27. Directors' expenses

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
 - (i) meetings of directors or committees of directors;
 - (ii) (ii) general meetings; or

- (iii) separate meetings of the holders of debentures of the company; or
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

Division 4—Alternate Directors

28. Appointment and removal of alternates

- (1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor must be effected—
 - (a) by notice to the company; or
 - (b) in any other manner approved by the directors.
- (4) The notice must be authenticated by the appointor.
- (5) The notice must—
 - (a) identify the proposed alternate; and
 - (b) if it is a notice of appointment, contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.
- (6) If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate's appointor.

29. Rights and responsibilities of alternate directors

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.
- (2) Unless these articles specify otherwise, alternate directors—
 - (a) are deemed for all purposes to be directors;
 - (b) are liable for their own acts and omissions;
 - (c) are subject to the same restrictions as their appointors; and
 - (d) are deemed to be agents of or for their appointors.
- (3) Subject to article 15(3), a person who is an alternate director but not a director—
 - (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and

- (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) An alternate director must not be counted or regarded as more than one director for determining whether—
 - (a) a quorum is participating; or
 - (b) a directors' written resolution is adopted.
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.
- (6) But the alternate's appointor may, by notice in writing made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

30. Termination of alternate directorship

- (1) An alternate director's appointment as an alternate terminates—
 - (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
 - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
 - (c) on the death of the alternate's appointor; or
 - (d) when the alternate's appointor's appointment as a director terminates.
- (2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
 - (a) the approval under article 26(1) is withdrawn or revoked; or
 - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

Division 5—Directors' Indemnity and Insurance

31. Indemnity

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be).
- (2) Paragraph (1) only applies if the indemnity does not cover—
 - (a) any liability of the director to pay—
 - (i) a fine imposed in criminal proceedings; or
 - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or

- (b) any liability incurred by the director—
 - (i) in defending criminal proceedings in which the director is convicted;
 - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
 - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
 - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
 - (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
- (3) A reference in paragraph (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of paragraph (3), a conviction, judgment or refusal of relief—
 - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
 - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of paragraph (4)(b), an appeal is disposed of if—
 - (a) it is determined, and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

32. Insurance

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

Division 6—Company Secretary

33. Appointment and removal of company secretary

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

Part 3

Members

Division 1—Becoming and Ceasing to be Member

34. Application for membership

A person may become a member of the company only if—

- (a) that person has completed an application for membership in a form approved by the directors;
- (b) the directors have approved the application; **and**
- (c) that person holds [*qualification*] or is a member of [*professional body or social organization*].⁸

35. Different classes of membership

The directors may establish different classes of Members and set out the different rights and obligations for each class, with such rights and obligations recorded in the Register of Members.

36. Termination of membership

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.
- (2) Membership is not transferable.
- (3) A person's membership terminates when that person dies or ceases to exist.

Division 2—Organization of General Meetings

37. General meetings

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.

⁸ Guidance note: Depending on the needs / objectives of the social enterprise, it may be appropriate to specify the qualifications for membership.

- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with section 568 of the Ordinance.

38. Notice of general meetings

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
 - (a) the day on which it is served or deemed to be served; and
 - (b) the day for which it is given.
- (4) The notice must—
 - (a) specify the date and time of the meeting;
 - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
 - (c) state the general nature of the business to be dealt with at the meeting;
 - (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
 - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
 - (i) include notice of the resolution; and
 - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
 - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
 - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
 - (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
 - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—

- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

39. Persons entitled to receive notice of general meetings

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

40. Accidental omission to give notice of general meetings

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

41. Attendance and speaking at general meetings

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
 - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

42. Quorum for general meetings

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.

- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

43. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
 - (a) there is no chairperson of the board of directors;
 - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;
 - (c) the chairperson is unwilling to act; or
 - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to be the chairperson if—
 - (a) no director is willing to act as chairperson; or
 - (b) no director is present within 15 minutes after the time appointed for holding the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

44. Attendance and speaking by non-members

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The chairperson of a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
 - (a) members of the company; or
 - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

45. Adjournment

- (1) If a quorum is not present within half an hour from the time appointed for holding a general meeting, the meeting must—
 - (a) if called on the request of members, be dissolved; or
 - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.

- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
 - (a) the meeting consents to an adjournment; or
 - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

Division 3—Voting at General Meetings

46. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
 - (a) has or has not been passed; or
 - (b) has passed by a particular majority, is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

47. Errors and disputes

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

48. Demanding a poll

- (1) A poll on a resolution may be demanded—
 - (a) in advance of the general meeting where it is to be put to the vote; or
 - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
 - (a) the chairperson of the meeting;
 - (b) at least 2 members present in person or by proxy; or
 - (c) any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

49. Number of votes a member has

On a vote on a resolution, whether on a show of hands at a general meeting or on a poll taken at a general meeting—

- (a) every member present in person has 1 vote; and
- (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has 1 vote.

50. Votes of mentally incapacitated members

- (1) A member who is a mentally incapacitated person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

51. Content of proxy notices

- (1) A proxy may only validly be appointed by a notice in writing (*proxy notice*) that—
 - (a) states the name and address of the member appointing the proxy;
 - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
 - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
 - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.

- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
 - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

52. Execution of appointment of proxy on behalf of member appointing the proxy

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

53. Delivery of proxy notice and notice revoking appointment of proxy

- (1) A proxy notice does not take effect unless it is received by the company—
 - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
 - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
 - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
 - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

54. Effect of member's voting in person on proxy's authority

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
 - (a) attends in person the general meeting at which the resolution is to be decided; and
 - (b) exercises, in relation to the resolution, the voting right that the member is entitled to exercise.

- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

55. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
 - (a) the previous death or mental incapacity of the member appointing the proxy; or
 - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity or revocation is received by the company—
 - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
 - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

56. Amendments to proposed resolutions

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
 - (a) notice of the proposed amendment is given to the company secretary in writing; and
 - (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) The notice must be given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
 - (a) the chairperson of the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
 - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

**Part 4
Miscellaneous Provisions**

Division 1—Communications to and by Company

57. Means of communication to be used

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Division 2—Administrative Arrangements

58. Company seals

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal having the company's name engraved on it in legible form.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
 - (a) any director of the company;
 - (b) the company secretary; or
 - (c) any person authorized by the directors for signing documents to which the common seal is applied.

59. No right to inspect accounts and other records

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance;
- (c) the directors; or
- (d) an ordinary resolution of the company.

60. Auditor's insurance

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
 - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
 - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
 - (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.
-