

BASSETT FURNITURE INDUSTRIES INC  
Form SC 13G  
February 12, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

SCHEDULE 13G

Under the Securities Exchange Act of 1934

BASSETT FURNITURE INDUSTRIES, INC.  
(Name of Issuer)

COMMON STOCK  
(Title of Class of Securities)

070203104  
(CUSIP Number)

December 31, 2008  
(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

- Rule 13d-1(b)  
 Rule 13d-1(c)  
 Rule 13d-1(d)

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 070203104

1. NAME OF REPORTING PERSONS

S.S. or I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
Aegis Financial Corporation  
54-1712996

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)  
(b) X

3. SEC USE ONLY

4. CITIZENSHIP OR PLACE OF ORGANIZATION  
Delaware

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5. SOLE VOTING POWER	1,260,875
	6. SHARED VOTING POWER	0
	7. SOLE DISPOSITIVE POWER	1,260,875
	8. SHARED DISPOSITIVE POWER	0
9. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON		1,260,875

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10. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES [ ]

11. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 10.9%

12. TYPE OF REPORTING PERSON  
IA

Cusip No. 070203104

1. NAME OF REPORTING PERSONS  
S.S. or I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
SCOTT L. BARBEE  
N/A

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)  
(b) X

3. SEC USE ONLY

4. CITIZENSHIP OR PLACE OF ORGANIZATION  
United States

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5. SOLE VOTING POWER	1,275,875
	6. SHARED VOTING POWER	0
	7. SOLE DISPOSITIVE POWER	1,275,875
	8. SHARED DISPOSITIVE POWER	0

9. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 1,275,875

10. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES [ ]

11. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 11.1%

12. TYPE OF REPORTING PERSON  
IN

Cusip No. 070203104

Schedule 13G Additional Information

Item #

1. (a) Name of Issuer:  
BASSETT FURNITURE INDUSTRIES, INC.
- (b) Address of Issuer's Principal Executive Offices:  
3525 FAIRYSTONE PARK HIGHWAY  
BASSETT, VIRGINIA 24055
2. (a) Name of Persons Filing:
  - (i) Aegis Financial Corporation ("AFC")
  - (ii) SCOTT L. BARBEE ("BARBEE")

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- (b) Address of Principal Business Office for Each of the Above:  
1100 NORTH GLEBE ROAD, SUITE 1040  
ARLINGTON, VIRGINIA 22201
- (c) Citizenship:  
(i) AFC: Delaware  
(ii) Barbee: United States
- (d) Title of Class of Securities: Common Stock
- (e) CUSIP Number: 070203104

3. This statement is filed pursuant to Rule 13d-1(b), or 13d-2(b) or (c).  
The person filing is a:

- (a)  Broker or Dealer registered under Section 15 of the Act;  
(b)  Bank as defined in section 3(a)(6) of the Act;  
(c)  Insurance Company as defined in section 3(a)(19) of the Act;  
(d)  Investment Company registered under section 8 of the  
Investment Company Act;  
(e)  Investment Adviser in accordance with Rule 13d-1(b)(1)(ii)(E);  
(f)  Employee Benefit Plan, Pension Fund which is subject to the  
provisions of the Employee Retirement Income Security Act  
of 1974 or Endowment Fund;  
(g)  Parent Holding Company, in accordance with 240.13d-1(b)(ii)(G);  
(h)  Savings association as defined in Section 3(b) of the Federal  
Deposit Insurance Act;  
(i)  Church plan that is excluded from the definition of an  
investment company under section 3(c)(14) of the  
Investment Company Act;  
(j)  Group, in accordance with Rule 13d-1(b)(1)(ii)(J)

4. Ownership:

Provide the following information regarding the aggregate number and  
percentage of the class of securities of the issuer identified in Item 1.

- (a) Amount Beneficially Owned:  
(i) AFC: 1,260,875  
(ii) Barbee: 1,275,875

- (b) Percent of Class:  
(i) AFC: 10.9%  
(ii) Barbee: 11.1%

(c) Number of shares as to which such person has:

(1) Sole power to vote or to direct the vote:

- (i) AFC: 1,260,875  
(ii) Barbee: 1,275,875

(2) Shared power to vote or to direct the vote:

- (i) AFC: 0  
(ii) Barbee: 0

(3) Sole power to dispose or to direct the disposition of:

- (i) AFC: 1,260,875  
(ii) Barbee: 1,275,875

(4) Shared power to dispose or to direct the disposition of:

- (i) AFC: 0  
(ii) Barbee: 0

5. Ownership of Five Percent or Less of a Class: Not Applicable

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6. Ownership of More than Five Percent on Behalf of Another Person:

The clients of Aegis Financial Corporation, a registered investment adviser, including two investment companies registered under the Investment Company Act of 1940 and other managed accounts, have the right to receive or the power to direct the receipt of dividends and proceeds from the sale of shares included on this Schedule. The Aegis Value Fund, a registered investment company, owns 933,699 shares or 8.1% of the class of securities reported herein. To the best of Aegis Financial Corp's knowledge, no other account owns more than 5% of the outstanding stock.

7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company:  
Not Applicable

8. Identification and Classification of Members of the Group:  
Not Applicable

9. Notice of Dissolution of Group: Not Applicable

10. Certification:

By signing below, the undersigned certify that, to the best of their knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

In accordance with Rule 13d-4 of the Securities Exchange Act of 1934, each of the persons filing this statement expressly disclaim the beneficial ownership of the securities covered by this statement and the filing of this report shall not be construed as an admission by such persons that they are the beneficial owners of such securities.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Aegis Financial Corporation

Date: FEBRUARY 12, 2009

By: /s/ Scott L. Barbee  
-----  
SCOTT L. BARBEE  
MANAGING DIRECTOR

Scott L. Barbee

Date: FEBRUARY 12, 2009

By: /s/ Scott L. Barbee  
-----  
SCOTT L. BARBEE

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EXHIBIT 1

JOINT FILING AGREEMENT AMONG AEGIS FINANCIAL CORPORATION,  
AND SCOTT L. BARBEE

WHEREAS, in accordance with Rule 13d-1(k) under the Securities and Exchange Act of 1934 (the "Act"), only one joint statement and any amendments thereto need to be filed whenever one or more persons are required to file such a statement or any amendments thereto pursuant to Section 13(d) of the Act with respect to the same securities, provided that said persons agree in writing that such statement or amendments thereto is filed on behalf of each of them;

NOW, THEREFORE, the parties hereto agree as follows:

Aegis Financial Corporation, AND  
SCOTT L. BARBEE hereby agree, in accordance with Rule 13d-1(k) under the Act, to file a statement on Schedule 13G relating to their ownership of Common Stock of the Issuer and do hereby further agree that said statement shall be filed on behalf of each of them.

Aegis Financial Corporation

Date: FEBRUARY 12, 2009

By: /s/ Scott L. Barbee  
-----  
SCOTT L. BARBEE  
MANAGING DIRECTOR

Scott L. Barbee

Date: FEBRUARY 12, 2009

By: /s/ Scott L. Barbee  
-----  
SCOTT L. BARBEE

a shareholder who directly holds shares may transfer those shares into his or her own broker account (or vice versa) without giving rise to Irish stamp duty provided there is no change in the ultimate beneficial ownership of the shares as a result of the transfer or the transfer is not made in contemplation of a sale of the shares.

Accordingly, we strongly recommend that all directly registered shareholders open broker accounts so they can transfer their ordinary shares into a broker account to be held through DTC prior to completion of the Transaction. We also strongly recommend that any person who wishes to acquire XL-Ireland ordinary shares after completion of the Transaction acquire such XL-Ireland ordinary shares beneficially.

**Provision**

**XL-Cayman**

**XL-Ireland**

Any transfer of XL-Ireland ordinary shares that is subject to Irish stamp duty will not be registered in the name of the buyer unless an instrument of transfer is duly stamped and provided to our transfer agent. XL-Ireland does not intend to pay any stamp duty on behalf of any purchaser of shares in its capital. XL-Ireland's articles of association grant the Board of Directors of XL-Ireland general discretion to decline to register an instrument of transfer without giving a reason.

Among other things, the Board of Directors may also decline to register a transfer of shares unless a registration statement under the Securities Act is in effect with respect to the transfer or the transfer is exempt from registration. The registration of transfers may be suspended at such times and for such periods, not exceeding 30 days in any year, as the Board of Directors of XL-Ireland may from time to time determine (except as may be required by law). Further, the articles of association of XL-Ireland provide that the Board of Directors of XL-Ireland must decline to register a transfer of shares if it appears to the Board of Directors that the effect of such transfer would be to increase the number of the XL-Ireland Controlled Shares of any person to 10% or more of any class of voting shares of the total issued shares or of the voting power of the company.

**Rights upon Liquidation**

Under Cayman Islands law, the rights of the shareholders to a return of XL-Cayman's assets on dissolution or winding up, following the settlement of all claims of creditors, may be prescribed in XL-Cayman's articles of association or the terms of any preferred shares issued by the Board time to time. The holders of preferred shares in particular may have the right to priority over other shareholders in a dissolution or winding up of XL-Cayman.

The rights of the shareholders to a return of XL-Ireland's assets on dissolution or winding up, following the settlement of all claims of creditors, may be prescribed in XL-Ireland's articles of association or the terms of any shares issued by the Board of Directors of XL-Ireland from time to time. The holders of preference shares in particular may have the right to priority over ordinary or other shareholders in a dissolution or winding up of XL-Ireland. If the articles of association and terms of issue of the

Provision	XL-Cayman	XL-Ireland
<p>The articles of association of XL-Cayman provide that if the company is to be wound up, the liquidator may, with the sanction of a special resolution of the XL-Cayman and any other sanction required by statute, value the assets of XL-Cayman and divide them among the shareholders. Pursuant to sanction by special resolution, the liquidator will have discretion to determine how such distribution will be carried out among classes of shareholders and may make other provisions in his or her discretion.</p>	<p>shares of the company contain no specific provisions in respect of a dissolution or winding up then, subject to the shareholder priorities and the rights of any creditors, the assets will be distributed to shareholders in proportion to the paid-up nominal value of the shares held. XL-Ireland's articles provide that the ordinary shareholders of XL-Ireland are entitled to participate in a winding up, and the method by which the property will be divided shall be determined by the liquidator, subject to a special resolution by the shareholders, but such rights by ordinary shareholders to participate may be subject to the rights of any preference shareholders to participate under the terms of any series or class of preference shares.</p>	
<p>Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of XL-Cayman, before any distribution is made to the holders of any junior-ranking shares, including the ordinary shares, (1) holders of the XL-Cayman Series C preference shares will be entitled to receive from its assets legally available for distribution to shareholders, \$25 per share plus all accrued and unpaid dividends to the date fixed for distribution, and (2) holders of the XL-Cayman Series E preference shares will be entitled to receive from its assets legally available for distribution to shareholders, \$1000 per share plus any declared but unpaid dividends with respect to the then-current dividend period to the date fixed for distribution.</p>	<p>Holders of the XL-Ireland Series C and Series E preference shares will have rights that are substantially the same as those described with respect to the Series C and Series E preference shares of XL-Cayman in any voluntary or involuntary liquidation, dissolution or winding up of the affairs of XL-Ireland and, in that respect, will rank in priority to the holders of any junior-ranking shares, including the XL-Ireland ordinary shares.</p>	
<p><b>Enforcement of Civil Liabilities Against Foreign Persons</b></p>	<p>XL has been advised by Cayman Islands counsel that there is no statutory recognition in the Cayman Islands of judgments obtained in the United States nor any relevant treaty in place. However, the courts of the Cayman Islands will in certain circumstances recognize and enforce a non-penal judgment of a foreign court of competent jurisdiction without retrial on the merits. The courts of the Cayman Islands will recognize a foreign judgment as the basis for a claim at common law in the Cayman Islands provided such judgment:</p>	<p>XL has been advised by its Irish counsel that a judgment for the payment of money rendered by a court in the United States based on civil liability would not be automatically enforceable in Ireland. There is no treaty between Ireland and the United States providing for the reciprocal enforcement of foreign judgments. The following requirements must be met before the foreign judgment will be deemed to be enforceable in Ireland:</p>
<p>is given by a competent foreign court;</p>	<p>the judgment must be for a definite sum;</p>	<p>the judgment must be final and conclusive; and</p>
<p>imposes on the judgment debtor a</p>	<p>the judgment must be provided by a</p>	

**Provision**

**XL-Cayman**

**XL-Ireland**

liability to pay a liquidated sum for which the judgment has been given;

is final;

is not in respect of taxes, a fine or a penalty; and

was not obtained in a manner and is not of a kind the enforcement of which is contrary to the public policy of the Cayman Islands.

court of competent jurisdiction.

An Irish court will also exercise its right to refuse judgment if the foreign judgment was obtained by fraud, if the judgment violated Irish public policy, if the judgment is in breach of natural justice or if it is irreconcilable with an earlier foreign judgment.



## THE MEETINGS

We are furnishing this proxy statement to the holders of our ordinary shares in connection with the solicitation of proxies by XL-Cayman's Board of Directors for use at the special scheme meeting to consider the Scheme of Arrangement Proposal and the other matters that may come before that meeting, the extraordinary general meeting to consider the Distributable Reserves Proposal, the Director Nomination Procedures Proposal and the Name Change Proposal and the other matters that may come before that meeting, each as described below, and at any adjournments of either of such ordinary shareholder special meetings.

### General

The special scheme meeting will be conducted in accordance with the directions of the Cayman Court. The extraordinary general meeting will be conducted in accordance with the articles of association of XL-Cayman.

### Time, Place, Date and Purpose of the Meetings

The ordinary shareholder special meetings are scheduled to be held on , 2010 at XL's principal executive offices, located at XL House, One Bermudiana Road, Hamilton HM 08, Bermuda.

The special scheme meeting is scheduled to commence at [a.m.], Bermuda time, on that date. At that meeting, XL-Cayman's Board of Directors will ask the ordinary shareholders of XL-Cayman, voting as a class, to vote on:

Proposal  
Number  
One the  
Scheme of  
Arrangement  
Proposal.

The extraordinary general meeting is scheduled to commence at [a.m.], Bermuda time, on that date (or as soon thereafter as the special scheme meeting concludes or is adjourned). At the extraordinary general meeting, XL-Cayman's Board of Directors will ask the ordinary shareholders of XL-Cayman, voting as a class, to vote on:

Proposal  
Number  
Two the  
Distributable  
Reserves  
Proposal;

Proposal  
Number  
Three the  
Director  
Nomination  
Procedures  
Proposal;  
and

Proposal  
Number  
Four the  
Name  
Change  
Proposal.

Also, at both ordinary shareholder special meetings, XL-Cayman's Board of Directors will ask the ordinary shareholders of XL-Cayman, voting as a class, to approve motions to adjourn each meeting to a later date to solicit additional proxies if there are insufficient proxies to approve the proposals at the time of each respective ordinary shareholder special meeting or if there are insufficient shares present, in person or by proxy, at the extraordinary general meeting to conduct the vote on the Director Nomination Procedures Proposal and the Name Change Proposal.

**XL-Cayman's Board of Directors has approved the Scheme of Arrangement and unanimously recommends that you vote FOR each of the proposals set forth in this proxy statement.**

If any other matters properly come before the ordinary shareholder special meetings or any adjournments of either of such ordinary shareholder special meetings, the persons named in the proxy card will have the authority to vote the shares represented by all properly executed proxies in their discretion. The Board currently does not know of any matters to be raised at the ordinary shareholder special meetings other than the proposals contained in this proxy statement.

#### **Record Date; Voting Rights**

The Cayman Court has set , 2010 as the record date for the special scheme meeting and the Board has also set , 2010 as the record date for the extraordinary general meeting.

Only shareholders of XL-Cayman ordinary shares on the record date are entitled to notice of and to vote at the ordinary shareholder special meetings or any adjournments of such meetings. You will not be the registered holder of shares that you hold beneficially. Instead, the depository (for

example, Cede & Co., as nominee for DTC) or other nominee will be the registered holder of such shares.

As of the record date for the ordinary shareholder special meetings on , 2010, XL-Cayman ordinary shares were issued and outstanding. Each XL-Cayman ordinary share entitles its holder to one vote on each proposal on which the holder is entitled to vote, except that (for purposes of the extraordinary general meeting but not the special scheme meeting) if, and for so long as, the votes conferred by the Controlled Shares of any person constitute 10% or more of the votes conferred by the issued shares of the company, the voting rights with respect to the XL-Cayman Controlled Shares owned by such person shall be limited, in the aggregate, to a voting power equal to approximately (but slightly less than) 10%, pursuant to a formula set forth in XL-Cayman's articles of association.

Under Cayman Islands law, the ordinary shareholders of XL-Cayman are not entitled to dissenters' or appraisal rights with respect to the matters to be considered and voted on at the ordinary shareholder special meetings.

### **Quorum**

At the special scheme meeting to approve the Scheme of Arrangement Proposal, at least two ordinary shareholders must be present, in person or by proxy, in order for the meeting to proceed. At the extraordinary general meeting to approve the Distributable Reserves Proposal, the Director Nomination Procedures Proposal and the Name Change Proposal, 50% of the outstanding ordinary shares of XL-Cayman must be present, in person or by proxy, in order for the meeting to proceed and in order for the Distributable Reserves Proposal to be considered and voted on at the meeting, but 2/3 of the outstanding ordinary shares of XL-Cayman must be present, in person or by proxy, in order for the Director Nomination Procedures Proposal and the Name Change Proposal to be considered and voted on at the meeting.

### **Votes of Ordinary Shareholders Required for Approval**

*Scheme of Arrangement.* The Scheme of Arrangement, which encompasses the Ordinary Share Exchange and (if approved by the Series C and Series E preference shareholders) the Preference Share Exchange, requires the affirmative vote of a majority in number of the registered shareholders of XL-Cayman ordinary shares representing 75% or more in value of the ordinary shares present and voting, in person or by proxy. The approval of the Series C or Series E preference shareholders is not needed to approve the Scheme of Arrangement with respect to the Ordinary Share Exchange.

For the purpose of calculating the majority in number requirement for the approval of the Scheme of Arrangement Proposal, each registered ordinary shareholder, voting in person or by proxy, will be counted as a single ordinary shareholder, regardless of the number of ordinary shares voted by that shareholder. Only ordinary shareholders whose names are recorded on XL-Cayman's register of members will be counted for purposes of the majority-in-number requirement. As such, where shares are held through DTC (including ordinary shares held in street name by brokers through DTC) or other nominees on behalf of beneficial owners, and DTC (or such other nominee) is listed as the registered holder of such shares on XL-Cayman's register of members, the Cayman Court will not look through the nominee to determine how the beneficial owners of shares instructed those shares to be voted. Accordingly, DTC and other nominee holders of ordinary shares who are registered shareholders will each be counted as one ordinary shareholder for the purpose of calculating the majority in number requirement. If a registered shareholder (including DTC or other nominee holder of ordinary shares) elects (or is directed) to vote a portion of such registered shareholder's ordinary shares FOR the Scheme of Arrangement Proposal, and a portion AGAINST the Scheme of Arrangement Proposal, then that registered shareholder will be counted as one ordinary shareholder voting FOR the Scheme of Arrangement Proposal and as one ordinary shareholder voting AGAINST the Scheme of Arrangement Proposal, thereby effectively cancelling out that registered shareholder's vote for the purposes of the majority in number calculation (but not for purposes of the 75% or more in value calculation).



*Distributable Reserves Proposal.* The Distributable Reserves Proposal requires the affirmative vote of XL-Cayman's ordinary shareholders representing more than 50% of all ordinary shares present and voting, in person or by proxy. While approval of the Distributable Reserves Proposal by more than 50% of all ordinary shares present and voting is sufficient for approval of the proposal under Cayman Islands law (which governs the extraordinary general meeting at which the vote is taking place), we are seeking the approval of at least 75% of all ordinary shares present and voting, in person or by proxy, to increase the likelihood of obtaining Irish High Court approval with respect to the creation of distributable reserves in XL-Ireland because such higher approval threshold would be required if the vote on the Distributable Reserves Proposal were being conducted under Irish law. Approval of the Distributable Reserves Proposal by our ordinary shareholders is not a condition to the effectiveness of the Scheme of Arrangement, but the Board may determine not to proceed with the Transaction for any reason, including because the Distributable Reserves Proposal is not approved or is approved by holders of fewer than 75% of all ordinary shares present and voting, in person or by proxy.

*Director Nomination Procedures Proposal.* The Director Nomination Procedures Proposal requires the affirmative vote of ordinary shareholders representing not less than 2/3 of all ordinary shares present and voting, in person or by proxy, at the extraordinary general meeting at which a quorum of 2/3 of all of our outstanding ordinary shares is present, in person or by proxy.

*Name Change Proposal.* The Name Change Proposal requires the affirmative vote of ordinary shareholders representing not less than 2/3 of all ordinary shares present and voting, in person or by proxy, at the extraordinary general meeting at which a quorum of 2/3 of all of our outstanding ordinary shares is present, in person or by proxy.

*Meeting Adjournments.* The affirmative vote of holders of XL-Cayman ordinary shares representing more than 50% of all ordinary shares present and voting, in person or by proxy, at the relevant meeting, whether in person or by proxy, is required to approve the proposal to adjourn either of the ordinary shareholder special meetings. However, an ordinary shareholder special meeting cannot be adjourned if the requisite quorum (discussed above under "Quorum") is not present at such meeting.

For purposes of determining whether the required approval has been obtained for any of the proposals described in this proxy statement, shares that are not voted at the applicable ordinary shareholder special meeting will not be considered.

*Intentions of Directors and Executive Officers.* Our directors and executive officers have indicated that they intend to vote their shares FOR each of the proposals set forth in this proxy statement. On the record date, our directors and executive officers and their affiliates beneficially owned , or %, of the outstanding XL-Cayman ordinary shares.

### **Votes of Preference Shareholders Required for Preference Share Exchange Approval**

As described above, the Ordinary Share Exchange is not conditioned on completion of the Preference Share Exchange or any approval by our Series C or Series E preference shareholders. However, in connection with the Scheme of Arrangement, the Series C and Series E preference shareholders will be asked to vote on the following two items at separate class meetings of the Series C and Series E preference shareholders:

*Scheme of Arrangement.*  
The Scheme of Arrangement requires, but only with

respect to the  
Preference  
Share  
Exchange: (1)  
the  
affirmative  
vote of a  
majority in  
number of the  
registered  
shareholders  
of  
XL-Cayman  
Series C  
preference  
shares  
representing  
75% or more  
in value of the  
Series C  
preference  
shares present  
and voting, in  
person or by  
proxy, o at a  
special  
court-ordered  
class meeting  
of the  
XL-Cayman  
Series C  
preference  
shareholders;  
and (2) the  
affirmative  
vote of a  
majority in  
number of the  
registered  
shareholders  
of  
XL-Cayman  
Series E  
preference  
shares  
representing  
75% or more  
in value of the  
Series E  
preference  
shares present

and voting, in person or by proxy, at a special court-ordered class meeting of the XL-Cayman Series E preference shareholders.

*Variation to the Terms of the Series C Preference Shares.* The variation to the terms of the Series C preference shares requires the affirmative vote of XL-Cayman s Series C preference shareholders representing at least 2/3 of all Series C preference shares present and voting, in person or by proxy, at the extraordinary general meeting of Series C preference shareholders at which holders of at least 2/3 of all Series C preference shares are present, either in person or by proxy. Approval of the variation to the terms of the Series C preference shares is a condition to the effectiveness of the Scheme



of  
Arrangement  
with respect  
to the  
Preference  
Share  
Exchange and  
therefore is  
required in  
order for us to  
carry out the  
Preference  
Share  
Exchange.

### **Proxies**

A gold proxy card is being sent to each XL-Cayman registered ordinary shareholder as of the record date. If you properly received a proxy card, you may grant a proxy to vote on the proposals presented in one of the ways that are explained below under How You Can Vote.

If you properly complete, sign and date the enclosed gold proxy card and timely send it to us or timely properly deliver your proxy by telephone or via the Internet, your proxy holder (one of the individuals named on the enclosed proxy card) will vote your ordinary shares as you have directed at the ordinary shareholder special meetings.

If you do not wish to vote all of your ordinary shares in the same manner on any particular proposal(s) at the ordinary shareholder special meetings, you may specify your vote by clearly hand-marking the proxy card to indicate how you want to vote your ordinary shares. You may not split your vote if you are voting via the Internet or by telephone.

**If you are a registered shareholder and if you do not specify on the accompanying gold proxy card that is submitted (or when giving your proxy by telephone or via the Internet) how you want to vote your ordinary shares, the proxy holders will vote them FOR each of the proposals set forth in this proxy statement.**

You may abstain on any proposal by marking ABSTAIN with respect to the proposal.

An abstention on any proposal has the effect of a vote not being cast with respect to the relevant shares in relation to that proposal. Although considered present for purposes of the relevant quorum requirement, such shares will not be considered when determining whether the proposal has received the required approval.

If you do not appoint a proxy and you do not vote at the ordinary shareholder special meetings, your ordinary shares will also not be considered when determining whether a proposal has received the required ordinary shareholder approval. Even if you do not appoint a proxy and you do not vote at the ordinary shareholder special meetings, you will still be bound by the outcome. You are therefore strongly urged to attend and vote at the ordinary shareholder special meetings in person or by proxy.

You should also receive a mailing containing a copy of the proxy statement and white proxy card, along with our annual report on Form 10-K for 2009, which contains the proposals for ordinary shareholder consideration at the AGM being held at [a.m.], Bermuda time, on , 2010. In order for you to cast your votes at both the AGM and the ordinary shareholder special meetings, you must return both proxy cards. Returning only the white proxy card related to the AGM will not permit your ordinary shares to be voted by proxy on the proposals at the ordinary shareholder special meetings described in this proxy statement.

The accompanying proxy is being solicited on behalf of the Board of Directors of XL-Cayman. We have hired Georgeson Inc. to assist in the distribution of proxy materials and the solicitation of proxies for a fee estimated at \$75,000, plus expenses. Proxies will be solicited on behalf of the Board by mail, in person and by telephone. We will bear the cost of soliciting proxies. We will also reimburse brokers and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses for forwarding proxy materials to the persons for whom they hold XL-Cayman ordinary shares. To the extent necessary in order to ensure sufficient representation at the ordinary shareholder special meetings, XL-Cayman or its proxy solicitor may solicit the return of proxies by

personal interview, mail, telephone, facsimile, Internet or other means of electronic transmission. The extent to which this will be necessary depends upon how promptly proxies are returned. We urge you to send in your proxy without delay.

### **Revoking your Proxy**

You may revoke your proxy at any time before it is exercised at the ordinary shareholder special meetings by one of the following means. If you are a registered shareholder, you may revoke your proxy by:

Sending a  
written  
notice to our  
Secretary at  
XL House,  
One  
Bermudiana  
Road,  
Hamilton  
HM 08,  
Bermuda.

Your written  
notice must  
be received a  
sufficient  
amount of  
time before  
the first  
ordinary  
shareholder  
special  
meeting to  
permit the  
necessary  
examination  
and  
tabulation of  
the  
revocation  
before the  
votes are  
taken.

If you wish  
to revoke  
your  
submitted  
proxy and  
submit new  
voting  
instructions

by mail,  
courier or  
hand  
delivery,  
then you  
must sign,  
date and  
mail, courier  
or  
hand-deliver  
a proxy card  
with your  
new voting  
instructions  
for the  
ordinary  
shareholder  
special  
meetings,  
which we  
must receive  
prior to the  
start of the  
applicable  
ordinary  
shareholder  
special  
meeting.

If you wish  
to revoke  
your  
submitted  
proxy and  
submit new  
voting  
instructions  
by telephone  
or via the  
Internet, then  
you must  
submit such  
new voting  
instructions  
for the  
ordinary  
special  
meetings by  
telephone or  
via the  
Internet by

[a.m.],  
Bermuda  
time, on ,  
2010.

You also  
may revoke  
your proxy  
in person at  
the ordinary  
shareholder  
special  
meetings by  
completing a  
written ballot  
(but only if  
you are the  
registered  
owner of the  
ordinary  
shares as of  
the record  
date) and  
vote your  
ordinary  
shares at the  
ordinary  
shareholder  
special  
meetings.

**If you hold your XL-Cayman ordinary shares in the street name of a broker, you may revoke your proxy only in accordance with the instructions from your broker or other nominee.**

Attending the ordinary shareholder special meetings without taking one of the actions above will not revoke your proxy.

### **How You Can Vote**

*Registered Shareholders.* If you are a registered shareholder, you may vote your ordinary shares either by voting in person at the ordinary shareholder special meetings or by submitting a completed proxy. By submitting your proxy, you are legally authorizing another person to vote your ordinary shares by proxy in accordance with your instructions. The enclosed proxy designates Michael S. McGavick or, failing him, Kirstin Romann Gould to vote your ordinary shares in accordance with the voting instructions you indicate in your proxy.

If you submit your proxy designating Michael S. McGavick or, failing him, Kirstin Romann Gould as the individuals authorized to vote your ordinary shares, but you do not indicate how your ordinary shares are to be voted, then your ordinary shares will be voted by those individuals in accordance with the Board's recommendations, which are described in this proxy statement. In addition, if any other matters are properly brought up at the ordinary shareholder special meetings (other than the proposals contained in this proxy statement), then each of these individuals will have the authority to vote your ordinary shares on those matters in his or her discretion. The Board currently does not know of any matters to be raised at the ordinary shareholder special meetings other than the proposals contained in this

proxy statement.

You may submit your proxy either by mail, courier or hand delivery, by telephone (at the number set forth in the accompanying proxy materials) or via the Internet (<https://www.proxyvotenow.com/xlcapital>). Please let us know whether you plan to attend the ordinary shareholder special meetings by marking the appropriate box on your proxy card or by following the instructions provided when you submit your proxy by telephone or via the Internet. In order for your proxy to be validly submitted and for your ordinary shares to be voted in accordance with your proxy, we must receive your mailed, couriered or hand-delivered proxy prior to the start

of the applicable ordinary shareholder special meeting. If you submit your proxy by telephone or via the Internet, then you may submit your voting instructions up until [a.m.], Bermuda time, on , 2010.

*Shareholders Owning Shares Through Brokers.* Ordinary shareholders who hold their shares in the street name of a broker must vote their ordinary shares by following the procedures established by their broker. This applies to our employees who received, through our employee plans, ordinary shares that are held by Merrill Lynch. Under NYSE Rule 452, brokers who hold ordinary shares on behalf of customers will not have the authority to vote without direction on any of the matters to be considered at the ordinary shareholder special meetings. If you hold your ordinary shares through a broker and you do not instruct your broker on how to vote your ordinary shares prior to the ordinary shareholder special meetings, your broker, or the depository through which your broker holds your shares, will not be able to vote your ordinary shares at the ordinary shareholder special meetings, and your ordinary shares may not be counted as present for purposes of the relevant quorum requirement. Under NYSE Rule 452, brokers who hold shares on behalf of customers have the authority to vote on routine proposals when they have not received instructions from beneficial owners, but are precluded from exercising their voting discretion with respect to proposals for non-routine matters. We believe that the proposals described in this proxy statement are proposals for non-routine matters.

Ordinary shareholders who hold their ordinary shares in the name of a broker and that plan to attend the ordinary shareholder special meetings must present proof of ownership of XL-Cayman ordinary shares as of the record date, such as a brokerage account statement or letter from broker, together with a form of personal photo identification, to be admitted to the ordinary shareholder special meetings.

### **Validity**

The chairman of each of the ordinary shareholder special meetings will determine all questions as to validity, form, and eligibility, including time of receipt and acceptance of proxies. His or her determination will be final and binding, provided, however, that such determination is subject to any decision made by a court of competent jurisdiction upon a lawful challenge to his or her determination. The chairman of the meeting has the right to waive any irregularities or conditions as to the manner of voting. The chairman of the meeting may accept your proxy by any form of written or electronic communication so long as it is reasonably assured that the communication is authorized by you.

**BENEFICIAL OWNERSHIP OF DIRECTORS AND EXECUTIVE OFFICERS**

The following table sets forth, as of January 4, 2010, information regarding the beneficial ownership of XL-Cayman ordinary shares held by: (1) each of our current directors and each of our named executive officers (using the named executive officers with respect to 2008 as set forth in the proxy statement for XL-Cayman's 2009 annual general meeting of ordinary shareholders dated March 9, 2009, the information to determine the named executive officers with respect to 2009 not yet being available); and (2) all of our current directors and executive officers as a group. To our knowledge, except as otherwise indicated, each of the persons listed below has sole voting and investment power with respect to the shares beneficially owned by him or her and none of the persons listed below owns any ESUs or Series C or Series E preference shares. For purposes of the table below, beneficial ownership is determined in accordance with Rule 13d-3 under the Exchange Act, pursuant to which a person or group of persons is deemed to have beneficial ownership of any shares that such person has the right to acquire within 60 days after January 4, 2010. For purposes of computing the percentage of outstanding XL-Cayman ordinary shares held by each person or group of persons named below, any shares that such person or persons has the right to acquire within 60 days after January 4, 2010 are deemed to be outstanding but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.

<b>Name</b>	<b>XL-Cayman Class A ordinary shares beneficially owned(1)</b>
Dale R. Comey (2)	63,797
David B. Duclos (3)	181,280
Robert Glauber (4)	60,288
Herbert Haag (5)	90,228
G. Thompson Hutton (6)	25,000
Joseph Mauriello (7)	41,044
Michael S. McGavick (8)	329,499
Eugene M. McQuade (9)	49,900
Brian W. Nocco (10)	166,500
Robert S. Parker (11)	73,888
Alan Z. Senter (12)	70,449
Clayton S. Rose (13)	7,237
Sarah S. Street (14)	209,915
Ellen E. Thrower (15)	67,020
James H. Veghte (16)	291,572
John Vereker (17)	33,464
Directors and executive officers of XL as a group including those named above (21 in total)	2,104,523

(1) The ordinary shares



beneficially  
owned by (i)  
each of our  
current  
directors, (ii)  
each of our  
named  
executive  
officers and  
(iii) all of our  
current  
directors and  
executive  
officers as a  
group  
included in  
the table  
above  
represent,  
respectively,  
less than 1%  
of the  
XL-Cayman  
Class A  
ordinary  
shares  
deemed to  
have been  
outstanding  
as of January  
4, 2010.

- (2) Includes  
37,500  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.  
Also  
includes  
12,297  
retainer share  
units,  
deferred  
share units,  
deferred

restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

- (3) Includes  
76,667  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable  
and 70,000  
ordinary  
shares  
issuable  
upon the  
exercise of  
options  
which vest  
within 60  
days. Also  
includes  
14,125  
restricted  
ordinary  
shares which  
had not  
vested.

- (4) Includes  
40,000  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.

Also  
includes  
4,213  
retainer share  
units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

- (5) Includes 22,500 ordinary shares issuable upon exercise of options that were vested and exercisable. Also includes 3,419 retainer share units and accrued dividends issuable upon retirement from the Board of Directors.
- (6) Includes 15,000 ordinary shares issuable upon exercise of options that were vested and exercisable.
- (7) Includes 22,500 ordinary shares issuable upon exercise of options that were vested and exercisable. Also includes

6,544  
retainer  
share units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

- (8) Includes  
41,666  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable  
and 145,833  
ordinary  
shares  
issuable  
upon the  
exercise of  
options  
which vest  
within 60  
days. Also  
includes  
24,000  
restricted  
ordinary  
shares  
which had  
not vested.

- (9) Includes  
25,000  
ordinary  
shares  
issuable

upon  
exercise of  
options that  
were vested  
and  
exercisable.

Also  
includes  
7,900  
retainer  
share units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

(10) Includes  
110,000  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.

(11) Includes  
37,500  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.  
Also  
includes  
16,388

retainer  
share units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

(12) Includes  
37,500  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.  
Also  
includes  
11,913  
retainer  
share units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

(13) Includes  
5,000  
ordinary  
shares  
issuable

upon  
exercise of  
options that  
were vested  
and  
exercisable.

- (14) Includes  
137,084  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable  
and 18,833  
ordinary  
shares  
issuable  
upon the  
exercise of  
options  
which vest  
within 60  
days. Also  
includes  
22,937  
restricted  
ordinary  
shares  
which had  
not vested.

- (15) Includes  
37,500  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable.  
Also  
includes  
13,470  
retainer



share units,  
deferred  
share units,  
deferred  
restricted  
stock, and  
accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

(16) Includes  
173,721  
ordinary  
shares  
issuable  
upon  
exercise of  
options that  
were vested  
and  
exercisable  
and 41,666  
ordinary  
shares  
issuable  
upon the  
exercise of  
options  
which vest  
within 60  
days. Also  
includes  
21,625  
restricted  
ordinary  
shares  
which had  
not vested.

(17) Includes  
17,500  
ordinary  
shares  
issuable  
upon  
exercise of

options that  
were vested  
and  
exercisable.  
Also  
includes  
2,164  
retainer  
share units  
and accrued  
dividends  
issuable  
upon  
retirement  
from the  
Board of  
Directors.

**BENEFICIAL OWNERSHIP OF MORE THAN  
FIVE PERCENT OF ANY CLASS OF VOTING SECURITIES**

As of January 4, 2010, the only persons known by us to be beneficial owners of more than five percent of XL-Cayman ordinary shares were as follows:

Name and Address of Beneficial Owner	XL-Cayman Class A ordinary shares(1)	
	shares beneficially owned	% of shares beneficially owned
Ameriprise Financial, Inc. and RiverSource Investments, LLC 145 Ameriprise Financial Center Minneapolis, MN 55474	21,622,012	6.3 %(2)
AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, AXA, and AXA Financial, Inc. 26, rue Drouot, 75009 Paris, France 25, avenue Matignon, 75008 Paris, France 1290 Avenue of the Americas, New York, NY 10104	20,549,243	6.0 %(3)
Hotchkis and Wiley Capital Management, LLC 725 S. Figueroa Street, 39th Floor, Los Angeles, CA 90017	18,408,800	5.4 %(4)
Barrow, Hanley, Mewhinney & Strauss, Inc. 2200 Ross Avenue, 31st Floor, Dallas, TX 75201-2761	17,466,121	5.1 %(5)

- (1) Each share has one vote at each of the ordinary shareholder special meetings, except that (for purposes of the extraordinary general meeting but not the special scheme meeting) if, and for so long as, the votes

conferred by  
the  
XL-Cayman  
Controlled  
Shares of any  
person  
constitute 10%  
or more of the  
votes  
conferred by  
the issued  
shares of the  
company, the  
voting rights  
with respect to  
the  
XL-Cayman  
Controlled  
Shares owned  
by such person  
shall be  
limited, in the  
aggregate, to a  
voting power  
equal to  
approximately  
(but slightly  
less than)  
10%, pursuant  
to a formula  
set forth in  
XL-Cayman's  
articles of  
association.  
XL-Ireland's  
articles of  
association  
will establish  
the same  
approximately  
10% limit.

- (2) Represents  
300,805  
ordinary  
shares with  
shared voting  
power and  
21,622,012  
ordinary  
shares with

shared  
dispositive  
power.  
Beneficial  
ownership  
details are  
based upon  
information  
contained in  
filings with the  
SEC.

- (3) Represents  
14,936,184  
ordinary  
shares with  
sole voting  
power and  
20,549,243  
ordinary  
shares with  
sole  
dispositive  
power.  
Beneficial  
ownership  
details are  
based upon  
information  
contained in  
filings with the  
SEC.

- (4) Represents  
11,867,000  
ordinary  
shares with  
sole voting  
power and  
18,408,800  
ordinary  
shares with  
sole  
dispositive  
power.  
Beneficial  
ownership  
details are  
based upon  
information  
contained in

filings with the  
SEC.

- (5) Represents  
1,950,921  
ordinary  
shares with  
sole voting  
power and  
15,515,200  
ordinary  
shares with  
shared voting  
power; also  
represents  
17,466,121  
ordinary  
shares with  
sole  
dispositive  
power.  
Beneficial  
ownership  
details are  
based upon  
information  
contained in  
filings with the  
SEC.

**MARKET PRICE AND DIVIDEND INFORMATION**

Information regarding the principal market for our ordinary shares and related shareholder matters is as follows:

Our ordinary shares are traded on the NYSE under the symbol XL. As of January 4, 2010, the approximate number of registered holders of our ordinary shares was 354. Historical financial information may not be indicative of XL-Ireland's future performance. We have included no data for XL-Ireland because this entity was not in existence during any of the periods shown below. The high and low sales price per XL-Cayman ordinary share and the dividends declared per XL-Cayman ordinary share for the following periods were as follows:

<b>2008</b>	<b>High</b>	<b>Low</b>	<b>Dividends</b>
First quarter	\$ 46.6105	\$ 25.0138	\$ 0.38
Second quarter	34.5485	18.5495	0.38
Third quarter	21.5331	12.4421	0.19
Fourth quarter	16.5341	2.5276	0.19
<b><u>2009</u></b>			
First quarter	\$ 6.3142	\$ 2.4418	\$ 0.10
Second quarter	12.3082	5.0984	0.10
Third quarter	18.0896	10.7067	0.10
Fourth quarter	19.0250	15.6929	0.10
<b><u>2010</u></b>			
First quarter (through January 11)	\$ 18.8405	\$ 18.0800	\$ 0.00

On January 11, 2010, the last trading day before the public announcement of the Transaction, the closing price of the XL-Cayman ordinary shares as reported by the NYSE was \$18.28 per share. On , 2010, the most recent practicable date before the date of this proxy statement, the closing price of the XL-Cayman ordinary shares as reported by the NYSE was \$ per share.

Future dividends, if any, on the XL-Cayman ordinary shares and/or the XL-Ireland ordinary shares will be at the discretion of the respective Boards of Directors and will depend on, among other things, our results of operations, cash requirements and surplus, financial condition, contractual restrictions and other factors that the Boards of Directors may deem relevant, as well as our ability to continue to pay dividends in compliance with Cayman Islands or Irish law, as applicable. Under Irish law, XL-Ireland requires distributable reserves in its unconsolidated balance sheet prepared in accordance with the Irish Companies Acts and applicable accounting standards to enable it to pay dividends. Immediately following the Effective Time, the unconsolidated balance sheet of XL-Ireland will not contain any distributable reserves because it is a newly formed holding company with no distributable reserves unless and until it generates earnings after the Effective Time. As discussed under Proposal Number Two: The Distributable Reserves Proposal above, if the ordinary shareholders of XL-Cayman approve the Distributable Reserves Proposal and the Ordinary Share Exchange is consummated, we will seek to obtain (as soon as practicable following the Effective Time) the approval of the Irish High Court, as required for the creation of distributable reserves through a reduction of XL-Ireland's share premium account, so that we are able to continue dividend payments in accordance with our current practice (when, as and if declared by the XL-Ireland Board of Directors).

The Cayman Companies Law regulates the payment of dividends by XL-Cayman. XL-Cayman may not declare or pay a dividend if, after the payment, it would not be able to pay its debts as they become due in the ordinary course of business.

We intend to file an application with the NYSE to list the XL-Ireland ordinary shares that holders of XL-Cayman ordinary shares will receive in the Transaction. Immediately following the Effective Time, the XL-Ireland ordinary shares will be listed on the NYSE under the symbol XL , the same symbol under which the XL-Cayman ordinary shares are currently listed. XL-Ireland ordinary shares are also expected to be listed on the Bermuda Stock Exchange following the Effective Time under the symbol XL , the same symbol under which the XL-Cayman ordinary



shares are currently listed. We do not currently intend to list the XL-Ireland ordinary shares on the Irish Stock Exchange or any other stock exchange.

Please see Risk Factors, Description of XL Group plc Share Capital Dividends, Proposal Number One: The Scheme of Arrangement Proposal Amendment, Termination or Delay and Proposal Number Two: The Distributable Reserves Proposal. Please also see Material Tax Considerations Related to the Transaction.

### **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The consolidated financial statements of XL-Cayman and its subsidiaries as of December 31, 2008 and December 31, 2007, and for each of the three years in the period ended December 31, 2008, incorporated by reference in this proxy statement from XL-Cayman's Annual Report on Form 10-K for the year ended December 31, 2008, and the effectiveness of XL-Cayman's internal control over financial reporting as of December 31, 2008, have been audited by PricewaterhouseCoopers LLP, New York, New York, an independent registered public accounting firm, as stated in their report incorporated herein by reference.

### **LEGAL MATTERS**

Baker & McKenzie LLP will pass upon certain U.S. federal income tax consequences of the Transaction. Matheson Ormsby Prentice, Solicitors will pass upon certain Irish tax consequences of the Transaction. Cleary Gottlieb Steen & Hamilton LLP has advised us as to certain matters, including certain matters under the U.S. securities laws.

### **SUBMISSION OF FUTURE SHAREHOLDER PROPOSALS**

Our annual general meeting of ordinary shareholders for 2010 is expected to occur on , 2010. In accordance with the rules established by the SEC, any shareholder proposal to be included in the proxy statement for that meeting submitted pursuant to Rule 14a-8 promulgated under the Exchange Act must have already been received by us by November 9, 2009. However, if the date of our 2010 annual general meeting of ordinary shareholders is changed by more than 30 days from the date of our 2009 annual general meeting, then the deadline for receipt of any shareholder proposal submitted pursuant to Rule 14a-8 is a reasonable time before we begin to print and send our proxy materials. We will notify you of this deadline in a Quarterly Report on Form 10-Q or in another communication to you. Shareholder proposals must also be otherwise eligible for inclusion.

Pursuant to our articles of association, any ordinary shareholder entitled to attend and vote at any annual general meeting of ordinary shareholders may nominate persons for election as directors if written notice of such ordinary shareholder's intent to nominate such persons is received by the Secretary at XL House, One Bermudiana Road, Hamilton, HM 08, Bermuda not less than five days or more than twenty-one days before the date appointed for such annual general meeting. Such notice must include the information currently required by our articles of association. The nomination of any person not made in compliance with the foregoing procedures shall be disregarded.

### **COMMUNICATING WITH THE BOARD OF DIRECTORS**

The Board welcomes your questions and comments. If you would like to communicate directly with the Board, our non-management directors as a group or Mr. Robert R. Glauber, our non-executive chairman, then you may submit your communication to our Secretary at XL House, One Bermudiana Road, Hamilton HM 08, Bermuda and specifying the intended recipient(s). Communications and concerns will be forwarded to the Board, our non-management directors as a group or our non-executive chairman, as appropriate.

### **HOUSEHOLDING OF SHAREHOLDER DOCUMENTS**

We may send a single set of ordinary shareholder documents to any household at which two or more ordinary shareholders reside. This process is called householding. This reduces the volume of

duplicate information received at your household and helps us to reduce our costs. Your materials may be household based on your prior express or implied consent. A number of brokerage firms with account holders who are XL-Cayman ordinary shareholders have instituted householding. Once an ordinary shareholder has received notice from his or her broker that the broker will be householding communications to the shareholder's address, householding will continue until the ordinary shareholder is notified otherwise or until the ordinary shareholder revokes his or her consent. If your materials have been householded and you wish to receive separate copies of these documents, or if you are receiving duplicate copies of these documents and wish to have the information householded, you may notify your broker or write or call XL's Investor Relations department at:

Investor Relations  
XL Capital Ltd  
XL House  
One Bermudiana Road  
Hamilton HM 08, Bermuda  
Telephone: (441) 292-8515  
Fax: (441) 292-5280  
Email: investorinfo@xlgroup.com

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports and other information with the SEC. You may read and copy materials that we have filed with the SEC, at the following location:

**Public Reference Room**  
**100 F Street, N.E.**  
**Washington, D.C. 20549**

You may obtain information on the operation of the SEC's Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an Internet web site that contains reports, proxy and information statements and other information regarding issuers, including XL Capital Ltd, who file electronically with the SEC. The address of that site is <http://www.sec.gov>. Reports, proxy statements and other information concerning XL Capital Ltd may also be inspected at the offices of the New York Stock Exchange, Inc., which are located at 20 Broad Street, New York, New York 10005.

The SEC allows us to incorporate by reference the information filed with it, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this proxy statement, and information we file later with the SEC (but prior to the date of the ordinary shareholder special meetings) will automatically update and supersede this information. We incorporate by reference the documents listed below, which we have previously filed with the SEC and are considered a part of this proxy statement, and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the date of the ordinary shareholder special meetings (excluding any information furnished but not filed). These filings contain important information about XL Capital:

XL Capital  
Ltd's Annual  
Report on  
Form 10-K  
for the fiscal

year ended  
December  
31, 2008.

XL Capital  
Ltd s  
Quarterly  
Reports on  
Form 10-Q  
for the  
quarterly  
periods  
ended  
March 31,  
2009, June  
30, 2009  
and  
September  
30, 2009.

XL Capital  
Ltd s  
Current  
Reports on  
Form 8-K,  
filed on  
January 13,  
2009,  
January 23,  
2009,  
February 4,  
2009,  
February  
17, 2009,  
March 5,  
2009,  
March 24,  
2009, April  
28, 2009  
(only with  
respect to  
the  
information  
filed in  
response to  
Item 8.01 of  
Form 8-K),  
June 9,  
2009,  
September  
14, 2009,

November  
13, 2009  
and  
December  
17, 2009.

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The description of the XL Capital Ltd ordinary shares contained in the Registration Statement on Form S-3, dated November 28, 2008, filed with the SEC under Section 12(b) of the Exchange Act.

These documents are available to any person, including any beneficial owner, upon request directed to our Investor Relations department by contacting us at:

Investor Relations  
XL Capital Ltd  
XL House  
One Bermudiana Road  
Hamilton HM 08, Bermuda  
Telephone: +1 (441) 292-8515  
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Email: investorinfo@xlgroup.com

To ensure timely delivery of these documents, any request should be made by , 2010. The exhibits to these documents will generally not be made available unless such exhibits are specifically incorporated by reference in this proxy statement.

In addition, we make available free of charge these documents and our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with the SEC on the Investor Relations section of XL's website (<http://investor.xlcapital.com>). We do not intend for information contained on our website to be part of this proxy statement unless specifically incorporated herein.

We have not authorized anyone to give any information or make any representation about the Transaction or the other proposals contained herein or about us that differs from or adds to the information in this proxy statement or in the documents incorporated by reference. Therefore, you should not rely upon any information that differs from or is in addition to the information contained in this proxy statement or in the documents incorporated by reference.

The information contained in this proxy statement speaks only as of the date on the cover, unless the information specifically indicates that another date applies.



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**SCHEME OF ARRANGEMENT**

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**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO.: FSD [\*] OF 2010**

**IN THE MATTER OF XL CAPITAL LTD**

**and**

**IN THE MATTER OF SECTION 86 OF  
THE COMPANIES LAW (2009 REVISION) OF THE CAYMAN ISLANDS**

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**SCHEME OF ARRANGEMENT**

**between**

**XL CAPITAL LTD**

**and**

**XL GROUP plc**

**and**

**THE ORDINARY SHAREHOLDERS (as defined herein)**

**and**

**THE SERIES C PREFERENCE SHAREHOLDERS (as defined herein)**

**and**

**THE SERIES E PREFERENCE SHAREHOLDERS (as defined herein)**

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**PRELIMINARY**

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(A) In this Scheme, unless inconsistent with the subject or context, the following expressions shall bear the meanings respectively set opposite them:

Allowed Proceeding	Any Proceeding by a Scheme Shareholder to enforce its rights under this Scheme where any party fails to perform its obligations under this Scheme;
Business Day	Any day other than (1) a day on which banks are required or permitted by law to be closed in New York City, New York, USA, the Cayman Islands, Hamilton, Bermuda or Dublin, Ireland or (2) a day on which the NYSE is closed for trading;
Cayman Court Code	The Grand Court of the Cayman Islands and any court capable of hearing appeals therefrom;
Companies Law	The U.S. Internal Revenue Code of 1986, as amended;
Company	The Companies Law (2009 Revision) of the Cayman Islands, and its predecessors, as consolidated and revised from time to time;
Effective Time	XL Capital Ltd, an exempted company incorporated in the Cayman Islands with limited liability, the Ordinary Shares of which are currently listed on the NYSE;
Latest Practicable Date	The time at which Part I of this Scheme becomes effective in accordance with Clause 12 of this Scheme;
NYSE	[*], 2010, being the latest practicable date for the purposes of ascertaining certain information contained herein;
Ordinary Share Exchange	The New York Stock Exchange, Inc.;
Ordinary Shareholders	The transaction to be effected by Part I of this Scheme;
Ordinary Shares	The registered holders of the Ordinary Shares, as recorded on the Register;
Parties	Class A ordinary shares issued by the Company with a par value of US\$0.01 per share;
Preference Share Exchange	The Company, XL Group plc and the Ordinary Shareholders, and, in the event Part II of this Scheme takes effect, such term also includes the Series C Preference Shareholders and the Series E Preference Shareholders;
Preference Shares	The transaction to be effected by Part II of this Scheme;
	The Series C Preference Shares and the Series E Preference Shares;

Prohibited  
Proceeding

Any Proceeding against the Company or XL Group plc or their property, or any of their  
directors,

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	officers, employees or agents, in any jurisdiction whatsoever other than an Allowed Proceeding;
Proxy Statement	The proxy statement dated [*], 2010 issued to the Ordinary Shareholders in connection with this Scheme by order of the Cayman Court on [*], 2010;
Proceeding	Any process, suit, action, legal or other proceeding, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment, enforcement of any security or enforcement of any letters of credit;
Register	The register of members of the Company;
Scheme	This scheme of arrangement in its present form or with or subject to any modifications, additions or conditions which the Cayman Court may approve or impose;
Scheme Meetings	The class meetings of the Ordinary Shareholders, the Series C Preference Shareholders and the Series E Preference Shareholders convened by the Cayman Court for the purposes of considering, and if seen fit, approving this Scheme;
Scheme Shares	The Ordinary Shares, and, in the event that Part II of this Scheme takes effect, such term also includes the Series C Preference Shares and the Series E Preference Shares;
Scheme Shareholders	The Ordinary Shareholders, and, in the event Part II of this Scheme takes effect, such term also includes the Series C Preference Shareholders and the Series E Preference Shareholders;
Series C Preference Shareholders	The registered holders of Series C Preference Shares, as recorded on the Register;
Series C Preference Shares	Series C preference ordinary shares issued by the Company with a par value of US\$0.01 per share;
Series E Preference Shareholders	The registered holders of Series E Preference Shares, as recorded on the Register;
Series E Preference Shares	Series E preference ordinary shares issued by the Company with a par value of US\$0.01 per share;
Transaction	The Ordinary Share Exchange, and in the event that Part II of this Scheme takes effect, (i) the Preference Share Exchange and (ii) the entity classification election to treat the Company as a disregarded entity for U.S. federal tax purposes shortly after the Ordinary Share Exchange and the Preference Share Exchange are effected.
XL Capital Group	The Company and its direct and indirect subsidiaries prior to the Effective Time;

XL Group plc Ordinary Shares	Ordinary shares issued by XL Group plc, with a par value of US\$0.01 per share, having the rights attaching to them as set out in the Memorandum of Association and Articles of Association of XL Group plc;
XL Group plc Series C Preference Shares	Series C preference shares issued by XL Group plc, with a nominal par value of US\$0.01 per share, having the rights attaching to them as set out in the terms of their issue;
XL Group plc Series E Preference Shares	Series E preference shares issued by XL Group plc, with a nominal par value of US\$0.01 per share, having the rights attaching to them as set out in the terms of their issue; and
XL Group plc	XL Group plc, an Irish public limited company

(A) The Company was incorporated as an exempted company named EXEL Merger Company on March 16, 1998 in the Cayman Islands under the Companies Law. The authorised share capital of the Company as at the Latest Practicable Date was US\$9,999,900 divided into (i) 999,990,000 Ordinary Shares of par value US\$0.01, of which [\*] Ordinary Shares were issued and fully paid as at the Latest Practicable Date; (ii) 20,000,000 Class C Preference Shares of par

value  
US\$0.01, of  
which [\*]  
Class C  
Preference  
Shares were  
issued and  
fully paid as at  
the Latest  
Practicable  
Date; and (iii)  
1,000,000  
Class E  
Preference  
Shares of par  
value  
US\$0.01, of  
which [\*]  
Class E  
Preference  
Shares were  
issued and  
fully paid as at  
the Latest  
Practicable  
Date.

- (B) The Company  
proposes to  
relocate the  
ultimate parent  
holding  
company of  
the XL Capital  
Group from  
the Cayman  
Islands to  
Ireland by way  
of this  
Scheme, such  
that, upon the  
Effective  
Time, all the  
Ordinary  
Shares of XL  
Capital Ltd  
(and if the  
Preference  
Share  
Exchange  
becomes

effective, all the Preference Shares of XL Capital Ltd) shall be owned by XL Group plc.

- (C) The Parties intend for the Transaction to qualify as (i) a reorganization under Section 368(a)(1)(F) of the Code if both the Ordinary Share Exchange and Preference Share Exchange are effected, or (ii) an exchange under Section 351 of the Code if only the Ordinary Share Exchange is effected.
- (D) The Parties further intend for this Scheme to constitute a plan of reorganization within the meaning of Section 368 of the Code.
- (E) Pursuant to the terms of the special resolution passed at the class meeting

of the Series C Preference Shareholders on [ \* ], 2010, the full amount of the dividend that would otherwise be payable on the Series C Preference Shares on July 15, 2010 (as and if declared by the board of the Company) will be paid (as and if declared by the board of the Company) on the earlier of (x) July 15, 2010 and, (y) if all of the conditions to the Preference Share Exchange set forth in Clause 13 below have been satisfied or, if allowed by law, waived, other than the occurrence of the Ordinary Share Exchange, the Business Day immediately preceding the Effective Time.

- (F) XL Group plc has undertaken to the Cayman Court to be bound by this

Scheme and to  
execute and do  
and procure to  
be executed  
and done all  
such  
documents,  
acts and things  
as may be  
necessary or  
desirable to be  
executed and  
done by it for  
the purpose of  
giving effect to  
this Scheme.

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**SCHEME OF ARRANGEMENT**

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**PART I**

**ORDINARY SHARE EXCHANGE**

1. At the Effective Time, all issued and outstanding Ordinary Shares shall be transferred to XL Group plc and such Ordinary Shares shall be credited as fully paid and recorded in the Register in the name of XL Group plc.
  
2. In consideration of the transfer of the Ordinary Shares pursuant to Clause 1 of this Scheme, at the Effective Time:
  - (a) XL Group plc will issue to each Ordinary Shareholder one XL Group plc

Ordinary  
Share for  
each whole  
Ordinary  
Share held  
by such  
Ordinary  
Shareholder  
immediately  
prior to the  
Effective  
Time and  
that is  
transferred  
pursuant to  
Clause 1 of  
this Scheme;  
and

- (b) if an  
Ordinary  
Shareholder  
holds a  
fraction of  
an Ordinary  
Share  
immediately  
prior to the  
Effective  
Time that is  
transferred  
pursuant to  
Clause 1 of  
this Scheme  
(after taking  
into account  
all Ordinary  
Shares held  
by such  
Ordinary  
Shareholder  
immediately  
prior to the  
Effective  
Time), XL  
Group plc  
will pay to  
such  
Ordinary  
Shareholder  
an amount in

cash  
(rounded to  
the nearest  
cent)  
determined  
by  
multiplying  
(i) the  
average of  
the high and  
low trading  
prices of the  
Ordinary  
Shares on  
the NYSE on  
the Business  
Day  
immediately  
preceding  
the Effective  
Time and (ii)  
such fraction  
of an  
Ordinary  
Share held  
by such  
Ordinary  
Shareholder  
immediately  
prior to the  
Effective  
Time.

3. As from the  
Effective  
Time, the  
Ordinary  
Shareholders  
prior to the  
Effective  
Time shall in  
accordance  
with this  
Scheme cease  
to have any  
rights with  
respect to the  
Ordinary  
Shares,  
except the  
right to

receive the consideration set out in Clause 2 of this Scheme.

4. As from the Effective Time, each instrument of transfer and certificate existing at the Effective Time in respect of a holding of any number of Ordinary Shares shall cease to be valid for any purpose as an instrument of transfer or a certificate for such Ordinary Shares.

## **PART II**

### **PREFERENCE SHARE EXCHANGE**

5. At the Effective Time, all issued and outstanding Series C Preference Shares shall be transferred to XL Group plc and such Series C Preference Shares shall be credited as fully paid and recorded in the Register

in the name  
of XL Group  
plc.

6. In consideration of the transfer of the Series C Preference Shares pursuant to Clause 5 of this Scheme, at the Effective Time, XL Group plc will issue to each Series C Preference Shareholder one XL Group plc Series C Preference Share for each Series C Preference Share held by such Series C Preference Shareholder immediately prior to the Effective Time and that is transferred pursuant to Clause 5 of this Scheme.
  
7. As from the Effective Time, the Series C Preference Shareholders prior to the Effective Time shall in accordance

with this  
Scheme cease  
to have any  
rights with  
respect to the  
Series C  
Preference  
Shares,  
except the  
right to  
receive the  
consideration  
set out in  
Clause 6 of  
this Scheme.

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8. At the Effective Time, all issued and outstanding Series E Preference Shares shall be transferred to XL Group plc and such Series E Preference Shares shall be credited as fully paid and recorded in the Register in the name of XL Group plc.
  
9. In consideration of the transfer of the Series E Preference Shares pursuant to Clause 8 of this Scheme, at the Effective Time, XL Group plc will issue to each Series E Preference Shareholder one XL Group plc Series E Preference Share for each Series E Preference Share held by such Series E Preference Shareholder

immediately  
prior to the  
Effective  
Time and that  
is transferred  
pursuant to  
Clause 8 of  
this Scheme.

10. As from the  
Effective  
Time, the  
Series E  
Preference  
Shareholders  
prior to the  
Effective  
Time shall in  
accordance  
with this  
Scheme cease  
to have any  
rights with  
respect to the  
Series E  
Preference  
Shares,  
except the  
right to  
receive the  
consideration  
set out in  
Clause 9 of  
this Scheme.

11. As from the  
Effective  
Time, each  
instrument of  
transfer and  
certificate  
existing at the  
Effective  
Time in  
respect of a  
holding of  
any number  
of Preference  
Shares shall  
cease to be  
valid for any



purpose as an  
instrument of  
transfer or a  
certificate for  
such  
Preference  
Shares.

**PART III**

**GENERAL**

12. Part I of  
this  
Scheme  
shall  
become  
effective at  
[\*] a.m. on  
July 1,  
2010 or  
such  
earlier or  
later date  
and time as  
the board  
of the  
Company  
(or any  
duly  
authorized  
committee  
of the  
board of  
the  
Company)  
shall at any  
time  
resolve,  
provided  
that at or  
by that  
time all of  
the  
following  
conditions  
are  
satisfied  
or, to the  
extent  
permitted

by law,  
waived by  
the  
Company  
and XL  
Group plc:

- (a) this Scheme is approved by the affirmative vote of a majority in number of registered Ordinary Shareholders present and voting, in person or by proxy, on the proposal to approve this Scheme at the Scheme Meeting of the Ordinary Shareholders, representing 75% or more in value of the Ordinary Shares present and voting, in person or by proxy, on the proposal to approve this Scheme;
- (b) the requisite court order sanctioning this Scheme, insofar as it relates to the Ordinary Share Exchange, is obtained from the Cayman Court;
- (c) there is no threatened or pending litigation relating to, or

effective decree,  
order, injunction  
or other legal  
restraint  
prohibiting the  
consummation  
of, the Ordinary  
Share Exchange;

- (d) all consents and  
governmental  
authorizations  
that are  
necessary,  
desirable or  
appropriate in  
connection with  
the Ordinary  
Share Exchange  
are obtained on  
terms acceptable  
to the Company  
(as it should  
think fit in its  
absolute  
discretion) and  
are in full force  
and effect;

- (e) the Company  
receives an  
opinion from  
Baker &  
McKenzie LLP,  
in form and  
substance  
reasonably  
satisfactory to it,  
confirming, as of  
the effective date  
of this Scheme,  
the matters  
discussed under  
Material Tax  
Considerations  
Relating to the  
Transaction U.S.  
Federal Income  
Tax  
Considerations  
in the Proxy

Statement;

- (f) the Company receives an opinion from Matheson Ormsby Prentice, Solicitors, in form and substance reasonably satisfactory to it, confirming, as of the effective date of this Scheme, the matters discussed under Material Tax Considerations Relating to the Transaction Irish Tax Considerations in the Proxy Statement; and
- (g) the XL Group plc Ordinary Shares to be issued pursuant to the Ordinary Share Exchange are authorized for listing on the NYSE, subject to official notice of issuance.

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13. Part II of this Scheme shall become effective (if at all) on the date upon which Part I of this Scheme takes effect, provided that at or by that time all of the following conditions are satisfied or, to the extent permitted by law, waived by the Company and XL Group plc:
- (a) all of the conditions set out in Clause 12 above with respect to completion of the Ordinary Share Exchange are satisfied or, if allowed by relevant law, waived, and the Ordinary Share Exchange is concurrently

consummated;

- (b) this Scheme is approved by the affirmative vote of a majority in number of the registered Series C Preference Shareholders present and voting, in person or by proxy, on the resolution to approve this Scheme at the Scheme Meeting of the Series C Preference Shareholders, voting as a class, representing 75% or more in value of the Series C Preference Shares present and voting, in person or by proxy, on the resolution to approve this Scheme;
  
- (c) this Scheme is approved by the affirmative vote of a majority in number of the registered Series E Preference Shareholders present and voting, in

person or by proxy, on the resolution to approve this Scheme at the Meeting of the Series E Preference Shareholders, voting as a class, representing 75% or more in value of the Series E Preference Shares present and voting, in person or by proxy, on the resolution to approve this Scheme;

- (d) the proposal to vary the terms of the Series C preference shares with respect to payment of the dividend that would otherwise be payable on July 15, 2010 (as and if declared by the Board) is approved by a special resolution of the Series C Preference Shareholders passed by Series C Preference Shareholders representing at

least 2/3 of all  
Series C  
Preference  
Shares present  
and voting, in  
person or by  
proxy, on such  
proposal, as a  
class, at a  
general  
meeting of the  
Series C  
Preference  
Shareholders at  
which holders  
of at least 2/3  
of all Series C  
Preference  
Shares are  
present, either  
in person or by  
proxy;

- (e) the requisite  
court order  
sanctioning  
this Scheme,  
insofar as it  
relates to the  
Ordinary Share  
Exchange, is  
obtained from  
the Cayman  
Court;
- (f) there is no  
threatened or  
pending  
litigation  
relating to, or  
effective  
decree, order,  
injunction or  
other legal  
restraint  
prohibiting the  
consummation  
of, the  
Preference  
Share  
Exchange;



(g) all consents and governmental authorizations that are necessary, desirable or appropriate in connection with the Preference Share Exchange are obtained on terms acceptable to the Company (as it should think fit in its absolute discretion) and are in full force and effect; and

(h) the Company receives opinions from Baker & McKenzie LLP and Matheson Ormsby Prentice, Solicitors, in form and substance reasonably satisfactory to it, confirming, as of the effective date of this Scheme, certain tax matters relating to the Preference Share Exchange.

14. For the avoidance

of doubt:

- (a) Part I of this Scheme may become effective whether or not Part II of this Scheme becomes effective, but Part II of this Scheme shall not become effective unless and until Part I of this Scheme becomes effective; and
- (b) Clauses 5 through 7 of this Scheme shall not become effective unless Clauses 8 through 10 of this Scheme shall become effective at the same time and Clauses 8 through 10 of this

Scheme shall not become effective unless Clauses 5 through 7 of this Scheme shall become effective at the same time.

15. All mandates or other instructions to the Company in force at the Effective Time relating to any of the Scheme Shares (including, without limitation, elections for the payment of dividends

by way of scrip  
(if any)) shall,  
mutatis  
mutandis  
immediately  
after the  
Effective Time,  
be deemed to be  
valid as  
effective  
mandates or  
instructions in  
respect of the  
XL Group plc  
Ordinary  
Shares, the XL  
Group plc  
Series C  
Preference  
Shares or the  
XL Group plc  
Series E  
Preference  
Shares, as the  
case may be,  
received in  
connection with  
the transfer of  
such Scheme  
Shares;  
provided,  
however, that  
nothing in this  
Scheme shall in  
any way affect  
the right (if  
any) of a  
shareholder of  
the Company to  
receive any  
dividend  
declared by the  
Company prior  
to the Effective  
Time but which  
has not been  
paid prior to the  
Effective Time.

16. Subject to any applicable laws,

this Scheme may be amended, modified or supplemented at any time before or after its approval by the shareholders of the Company at the Scheme Meetings. At the Cayman Court hearing to sanction this Scheme, the Cayman Court may impose such conditions, modifications and amendments as it deems appropriate in relation to this Scheme but will not impose any material changes without the joint consent of the Company and XL Group plc. Subject to any applicable laws, the Company may consent to any condition, modification or amendment of this Scheme on behalf of the Scheme Shareholders which the Company may think fit to approve or impose. After its approval, no amendment,

modification or supplement may be made or effected that legally requires further approval by shareholders or any class of shareholders of the Company without obtaining that approval.

17. The Company may terminate or abandon this Scheme at any time prior to the Effective Time without obtaining the approval of the Scheme Shareholders, even though this Scheme may have been approved at the Scheme Meetings and sanctioned by the Cayman Court and all other conditions may have been satisfied.

18. None of the Scheme Shareholders shall commence a Prohibited Proceeding in respect of or arising from this Scheme after the Effective Time. A Scheme Shareholder

may commence  
an Allowed  
Proceeding  
against the  
Company or XL  
Group plc after  
the Effective  
Time provided  
that it has first  
given the  
Company and  
XL Group plc  
five Business  
Days prior  
notice in  
writing of its  
intention to do  
so.

19. Any cash payment to be made to a Scheme Shareholder pursuant to Clause 2(b) above shall be made by posting a check to that Scheme Shareholder at its address (as it appears on the Register immediately prior to the Effective Time) not later than 30 Business Days after the Effective Time (or as shall otherwise be agreed to between XL Group plc and the Scheme Shareholder).
20. Any notice or other written

communication  
to be given  
under or in  
relation to this  
Scheme (other  
than pursuant to  
Clause 25  
below) shall be  
given in writing  
and shall be  
deemed to have  
been duly given  
if it is delivered  
by hand or sent  
by post to:

- (a) in the case of  
the  
Company,  
XL Capital  
Ltd, XL  
House, One  
Bermudiana  
Road,  
Hamilton  
HM 08,  
Bermuda;
- (b) in the case of  
XL Group  
plc, No. 1  
Upper Hatch  
Street, 4th  
Floor,  
Dublin 2,  
Ireland;
- (c) in the case of  
any Scheme  
Shareholder,  
its address as  
it appeared  
on the  
Register  
immediately  
prior to the  
Effective  
Time; and
- (d) in the case of  
any other



person, any  
address set  
forth for that  
person in any  
agreement  
entered into  
in connection  
with this  
Scheme or  
the last  
known  
address  
according to  
the records  
of the  
Company, or  
by fax to its  
last known  
fax number  
according to  
the records  
of the  
Company.

21. In proving service, it shall be sufficient proof, in the case of a notice sent by post, that the envelope was properly stamped, addressed and placed in the post.
22. Without limiting the manner in which notice or other written communication may be given or deemed given pursuant to any other clause of this Scheme, any notice or other written

communication  
to be given  
under this  
Scheme shall be  
deemed to have  
been served as  
provided in  
Articles 103 to  
106 of the  
Company s  
Articles of  
Association.

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23. The accidental omission to send any notice, written communication or other document in accordance with Clauses 20 or 21 above, or the non-receipt of any such notice by a Scheme Shareholder, shall not affect the provisions of this Scheme.
24. The Company shall not be responsible for any loss or delay in the transmission of any notices, other documents or checks posted by or to a Scheme Shareholder, which shall be posted at the risk of such Scheme Shareholder.
25. XL Group plc shall give notification of this Scheme having become effective (which notice will also specify whether or not Part II of this Scheme has become effective). The Company shall give notification

if it decides to terminate or abandon the Scheme pursuant to Clause 17 above. This notification, and any other notice or other written communication that is required to be given to all or substantially all of the Scheme Shareholders, may (but is not required to) be made by issuing a press release.

26. The operative terms of this Scheme shall be governed by, and construed in accordance with, the laws of the Cayman Islands and the Scheme Shareholders hereby agree that the courts of the Cayman Islands shall have exclusive jurisdiction to hear and determine any Proceeding and to settle any dispute which arises out of or is connected with the terms of this Scheme or their implementation or out of any

action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and, for such purposes, the Parties irrevocably submit to the jurisdiction of the courts of the Cayman Islands.

27. If any provision (or any part of any provision) of this Scheme is found by the Cayman Court to be illegal or unenforceable, it shall be severed from this Scheme and the remaining provisions of this Scheme shall continue in force.
  
28. Notwithstanding any other clause of this Scheme, unless this Scheme has become effective on or before December 31, 2010 (or such later date, if any, as the Cayman Court may allow), this Scheme shall lapse and be of no further

effect.  
Dated [ \* ], 2010

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**Companies Acts 1963 to 2009**

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**A PUBLIC COMPANY LIMITED BY SHARES**

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**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**of**

**XL GROUP PUBLIC LIMITED COMPANY**

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**Incorporated the [ ] day of [ ] 2010**

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[ ]

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Cert. No.: [ ]

**Companies Acts 1963 to 2009**

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**A PUBLIC COMPANY LIMITED BY SHARES**

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**MEMORANDUM OF ASSOCIATION**

**-of-**

**XL GROUP PUBLIC LIMITED COMPANY**

1. The name of the Company is XL Group public limited company.
2. The Company is to be a public limited company.
3. The objects for which the Company is established are:
  - 3.1 To carry on the business of an investment and holding company in all of its branches, and to acquire by purchase, lease, concession, grant, licence or otherwise such businesses, options, rights, privileges, lands, buildings, leases, underleases, stocks, shares, debentures, debenture stock, bonds, obligations, reversionary interests, annuities, policies of assurance, certificates of deposit, treasury bills, trade bills, bank acceptances, bills of exchange, fixed rate securities, variable or floating rate securities, and securities of all kinds created, issued or guaranteed by any government, sovereign, ruler, commissioners, body or authority, supreme, state, municipal, local, supranational or otherwise, in any part of the world, or by any corporation, bank, association or partnership, whether with limited or unlimited liability constituted or carrying on business or activities in any part of the world, units of or participation in any unit trust scheme, mutual fund or collective investment scheme in any part of the world, policies of insurance and assurance, domestic and foreign currency and any present or future rights and interests to or in any of the foregoing and other property and rights and interests in property as the Company shall deem fit and generally to hold, manage, develop, lease, sell or dispose of the same; to subscribe for the same either conditionally or otherwise; to enter into underwriting, stocklending and repurchase and similar contracts with respect thereto, to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof and from time to time to sell, exchange, lend, vary or dispose of and grant and dispose of options over any of the foregoing, to acquire, dispose of, invest in and hold by way of investment any derivative instrument relating to any of the foregoing and to deposit money (or place money on current account) with such persons in such currencies and otherwise on such terms as may seem expedient and to do all of the foregoing as principal, agent or broker; and to vary any of the investments of the Company; to establish, carry on, develop and extend investments and holdings and to sell, dispose of or otherwise turn the same to account and to coordinate the policy and administration of any companies of which the Company is a member or which are in any manner controlled by or connected with the Company.
  - 3.2 To exercise and enforce all rights and powers conferred to or incidental upon the ownership of any shares, stock obligations or other securities acquired by the Company including without prejudice to the generality of the foregoing all such powers of veto or control as may be conferred by virtue of the holding by the Company of such special proportion of the issued or nominal amount thereof and to provide managerial and other executive, supervisory and consultant services for or in relation to any corporation in which the Company is interested upon such terms as may be thought fit.



- 3.3 To acquire any such shares and other securities as are mentioned in the preceding paragraphs by subscription, syndicate participation, tender, purchase, exchange or otherwise and to subscribe for the same, either conditionally or otherwise, and to guarantee the subscription thereof and to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof.
- 3.4 To co-ordinate the administration, policies, management, supervision, control, research, planning, trading and any and all other activities of, and to act as financial advisers and consultants to, any corporation or corporations now or hereafter incorporated or acquired which may be or may become a Group Company of, or an Affiliate of or to any corporation or corporations now or hereafter incorporated or acquired (which are not Group Companies) with which the Company may be or may become associated.
- 3.5 To provide financing and financial investment, management and advisory services to any Group Company or Affiliate, which shall include granting or providing credit and financial accommodation, lending and making advances with or without interest to any Group Company or Affiliate and lending to or depositing with any bank funds or other assets to provide security (by way of mortgage, charge, pledge, lien or otherwise) for loans or other forms of financing granted to such Group Company or Affiliate by such bank.
- 3.6 To lease, acquire by purchase or otherwise and hold, sell, dispose of and deal in real property and in personal property of all kinds wheresoever situated.
- 3.7 To enter into any guarantee, contract of indemnity or suretyship and to assure, support or secure with or without consideration or benefit the performance of any obligations of any person or persons and to guarantee the fidelity of individuals filling or about to fill situations of trust or confidence.
- 3.8 To acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the Company is authorized to carry on.
- 3.9 To apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks, technology and know-how and the like conferring any exclusive or non-exclusive or limited right to use or any secret or other information as to any invention or technology which may seem capable of being used, for any of the purposes of the Company or the acquisition of which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired.
- 3.10 To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint venture, reciprocal concession or otherwise with any person carrying on or engaged in or about to carry on or engage in any business or transaction that the Company is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the Company.
- 3.11 To take or otherwise acquire and hold securities in any other corporation having objects altogether or in part similar to those of the Company or any Group Company or carrying on any business capable of being conducted so as to benefit the Company or any Group Company.
- 3.12 To lend money to any employee or to any person having dealings with the Company or any Group Company or with whom the Company or any Group Company proposes to have dealings or to any other corporation (including any Group Company) any of whose shares are held directly or indirectly by the Company or any Group Company.
- 3.13 To apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority, corporation or public body may be empowered to grant, and to pay for, aid in and

contribute toward carrying it into effect and to assume any liabilities or obligations incidental thereto and to enter into any arrangements with any governments, authorities or public bodies, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them.

- 3.14 To perform any duty or duties imposed on the Company by or under any enactment and to exercise any power conferred on the Company by or under any enactment.
- 3.15 To incorporate or cause to be incorporated any one or more subsidiaries (within the meaning of Section 155 of the Companies Act 1963) of the Company for the purpose of carrying on any business.
- 3.16 To issue securities of the Company (or contracts, options or warrants to subscribe for, or other rights or interests in, or in respect of, such securities) directly to any employees of the Company or Group Company, in consideration for employment or other services performed by those employees and to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees, directors or consultants or former employees, directors or consultants of the Company or its predecessors or any Group Companies or Affiliates, or the dependants or connected persons of such employees, directors or consultants or former employees, directors or consultants and grant gratuities, pensions and allowances, including the establishment of share option schemes or employee share schemes, enabling employees, directors or consultants of the Company or other persons aforesaid to become shareholders in the Company, or otherwise to participate in the profits of the Company upon such terms and in such manner as the Company thinks fit, and to make payments towards insurance or for any object similar to those set forth in this paragraph.
- 3.17 To establish and contribute to any scheme for the purchase by trustees of shares in the Company to be held for the benefit of the Company's employees or the employees of any Group Companies or Affiliates and to lend or otherwise provide money to the trustees of such schemes or the Company's employees or the employees of any Group Companies or Affiliates to enable them to purchase shares of the Company.
- 3.18 To grant bonuses to any person or persons who are or have been in the employment of the Company or any Group Companies or Affiliates or any person or persons who are or have been directors of, or consultants to, the Company or any of its Group Companies or Affiliates.
- 3.19 To establish any scheme or otherwise to provide for the purchase by or on behalf of customers of the Company or of any Group Company or Affiliate of shares in the Company.
- 3.20 To subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects.
- 3.21 To promote any corporation for the purpose of acquiring or taking over any of the property and liabilities of the Company or any Group Company or Affiliate or for any other purpose that may benefit the Company or any Group Company or Affiliate.
- 3.22 To purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the Company considers necessary or convenient for the purposes of its business.
- 3.23 To construct, maintain, alter, renovate and demolish any buildings or works necessary or convenient for its objects.
- 3.24 To construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, factories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the Company or any Group Company or Affiliate and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out of control thereof.

- 3.25 To raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person and guarantee the performance or fulfilment of any contracts or obligations of any person, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person.
- 3.26 To borrow or raise finance or secure the payment of money (including money in a currency other than the currency of Ireland) in such manner as the Company shall think fit and in particular by the issue of debentures or any other securities (or contracts, options or warrants to subscribe for, or other rights or interests in, or in respect of, such securities), perpetual or otherwise, charged upon all or any of the Company's property, both present and future, including its unissued capital or otherwise and to purchase, redeem or pay off any such securities.
- 3.27 To enter into, invest or engage in, acquire, hold or dispose of any financial instruments or risk management instruments, whether or not of a type currently in existence, and currency exchange, interest rate or commodity or index linked transactions (whether in connection with or incidental to any other contract, undertaking or business entered into or carried on by the Company or whether as an independent object or activity), including securities in respect of which the return or redemption amount is calculated by reference to any index, price or rate, monetary and financial instruments of all kinds, futures contracts, swaps and hedges (including credit default, interest rate and currency swaps and hedges of any kind whatsoever), options contracts, contracts for differences, commodities (including bullion and other precious metals), forward rate agreements, debentures, debenture stock, warrants, commercial paper, promissory notes, mortgage backed securities, asset backed securities, dealings in foreign currency, spot and forward rate exchange contracts, caps, floors, collars, and any other foreign exchange, interest rate or commodity or index linked arrangements, and such other instruments whether for the purpose of making a profit or avoiding a loss or managing a currency or interest rate exposure or any other purpose and to enter into any contract for and to exercise and enforce all rights and powers conferred by or incidental, directly or indirectly, to such transactions or the termination of any such transactions.
- 3.28 To carry on the business of financing and re-financing whether asset based or not (including financing and re-financing of financial assets), including managing financial assets with or without security in whatever currency including financing or re-financing by way of loan, acceptance credits, commercial paper, euro medium term bonds, euro bonds, asset-backed securities, securitisation, synthetic securitisation, collateralised debt obligations, bank placements, leasing, hire purchase, credit sale, conditional sale, factoring, forfeiting, invoice discounting, note issue facilities, project financing, bond issuances, participation and syndications, assignment, novation, factoring, discounting, participation, sub-participation, derivative contracts, securities/stock lending contracts, repurchase agreements or other appropriate methods of finance and to discount mortgage receivables, loan receivables and lease rentals for persons wherever situated in any currency whatsoever, and to do all of the foregoing as principal, agent or broker.
- 3.29 To remunerate any person or corporation for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares of the Company's capital or any debentures, debenture stock or other securities of the Company or of any Group Company or Affiliate or in or about the formation or promotion of the Company, any Group Companies or Affiliate or the conduct of their business.
- 3.30 To draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments.

- 3.31 To sell, lease, exchange or otherwise dispose of the undertaking of the Company or any part thereof as an entirety or substantially as an entirety for such consideration as the Company thinks fit.
- 3.32 To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the Company in the ordinary course of its business.
- 3.33 To adopt such means of making known the products of the Company or of any Group Company or Affiliate as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations.
- 3.34 To cause the Company to be registered and recognized in any foreign jurisdiction, and designate persons therein according to the laws of that foreign jurisdiction or to represent the Company and to accept service for and on behalf of the Company of any process or suit.
- 3.35 To allot and issue fully-paid shares of the Company in payment or part payment of any property purchased or otherwise acquired by the Company or for any past services performed for the Company or any Group Company.
- 3.36 To distribute among the members of the Company in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner considered advisable, any property of the Company, subject always to the provisions of the Companies Acts 1963 to 2009 and any other applicable law.
- 3.37 To promote freedom of contract, and to resist, insure against, counteract and discourage interference therewith, to join any lawful federation, union or association or do any other lawful act or thing with a view to preventing or resisting directly or indirectly any interruption of or interference with the Company's or any other trade or business or providing or safeguarding against the same, or resisting or opposing any strike, movement or organisation, which may be thought detrimental to the interests of the Company or any Group Companies or its or their employees and to subscribe to any association or fund for any such purposes.
- 3.38 To establish agencies and branches.
- 3.39 To take or hold mortgages, hypothecations, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the Company of whatsoever kind sold by the Company, or for any money due to the Company from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothecation, lien or charge.
- 3.40 To pay all costs and expenses of or incidental to the incorporation and organization of the Company.
- 3.41 To invest and deal with the moneys of the Company not immediately required for the other objects of the Company in such manner as may be determined.
- 3.42 To do any of the things authorized by this memorandum as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others.
- 3.43 To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.
- 3.44 As a separate and independent object to make voluntary dispositions of all or any part of the property and rights of the Company and to make gifts thereof or gratuitous payments either for no consideration or for a consideration less than the market value of such property or rights or the amount of cash payment or by all or any such methods.
- 3.45 To the extent permitted by law, to give whether directly or indirectly, any kind of financial assistance for the purchase of shares in or debentures of the Company or any corporation which is at any given time the Company's holding company.

- 3.46 To carry on any other business, except the issuing of policies of insurance, which may seem to the Company capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property or rights.
4. The liability of the members is limited.
  5. The share capital of the Company is 40,000 and US\$9,999,900 divided into 40,000 Subscriber Shares of 1 each, 500,000,000 Ordinary Shares of US\$0.01 each and 499,990,000 Undesignated Shares of US\$0.01 each.
  6. For the purposes of this memorandum of association, (a) the terms corporation and Group Company and Affiliate have the meanings ascribed to such terms in the articles of association of the Company, (b) the words including and includes shall be deemed to be followed by the words without limitation, and (c) unless a clear contrary intention appears, the word or shall be deemed to be used in the inclusive sense of and/or.

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WE, the several persons whose names, addresses and descriptions are subscribed, wish to be formed into a Company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the Company set opposite our respective names.

**Names, addresses and descriptions of subscribers**

**Number of shares taken by each subscriber**

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**Companies Acts 1963 to 2009**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**XL Group Public Limited Company**

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**PRELIMINARY**

1. The regulations contained in Table A in the First Schedule to the Companies Act 1963 shall not apply to the Company.
2. In these articles, unless the context otherwise requires:
  - 1963 Act** means the Companies Act 1963;
  - 1983 Act** means the Companies (Amendment) Act 1983;
  - 1990 Act** means the Companies Act 1990;
  - address** includes any number or address used for the purposes of communication by way of electronic mail or other electronic communication;
  - Affiliate** of any person means any other person that directly or indirectly controls, is controlled by, or is under common control with, such person;
  - Assistant Secretary** means any person appointed and so designated by the

Secretary or the Board to assist the Secretary (and specific references in these articles to functions that may be performed by an Assistant Secretary do not limit such general role of assisting the Secretary);

**Auditor** or **Auditors** means the auditor or auditors at any given time of the Company;

**beneficial ownership** means beneficial ownership as that term is defined in Rule 13d-3 promulgated under the Exchange Act and **beneficial owner** and **beneficially own** and variants thereof, will be interpreted accordingly;

**Board** means the board of directors at any given time of the Company;

**clear days** means, for purposes of any period of notice required to be given under these articles, the days between (and in each case excluding) (i) the day when the notice is given or deemed to be given and (ii) the

day of the event  
for which such  
notice is given or  
on which such  
notice is to take  
effect;

**Companies Acts**

means the  
Companies Acts  
1963 to 2009, and  
all statutory  
instruments which  
are to be read as  
one with, or  
construed, or to be  
read together with  
such Acts;

**Company** means  
the company  
whose name  
appears in the  
heading to these  
articles;

**Controlled**

**Shares** in  
reference to any  
person means: (i)  
all shares of the  
Company directly,  
indirectly or  
constructively  
owned by such  
person within the  
meaning of  
Section 958 of the  
Internal Revenue  
Code of 1986 of  
the United States  
of America; and  
(ii) all shares of  
the Company  
directly, indirectly  
or constructively  
owned by any  
person or group of  
persons within the  
meaning of  
Section 13(d) (3)  
of the Exchange  
Act;

**corporation**

means any body  
corporate,  
corporation,  
company,  
partnership,  
limited liability  
company or other  
legal entity;

**Covered  
Arrangement**

means, with  
respect to any  
person and as of  
any date, any  
agreement,  
arrangement or  
understanding  
(including any  
swaps or other  
derivative or short  
positions, profit  
interests, options,  
hedging  
transactions, and  
securities lending  
or borrowing  
arrangement) to  
which such person  
or its Affiliates is,  
directly or  
indirectly, a party  
as of such date  
(A) with respect  
to shares of the  
Company or (B)  
the effect or intent  
of which is to  
mitigate loss to,  
manage the  
potential risk or  
benefit of share  
price changes  
(increases or  
decreases) for, or  
increase or  
decrease the  
voting power of  
such person or  
any of its

Affiliates with respect to securities of the Company or which may have payments based in whole or in part, directly or indirectly, on the value (or change in value) of any securities of the Company (other than, in each such case, interests in investment companies registered under the U.S. Investment Company Act of 1940);

**Director** means a director at any given time of the Company;

**electronic communication** has the meaning given to those words in the Electronic Commerce Act 2000;

**electronic signature** has the meaning given to those words in the Electronic Commerce Act 2000;

**EUR** , and **euro** mean the currency of Ireland;

**Exchange Act** means the Securities Exchange Act of 1934 of the United States of America;

**Governmental Entity** means any government or subdivision thereof, or governmental, judicial, legislative, tax, administrative or regulatory authority or body, whether of Ireland or elsewhere;

**Group Company** means the Company, any holding company of the Company and any subsidiary of the Company or of any such holding company;

**Ordinary Resolution** means a

resolution of the Shareholders passed by a simple majority of the votes cast by those present in person or by proxy at a meeting and who are entitled to vote (or, if in writing, signed by all of the Shareholders entitled to attend and vote) at such meeting;

**Ordinary Shares** means ordinary shares of nominal value US\$0.01 per share (or such other nominal value as may result from any reorganisation of capital) in the capital of the Company, having the rights and being subject to the limitations set out in these articles;

**Paid Up** means paid up or credited as paid up;

**person entitled by transmission** means a person whose entitlement to a share arises in consequence of the death or

bankruptcy of a Shareholder or in any other way than by transfer;

**Redeemable Shares** means shares in the capital of the Company that are redeemable in accordance with the provisions of these articles or the terms of issue of such class or series of shares;

**Register** means the register of members of the Company;

**Registered Office** means the registered office at any given time of the Company;

**Seal** means the common seal of the Company and includes any duplicate seal, securities seal or seal for use abroad;

**Secretary** means the secretary of the Company or, if there are joint secretaries, any of the joint secretaries;

**Share** or **share** means, unless specified otherwise or the context



otherwise  
requires, any  
share in the  
capital of the  
Company;

**Shareholder**

means in  
relation to any  
share, the  
person whose  
name is entered  
in the Register  
as the holder of  
the share or,  
where the  
context permits,  
the persons  
whose names  
are entered in  
the Register as  
the joint holders  
of shares;

**Special  
Resolution**

means a special  
resolution of the  
Shareholders  
within the  
meaning of  
Section 141 of  
the 1963 Act;

**Subscriber**

**Shares** means  
the shares of  
nominal value 1  
per share having  
the rights and  
being subject to  
the limitations  
set out in these  
articles;

**subsidiary and  
holding**

**company** have  
the same  
meanings as in  
Section 155 of  
the 1963 Act,  
except that  
references in

that Section to a company shall include any corporation or other legal entity, whether incorporated or established in Ireland or elsewhere;

**Undesignated Shares** means the shares of nominal value US\$0.01 per share (or such other nominal value as may result from any reorganisation of capital) in the capital of the Company, having such rights and being subject to such limitations as may be attached to them pursuant to article 6.

**US dollars** or **US\$** means United States dollars, the currency of the United States of America.

**Variation Resolution** means a resolution of the Shareholders of any class or series of Shares (1) passed by a two-thirds majority of those present in person or by proxy at a separate meeting of the Shareholders of such class or series of Shares and who are entitled to attend and vote at such meeting or (2) in writing signed by all of the Shareholders of such class or series of Shares.

3. For the purposes of these articles, unless specified otherwise or the context otherwise requires:
- (a) a corporation shall be deemed to be present in person at a meeting if its representative, duly authorised pursuant to these articles or the Companies Acts, is present;
  - (b) words importing only the singular number include the plural number and vice versa, and words importing only one gender include the other gender;
  - (c) the word including or includes or any similar word shall be deemed to be followed by the words without limitation ;
  - (d) unless a clear contrary intention appears, the word or shall be deemed to be used in the inclusive sense of and/or ;
  - (e) except as otherwise specified, the words herein and hereof and words of similar import shall be deemed to refer to these articles as a whole rather than to any particular portion of these articles;
  - (f) references to the terms of issue of Shares shall be deemed to mean the terms of issue of those shares (including, where applicable, the rights attaching to such Shares as set out in these articles) as they may be varied from time to time in accordance with these articles;
  - (g) references to a person include any natural person, corporation or other body of persons, whether corporate or not, any trust and any Governmental Entity;
  - (h) references to writing shall be construed, unless the contrary intention appears, as including references to printing, lithography, photography, electronic mail and any other modes of representing or reproducing words in a visible form;
  - (i) a reference to anything being done by electronic means includes its being done by means of any electronic or other communications equipment or facilities and references to any communication being delivered or received, or being delivered or received at a particular place, include the transmission of an electronic or similar communication, and to a recipient identified in such manner or by such means, as the Board may from time to time approve or prescribe, either generally or for a particular purpose;
  - (j) references to a signature or to anything being signed or executed include such forms of electronic signature or other means of verifying the authenticity of an electronic or similar communication as the Board may from time to time approve or prescribe, either generally or for a particular purpose;
  - (k) references to a dividend include any dividend or distribution, in cash or by the distribution of assets, paid or distributed to Shareholders out of the profits of the Company available for distribution;
  - (l) any words or expressions defined in the Companies Acts, if not otherwise defined in or given a particular meaning by these articles, have the same meaning in these articles;
  - (m) any reference to any specific statute, statutory provision, Act, statutory instrument and other legislation are to legislation operative in Ireland unless otherwise specified;
  - (n) except as otherwise specified herein, (i) any reference to any statute, statutory provision, Act, statutory instrument or other legislation (whether of Ireland or elsewhere) includes a reference to any modification or re-enactment of it as then in force and to every rule, regulation or order made under it (or under any such modification or re-enactment) and then in force, and (ii) any reference to any rule, regulation or order made under any statute, statutory provision, Act, statutory instrument or other legislation includes a

reference to any modification or replacement of such rule, regulation or order then in force;

- (o) the provisions of these articles shall, except as otherwise specified herein, insofar as they relate to any right of Shareholders to receive notice of, attend and vote at general meetings (or pass resolutions in writing in lieu of a vote at a general meeting), relate only to holders of Ordinary Shares or any other class or series of shares which, by virtue of these articles or the terms of the issue of such shares, expressly carry the general right to vote at general meetings of the Company and exclude shares which entitle the holders to vote only in limited circumstances or upon the occurrence of a specified event or condition (whether or not those circumstances have arisen or that event or condition has occurred) and any provision of these articles relating to Special Resolutions, Ordinary Resolutions and the respective voting and approval threshold attaching thereto will be interpreted accordingly.

#### **REGISTERED OFFICE**

4. The Registered Office shall be at such place in Ireland as the Board from time to time shall decide.

#### **SHARE CAPITAL AND VARIATION OF RIGHTS**

5. (a) Without prejudice to the power of the Board to issue and allot shares pursuant to the following articles, the authorised share capital of the Company at the date of adoption of these articles is 40,000 and US\$9,999,900, divided into 40,000 Subscriber Shares of 1 each, 500,000,000 Ordinary Shares of US\$0.01 each and 499,990,000 Undesignated Shares of US\$0.01 each.
- (b) The Ordinary Shares shall entitle the holders thereof to the following rights:
- (i) as regards dividends:  
after making all necessary provisions, where relevant, for payment of any preference dividend in respect of any preference shares in the Company then outstanding, the Company shall apply any profits or reserves which the Board resolves to distribute in paying such profits or reserves to the holders of the Ordinary Shares in respect of their holdings of such shares *pari passu* and pro rata to the number of Ordinary Shares held by each of them;
  - (ii) as regards capital:  
on a return of assets on liquidation, reduction of capital or otherwise, the holders of the Ordinary Shares shall be entitled to be paid the surplus assets of the Company remaining after payment of its liabilities (subject to the rights of the holders of any preference shares in the Company then in issue, having preference rights on a return of capital) in respect of their holdings of Ordinary Shares *pari passu* and pro rata to the number of Ordinary Shares held by each of them;
  - (iii) as regards voting in general meetings:  
subject to the provisions of article 44 and the right of the Company to set record dates for the purpose of determining the identity of Shareholders entitled to notice of or vote at a general meeting, (A) the holders of the Ordinary Shares shall be entitled to receive notice of, and to attend and vote at, general meetings of the Company; and (B) every holder of Ordinary Shares present in person or by proxy shall have one vote for each Ordinary Share held by him;
  - (iv) as regards redemption:  
(A) if an Ordinary Share is not listed on a recognised stock exchange within the meaning of the 1990 Act, it shall be automatically converted into a Redeemable

Share on, and from the time of, the existence or creation of an agreement, transaction or trade ( arrangement ) between the Company and any third party pursuant to which the Company acquires or will acquire Ordinary Shares, or an interest in Ordinary Shares, from the relevant third party. In these circumstances, the Ordinary Share concerned shall have the same characteristics as any other Ordinary Share in accordance with these articles save that it shall be redeemable in accordance with the arrangement. The acquisition of such Ordinary Shares in accordance with this clause (iv)(A) by the Company shall constitute the redemption of a Redeemable Share in accordance with Part XI of the 1990 Act;

(B) if an Ordinary Share is listed on a recognised stock exchange within the meaning of the 1990 Act, the provisions of clause (iv)(A) shall apply unless the Board resolves, prior to the existence or creation of any relevant arrangement, that the arrangement concerned is to be treated as an acquisition of shares pursuant to article 7, in which case the arrangement shall be so executed;

(v) as regards certificates:

it shall be a condition of every issuance of Ordinary Shares that, unless the Board resolves otherwise (either generally or in any particular case or cases) holders of Ordinary Shares will not be entitled to receive a share certificate in respect of any Ordinary Shares except upon request and on such other terms as the Board may in its sole discretion determine.

- (c) Subject to the Companies Acts, all or any of the rights at any time attached to any class or series of shares at any time in issue may, unless otherwise expressly provided in the terms of issue of the shares of that class or series, from time to time, be varied with the sanction of a Variation Resolution of that class or series.
- (d) The special rights conferred upon the holders of any shares or class or series of shares shall not, unless otherwise expressly provided in the terms of issue of such shares, be deemed to be varied by the creation or issue of further shares ranking *pari passu* with them.
- (e) Notwithstanding any other provision of these articles, the nominal value of the issued share capital of the Company which is not redeemable will in no event be less than one tenth of the nominal value of the total issued share capital of the Company.
- (f) The Subscriber Shares shall carry the same rights as the Ordinary Shares, save that, in addition to the provisions of article 5(b)(iv), the Subscriber Shares will be automatically converted to redeemable shares, redeemable at par at the option of the Company immediately on the issue by the Company of any Ordinary Shares, representing not less than 10% in nominal value of the issued share capital of the Company.

#### **SHARES ALLOTMENTS AND ISSUANCES**

- 6. (a) The Company may, in accordance with the provisions of these articles issue any shares in its capital with such preferred or deferred or other special rights and privileges or such limitations, conditions and restrictions,

whether in regard to dividend, voting, return of capital, redemption or otherwise as it may determine.

Without prejudice to the generality of the foregoing, the Company may issue and redeem redeemable shares, subject to articles 6(c) and 6(d), and the Board is generally and unconditionally authorized to exercise all powers of the Company to do so.

- (b) Subject to the Companies Acts and the expiration dates contained in articles 6(c) and 6(d), the unissued shares of the Company (whether forming part of the original share capital or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options, warrants or other rights over or otherwise deal with or dispose of them to such persons, at such

times and for  
such  
consideration and  
generally on such  
terms and  
conditions as the  
Board may from  
time to time  
determine.

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- (c) The Board is, for the purposes of Section 20 of the 1983 Act, generally and unconditionally authorised to exercise all powers of the Company to allot and issue relevant securities (as defined by the said Section 20) up to the amount of the Company's authorised share capital and to allot and issue any shares purchased by the Company pursuant to the provisions of Part XI of the 1990 Act and held as treasury shares and this authority shall expire five years from the date of adoption of these articles. The Company may before the expiry of such authority make an offer or agreement which would or might require equity securities to be allotted after such expiry and the Board may allot equity securities in pursuance of such an offer or agreement as if the power conferred by this article 6(c) had not expired.
- (d) The Board is hereby empowered pursuant to Sections 23 and 24(1) of the 1983 Act to allot equity securities within the meaning of the said Section 23 for cash pursuant to the authority conferred by article 6(c) as if Section 23(1) of the said 1983 Act did not apply to any such allotment. The Company may before the expiry of such authority make an offer or agreement which would or might require equity securities to be allotted after such expiry and the Board may allot equity securities in pursuance of such an offer or agreement as if the power conferred by this article 6(d) had not expired.
- (e) Subject to the Companies Acts and to the rights conferred on the holders of any other class or series of shares and without prejudice to the generality of article 6(b), the Board is empowered to cause Undesignated Shares to be issued from time to time as shares of one or more class or series of shares (including as Ordinary Shares) and may:
  - (i) fix the distinctive designation of such class or series and the number of shares which shall constitute such class or series, which number may be increased (except as otherwise provided by the Board in creating such class or series) or decreased (but not below the number of shares thereof then in issue) from time to time by resolution of the Board;
  - (ii) determine that they are to be redeemed (the manner and terms of redemption in all cases to be set by the Board) on the happening of a specified event or on a given date;
  - (iii) determine that they may be redeemed (the manner and terms of redemption in all cases to be set by the Board) at the option of the Company;
  - (iv) determine that they may be redeemed (the manner and terms of redemption in all cases to be set by the Board) at the option of the holder;
  - (v) fix the shares with any such other preferred, deferred, qualified, special or other rights, privileges, preferences, limitations and conditions or such restrictions, whether in regard to dividend, voting, return of capital, redemption, conversion or otherwise, as the Board in its sole discretion shall determine; and
  - (vi) subject to article 5(c), vary any of the matters specified in clauses (i) through (v) of this article 6(e) in respect of any issued Undesignated Shares.
- (f) Without prejudice to the generality of the foregoing, the Board may make provision for the issue and allotment of shares that do not carry any voting rights.
- (g) Subject to any requirement to obtain the approval of shareholders under any laws, regulations or the rules of any stock exchange to which the Company is then subject and any other applicable law, the Board is authorised, from time to time, in its discretion, to grant such persons, including Directors, for such periods and upon such terms as the Board deems advisable, (i) options to purchase or subscribe for or (ii) commitments to issue at a future date, such number of shares of any class or classes or of any series as the Board may deem advisable, and to cause warrants or other appropriate instruments evidencing such options or commitments to be issued.
- (h) The Company may, insofar as the Companies Acts or any other applicable law permits, pay commission or brokerage fees to any person in consideration of a person subscribing





or agreeing to  
subscribe,  
whether  
absolutely or  
conditionally,  
for any shares  
in the Company  
or procuring or  
agreeing to  
procure  
subscriptions,  
whether  
absolute or  
conditional, for  
any shares in  
the Company  
on such terms  
and subject to  
such conditions  
as the Board  
may determine,  
including by  
paying cash or  
allotting and  
issuing Paid Up  
shares.

- (i) No share of the  
Company shall  
be issued  
unless it is Paid  
Up. Except as  
otherwise  
expressly  
provided by  
these articles,  
no Shareholder  
shall be liable  
to make any  
additional  
payment to the  
Company in  
respect of any  
share beyond  
the initial  
consideration  
agreed with the  
Company at or  
before the time  
of issue thereof.

### **COMPANY PURCHASES**

7. Subject to the Companies Acts, the Company may, without prejudice to any relevant special rights attached to any class or series of shares, pursuant to Section 211 of the 1990 Act, purchase any of its own shares, including any Redeemable Shares, whether in the market, by tender or by private agreement, at such prices (whether at nominal value or above or below nominal value) and otherwise on such terms and conditions as the Board may from time to time determine and without any obligation to purchase on any pro rata basis as between Shareholders or Shareholders of the same class or series (the whole or any part of the amount payable on any such purchase may be paid or satisfied otherwise than in cash, to the extent permitted by the Companies Acts) and may cancel any shares so purchased or hold them as treasury shares (as defined in Section 209 of the 1990 Act) and may reissue any such shares as shares of any class or classes or series.
8. Except only as otherwise provided in these articles, as ordered by a court of competent jurisdiction or as otherwise required by law, the Company shall be entitled to treat the registered holder of any share as the absolute owner of it and accordingly no person shall be recognised by the Company as holding any share upon trust, and the Company shall not be bound by or required in any way to recognise (even when having notice of it) any equitable, contingent, future or partial interest or other right in any share except an absolute right to the entirety of the share in the registered holder of it. This shall not preclude the Company from requiring the Shareholders or a transferee of shares to furnish the Company with information as to the beneficial ownership of (or other interest of any person in) any share.

### **INCREASE OF CAPITAL**

9. The Company may from time to time by Ordinary Resolution increase its authorised share capital by such sum, to be divided into shares of such nominal value, as such Ordinary Resolution shall prescribe.
10. Any new shares shall be subject to all of the provisions of these articles with reference to lien, transfer, transmission and otherwise.

### **ALTERATION OF CAPITAL**

11. (a) The Company may from time to time by Ordinary Resolution:
  - (i) consolidate and divide all or any of its share capital into shares of larger nominal value than any of its existing shares;
  - (ii) sub-divide its shares or any of them into shares of smaller nominal value than is fixed by its memorandum of association, subject to Section 68(1)(d) of the 1963 Act; and
  - (iii) cancel shares which, at the date of the passing of the relevant Ordinary Resolution, have not been taken or agreed to be taken by any person, and

diminish the amount of its authorised share capital by the amount of the shares so cancelled.

- (b) Where any difficulty arises in regard to any division, consolidation or sub-division under this article 11, the Board may settle the same as it thinks expedient and, in particular, may arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale in due proportion among the Shareholders who would have been entitled to the fractions, except that any proceeds in respect of any holding which are less than a sum fixed by the Board may be retained for the benefit of the Company. For the purpose of any such sale the Board may authorise some person to transfer the shares representing fractions to the purchaser, who shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

#### **REDUCTION OF CAPITAL**

12. Subject to the Companies Acts and to any confirmation or consent required by law or these articles, the Company may from time to time by Special Resolution authorise the reduction in any manner of its issued share capital, any capital redemption reserve fund or any share premium account.
13. In relation to any such reduction, the Company may by Special Resolution determine the terms upon which the reduction is to be effected, including, in the case of a reduction of part only of a class or series of shares, those shares to be affected.

#### **CERTIFICATES**

14. (a) Shares shall be issued in registered form. It shall be a condition of issue of every Share that no Shareholder shall, upon becoming the holder of that Share (irrespective of the class or series of Shares concerned), be entitled to a share certificate for that Share or any shares of any class or series held by him (nor, on transferring a part of his holding, to a certificate for the balance), unless otherwise provided by these articles or the terms of issue of such class or series of shares.
- (b) Share certificates, if issued, shall be in such form as the Board may from time to time prescribe, subject to the requirements of the Companies Acts. No fee shall be charged by the Company for issuing a share certificate. In the case of a share held jointly by several persons, delivery of a certificate in their joint names to one of several joint holders shall be sufficient delivery to all.
15. If a share certificate is worn-out or defaced, or alleged to have been lost or destroyed, it may be replaced without fee but on such terms (if any) as to evidence and indemnity and to payment of any exceptional costs and out of pocket expenses of the Company in investigating such evidence and preparing such indemnity as the Board may think fit and, in case of wearing-out or defacement, on delivery of the certificate to the Company. The Board may require any such indemnity to be secured in such manner as the Board may think fit.
16. (a) All certificates for shares (other than letters of allotment, scrip certificates and other like documents) shall, except to the extent that the terms of issue of such shares otherwise provide, be issued under Seal. Each certificate shall be signed by a person or persons then authorized pursuant to article 93 to affix the Seal over his signature.
- (b) The Board may determine, either generally or in any particular case, that any signatures on certificates for shares (or certificates or agreements or other documents evidencing the issue by the Company of awards under any share option, share incentive or other form of employee benefits plan adopted by the Company from time to time) need not be autographic but may be affixed to such certificates, agreements or other documents by some mechanical means or may be facsimiles printed on such certificates, agreements



or other documents. If any person who has signed, or whose facsimile signature has been used on, any such certificate, agreement or other document ceases for any reason to hold his office, such certificate, agreement or other document may nevertheless be issued as though that person had not ceased to hold such office.

#### **LIEN**

17. The Company shall have a first and paramount lien on every share for all debts and liabilities of any Shareholder to the Company, whether presently due or not, payable in respect of such share. The Company's lien on a share shall extend to all dividends and other monies payable in respect thereof. The Board may at any time, either generally or in any particular case, waive any lien that has arisen or declare any share to be wholly or in part exempt from the provisions of this article. The registration of a transfer of any such share shall operate as a waiver of the Company's lien (if any) thereon.
18. (a) The Company may sell, in such manner as the Board may think fit, any share on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently due nor until the expiration of 14 clear days after a notice, stating and demanding payment of the sum presently due and giving notice of the intention to sell in default of such payment, has been served on the Shareholder of the share or the person entitled by transmission to it.
- (b) The net proceeds of sale by the Company of any shares on which it has a lien shall be applied in or towards payment or discharge of the debt or liability in respect of which the lien exists so far as the same is due, and any residue shall (subject to a like lien for debts or liabilities not presently due as existed upon the share prior to the sale) be paid to the holder of, or the person entitled by transmission to, the share immediately before such sale. For giving effect to any such sale the Board may authorise some person to transfer the share to the purchaser. The purchaser shall be registered as the holder of the share and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the sale. If a share, which is to be sold as provided for in this article 18, is held in uncertificated form (as such term is used in the Companies Act 1990 (Uncertificated Securities) Regulations 1996), the Board may authorise some person to do all that is necessary under the Companies Act, 1990 (Uncertificated Securities) Regulations 1996 to put such share into certificated form prior to its sale.

#### **REGISTER OF SHAREHOLDERS**

19. (a) The Register shall be kept in the manner prescribed by the Companies Acts at the Registered Office or at such other place as may be authorised by the Board from time to time consistent with the Companies Acts.
- (b) The Register may be closed at such times and for such periods as the Board may from time to time decide, subject to Section 121 of the 1963 Act. Except during such time as it is closed, the Register shall be open to inspection in the manner prescribed by the Companies Acts at such times as the Board may from time to time determine.
- (c) Unless the Board so determines, no Shareholder or intending Shareholder shall be entitled to have entered in the Register, or otherwise recognized by the Company, any indication of any trust or any equitable, beneficial, contingent, future, fractional or partial interest in any share, and if any such entry exists or is permitted by the Board it shall not be deemed to abrogate any provisions of these articles provided that no interest will be entered in the Register unless permitted by the Companies Acts.

**REGISTER OF DIRECTORS AND SECRETARY**

20. The Secretary shall maintain a register of the Directors and Secretary of the Company as required by the Companies Acts. The register of Directors and Secretary shall be open to inspection in the manner prescribed by the Companies Acts at such times as the Board may from time to time determine.

**TRANSFER OF SHARES**

21. Subject to the Companies Acts, to such of the restrictions contained in these articles as may be applicable and to the terms of the issue and rights and privileges attaching to any class or series of share, any Shareholder may transfer all or any of his shares (of any class or series) by an instrument of transfer in the usual common form or in any other form which the Board may from time to time approve. The instrument of transfer may be endorsed on the certificate (if any) issued in respect of the share.
22. (a) The instrument of transfer of a Share shall be signed by or on behalf of the transferor and the transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect of it. The instrument of transfer need not be signed by or on behalf of the Transferee. All instruments of

transfer may be retained by the Company. The foregoing provisions of this article 22(a) and the provisions of article 22(b) shall not limit the rights of the Company provided in articles 17 and 18.

- (b) Upon receipt of instructions in writing by a transferor, the instrument of transfer of any share may be executed for and on behalf of the transferor by the Secretary or an Assistant Secretary, and the Secretary or Assistant Secretary shall be deemed to have been irrevocably appointed agent for the transferor of such share or shares with full power to execute, complete and deliver in the name of and on behalf of the transferor of such share or shares all such transfers of shares held by the Shareholders in the share capital of the Company. Any document which records the



name of the transferor, the name of the transferee, the class (or series) and number of shares agreed to be transferred, the date of the agreement to transfer shares and the price per share, shall, once executed by the transferor or the Secretary or Assistant Secretary as agent for the transferor in accordance with the first sentence of this article 22(b), be deemed to be a proper instrument of transfer for the purposes of Section 81 of the 1963 Act. Neither the title of the transferee nor the title of the transferor shall be affected by any irregularity or invalidity in the proceedings in reference to the transfer should the Board so determine.

- (c) The Company, at its absolute discretion and insofar as the Companies Acts or any other applicable law permit, may, or

may procure that a subsidiary of the Company shall, pay Irish stamp duty arising on a transfer of shares on behalf of the transferee of such shares of the Company. If stamp duty resulting from the transfer of shares in the Company which would otherwise be payable by the transferee is paid by the Company or any subsidiary of the Company on behalf of the transferee, then in those circumstances, the Company shall, on its behalf or on behalf of its subsidiary (as the case may be), be entitled to (i) seek reimbursement of the stamp duty from the transferee, (ii) set-off the stamp duty against any dividends payable to the transferee of those shares and (iii) to claim a first and permanent lien on the shares on which stamp duty has been paid by

the Company or its subsidiary for the amount of stamp duty paid (and the provisions of articles 17 and 18 shall apply to such lien).

- (d) Notwithstanding the provisions of these articles and subject to the Companies Acts, title to any shares in the Company may also be evidenced and transferred without a written instrument in accordance with Section 239 of the 1990 Act or any regulations made thereunder. Subject to the Companies Acts, the Board shall have power to permit any

class or series of shares to be held in uncertificated form (as such term is used in the Companies Act 1990 (Uncertificated Securities) Regulations 1996) and to implement any arrangements it thinks fit for such evidencing and transfer which accord with such regulations and in particular shall, where appropriate, be entitled to disapply or modify all or part of the provisions of these articles with respect to the requirement for written instruments of transfer and share certificates (if any), in order to give effect to such regulations.

- (e) Nothing in these articles shall preclude the Board from recognising the renunciation of the allotment of any share by an allottee in favour of some other person on such terms and subject to such conditions as the Board may from time to time decide.
  - (f) The Board may decline to register any transfer:
    - (i) if the instrument of transfer is not duly stamped, if required, and lodged at the Registered Office or any other place as the Board may from time to time specify for the purpose, accompanied by the certificate (if any) for the shares to which it relates and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
    - (ii) unless a registration statement under the Securities Act of 1933 of the United States of America is in effect with respect to such transfer or such transfer is exempt from registration and, if requested by the Board, a written opinion from counsel reasonably acceptable to the Board is obtained to the effect that such transfer is exempt from registration; or
    - (iii) without prejudice to the foregoing, in the absolute discretion of the Board and without assigning any reason therefor, subject to any limitation on such right of the Board imposed by law.
  - (g) The Board shall decline to register a transfer of Shares if it appears to the Board, whether before or after such transfer, that the effect of such transfer would be to increase the number of the Controlled Shares of any person to 10% or any higher percentage of any class of voting Shares or of the total issued Shares or of the voting power of the Company. The Board may, in its discretion, advise any person that any transfer which would increase the number of such person's Controlled Shares to 10% or any higher percentage of any class of voting Shares or the total issued Shares or voting power of the Company may not be made and will not be recognised for any purpose and any such transfer purported to have been made to such person after receipt of such notice by such person shall be null and void.
  - (h) Subject to any directions of the Board from time to time in force, the Secretary or Assistant Secretary may exercise the powers and discretions of the Board under article 22(f) and articles 21 and 23.
  - (i) The registration of transfers may be suspended at such time and for such periods as the Board may from time to time determine, provided always that such registration shall not be suspended for more than 30 days in any year except as may be required by applicable law.
23. (a) If the Board declines to register a transfer it shall, within one month after the date on which the instrument of transfer was lodged, send to the transferee notice of such refusal.
- (b) No fee shall be charged by the Company for registering any transfer or for making any entry in the Register concerning any other document relating to or affecting the title to any share (except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed on it in connection with such transfer or entry).

### TRANSMISSION OF SHARES

24. In the case of the death of a Shareholder, the survivor or survivors, where the deceased was a joint Shareholder, or the estate representative, where he or she was sole Shareholder, shall be the only person or persons recognised by the Company as having any title to his shares; but nothing in these articles shall release the estate of a deceased Shareholder from any liability in respect of any share held by him solely or jointly with other persons. In this article, estate representative means the person to whom appropriate authority has been granted to represent or administer or otherwise manage the estate of a deceased Shareholder under the laws applicable to the estate of the deceased Shareholder or, if there is no such person, such other person as the Board may in its absolute discretion determine to be the person recognised by the Company for the purpose of this article.
25. (a) Subject to article 22(f), any person entitled by transmission to a share may, upon the production of such evidence as may be properly required by the Board from time to time, elect either to be registered himself as the holder of the share or to have some person nominated by him registered as the transferee of the share.
- (b) Subject to article 22(f) and article 25(c), if such person entitled by transmission to a share elects to be registered as holder of the share, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he elects to have his nominee registered, he shall signify his election by signing an instrument of transfer of such share in favour of his nominee.
- (c) All of the provisions of these articles relating to the right to transfer and the registration of transfers of shares shall apply to any such notice or instrument of transfer as if the death or bankruptcy of the Shareholder or other event giving rise to the transmission had not occurred and the notice or instrument of transfer were an instrument of transfer signed by such Shareholder.
26. A person entitled by transmission to a share shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a Shareholder in respect of the share, be entitled to exercise any right in respect of the share in relation to meetings of the Company; provided, however, that the Board may at any time give notice requiring a person entitled by transmission to a share to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 clear days after the date such notice is given, the Board may withhold payment of any dividend, other monies payable, scrip dividend or capitalisation issue of shares or other similar benefit in respect of the share until the requirements of the notice have been complied with.
27. Subject to any directions of the Board from time to time in force, the Secretary or Assistant Secretary may exercise the powers and discretions of the Board under articles 24, 25 and 26.

### GENERAL MEETINGS

28. The Board may, whenever it thinks fit (and, to the extent required by the Companies Acts, shall, on the requisition in writing of Shareholders holding such number of shares as is prescribed by Section 132 of the 1963 Act), convene a general meeting in the manner provided for in these articles and the Companies Acts.
29. In accordance with the Companies Acts, the Board shall convene and the Company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year, and shall specify the meeting as such in the notices calling it. Each such annual general meeting shall be held within such time period as required by Section 131 of the 1963 Act. Subject to Section 140 of the 1963 Act, all general meetings may be held outside of Ireland. All general meetings other than annual general meetings shall be called extraordinary general meetings.

30. Each general meeting shall be held at such time and place as specified in the notice of meeting.
31. Subject to the Companies Acts, all of the provisions of these articles (including article 44) relating to meetings of Shareholders (other than to meetings of any separate class or series of Shareholders) shall apply *mutatis mutandis* to (a) any separate meeting of ordinary Shareholders and (b) any separate meeting of any other class or series of Shareholders, except as otherwise expressly provided in the terms of issue of such other class or series of shares.

#### **NOTICE OF GENERAL MEETINGS**

32. Subject to Sections 133 and 141 of the 1963 Act, any annual general meeting and any extraordinary general meeting shall be called by at least thirty clear days' notice. The notice of a general meeting shall specify the place, day and time of the meeting (including any satellite meeting place arranged for the purposes of article 38) and, in the case of an extraordinary general meeting, the general nature of the business to be considered. Notice of every general meeting shall be given in any manner permitted by these articles to all Shareholders (other than those who, under the provisions of these articles or the terms of issue of the shares which they hold, are not entitled to receive such notice from the Company) and to each Director and to the Auditors.
33. The accidental omission to give notice of a meeting or (in cases where instruments of proxy are sent out with the notice) the accidental omission to send such instrument of proxy to, or the non-receipt of notice of a meeting or such instrument of proxy by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting. A Shareholder present, either in person or by proxy, at any general meeting of the Company or of the holders of any class or series of shares in the Company, will be deemed to have received notice of that meeting and, where required, of the purpose for which it was called.

#### **PROCEEDINGS AT GENERAL MEETINGS**

34. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the reports of the Directors and Auditors, the election of Directors, the re-appointment of the retiring Auditors and the fixing of the remuneration of the Auditors.
35. The chairman of the Board, if any, or, in his absence, another Director designated by the chairman of the Board

shall preside as chairman at every general meeting of the Company. If neither the chairman of the Board nor such other Director designated by the chairman of the Board is present within 30 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairman of the meeting. The chairman of the meeting shall take such action as he thinks fit to promote the proper and orderly conduct of the business of the meeting as laid down in the notice of the meeting.

36. (a) Subject to Section 141 of the 1963 Act and the requirements of the Companies Acts, anything which may be done by resolution in general meeting may, without a meeting and without any previous notice being required, be done by resolution in writing, signed by all of the Shareholders entitled generally to vote at general meetings who at the date of

the resolution  
in writing  
would be  
entitled to  
attend a  
meeting and  
vote on the  
resolution and  
if described as  
a special  
resolution  
shall be  
deemed to be a  
Special  
Resolution or a  
special  
resolution of  
the class, as  
applicable.  
Such  
resolution in  
writing may be  
signed in as  
many  
counterparts as  
may be  
necessary.  
This article 36  
shall not apply  
to those  
matters  
required by the  
Companies  
Acts to be  
carried out in a  
meeting.

- (b) For the  
purposes of  
any written  
resolution  
under this  
article 36, the  
date of the  
resolution in  
writing is the  
date when the  
resolution is  
signed by, or  
on behalf of,  
the





last Shareholder to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution in writing made in accordance with this Section, a reference to such date.

- (c) A resolution in writing made in accordance with this article 36 is as valid as if it had been passed by the Company in general meeting.
37. No business shall be transacted at any general meeting or adjourned meeting unless a quorum is present when the meeting proceeds to business, but the absence of a quorum shall not preclude the appointment or election of a chairman, which shall not be treated as part of the business of the meeting. Unless a higher or lower quorum is required by the Companies Acts or these articles, two or more Shareholders (or if there is only one Shareholder of the relevant class or series of Shareholders, then one Shareholder) present in person or by proxy and holding shares representing at least 50 percent of the issued shares carrying the right to vote at such meeting shall be a quorum; provided, that no quorum shall exist for the purpose of considering or passing any Special Resolution unless the Shareholder or Shareholders present in person or by proxy hold Shares representing at least two-thirds of the issued Shares carrying the right to vote at such meeting.
38. (a) Subject to the Companies Acts, the Board may resolve to enable persons entitled to attend a general meeting of the Company to do so by simultaneous attendance and participation at a satellite meeting place anywhere in the world and by such electronic means as the Board may from time to time approve. The Shareholders present at any such satellite meeting place in person or by proxy and entitled to vote shall be counted in the quorum for, and shall be entitled to vote at, the meeting in question if the chairman is satisfied that the conditions referred to in articles 38(b)(i), 38(b)(ii) and 38(b)(iii) have been met.
- (b) If it appears to the chairman of a general meeting that the place of the meeting specified in the notice convening the meeting is inadequate to accommodate all persons entitled and wishing to attend, then the meeting nevertheless is duly constituted and its proceedings nevertheless are valid if the chairman is satisfied that adequate facilities have been made available, whether at the place of the meeting or elsewhere, to ensure that each such person who is unable to be accommodated at the place of the meeting is able to:
- (i) communicate simultaneously and instantaneously with the persons present at the other meeting place or places, whether by the use of microphones, loud-speakers, audio-visual or other communications equipment or facilities;
  - (ii) have access to all documents which are required by the Companies Acts and these articles to be made available at the meeting; and
  - (iii) participate in any poll required to vote on any resolutions of the Company, and in that case the chairman may elect to use such adequate facilities described in the preceding sentence for the purposes of the meeting and any provision of these articles relating to meetings shall apply to any meeting so extended by the use of such facilities.
- (c) The chairman of the general meeting shall be present at, and the meeting shall be deemed to take place at, the principal meeting place. If it appears to the chairman of the general meeting that the facilities at the principal meeting place or any satellite meeting place are or become inadequate for the purposes referred to in articles 38(b)(i), 38(b)(ii) and 38(b)(iii), then the chairman may, without the consent of the meeting, adjourn the general meeting. All business conducted at that general meeting up to the time of such adjournment shall be valid.
39. Each Director and the Auditors shall be entitled to attend and speak at any general meeting of the Company or of any class or series of Shareholders.
40. The Board may make any security arrangements which it considers appropriate relating to the holding of a general meeting of the Company, including arranging for any person attending a

meeting to be searched and for items of personal property which may be taken into a meeting to be restricted, and any person who fails to comply with any such arrangements may be refused entry to the meeting.

41. (a) Subject to the Companies Acts, a resolution may only be put to a vote at a general meeting of the Company if:
- (i) it is proposed by or at the direction of the Board; or
  - (ii) it is proposed at the direction of a court of competent jurisdiction;
  - (iii) it is proposed with respect to an extraordinary general meeting in the requisition in writing for such meeting made by such number of Shareholders as is prescribed by (and such requisition in writing is made in accordance with) Section 132 of the 1963 Act; or
  - (iv) the chairman of the meeting in his discretion decides that the resolution may properly be regarded as within the scope of the meeting.
- (b) No amendment may be made to a resolution, at or before the time when it is put to a vote, unless the chairman of the meeting in his discretion decides that the amendment or the amended resolution may properly be put to a vote at that meeting.
- (c) If the chairman of the meeting in his discretion rules a resolution or an amendment to a resolution admissible or out of order (as the case may be), the proceedings of the meeting or on the resolution in question shall not be invalidated by any error in his ruling. Any ruling by the chairman of the meeting in relation to a resolution or an amendment to a resolution shall be final and conclusive, subject to any subsequent order by a court of competent jurisdiction.
42. (a) At any general meeting, whether or not a quorum is present, the chairman may, with the consent of the meeting, and shall if so directed by the meeting, adjourn the meeting from time to time and place to place without notice other than announcement at the meeting. Other than announcement at the meeting, notice of any adjourned meeting or of any business to be transacted at an adjourned meeting shall not be required to be given, except as provided in article 42(c) and except where expressly required by applicable law.
- (b) At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting originally called, but only those Shareholders entitled to vote at the meeting as originally notified shall be entitled to vote at any adjournment or adjournments thereof.
- (c) If an adjournment is for 30 days or more or for an indefinite period, a notice of the adjourned meeting shall be given in the manner specified in article 32.

#### VOTING

43. Except where a greater majority is required by the Companies Acts or these articles, any question proposed for consideration at any general meeting of the Company shall be decided by an Ordinary Resolution and all resolutions put to the Shareholders will be decided on a poll.
44. (a) Every Shareholder holding shares conferring the right to vote present in person or by proxy at any general meeting shall have one vote (or such other number of votes as may be specified in the terms of issue of such shares or in these articles), for each such share registered in such Shareholder's name in the Register on the date fixed pursuant to the provisions of article 106 or 107, as applicable, as the record date for the determination of Shareholders entitled to vote at such meeting, provided that if and so long as the votes conferred by the Controlled Shares of any person constitute 10% or more of the votes conferred by the issued shares of the Company, each issued share comprised in

such Controlled Shares shall confer only a fraction of a vote that would otherwise be applicable according to the following formula:

$[(T \text{ divided by } 10) - 1] \text{ divided by } C$

Where: T is the aggregate number of votes conferred by all the issued shares of the Company; and C is the number of votes conferred by the Controlled Shares of such person.

For the purposes of this article, person shall include any group of persons within the meaning of Section 13(d)(3) of the Exchange Act.

- (b) If, as a result of giving effect to the foregoing provisions of this article 44 or otherwise, the votes conferred by the Controlled Shares of any person would otherwise represent more than 10% of the votes conferred by all of the issued shares of the Company, the votes conferred by the Controlled Shares of such person shall be reduced in accordance with the foregoing provisions of this article 44. Such process shall be repeated until the votes conferred by the Controlled Shares of each person represent no more than 10% of the votes conferred by all of the issued shares of the Company.
  - (c) Notwithstanding the foregoing provisions of this article 44, after having applied the provisions thereof as best as they consider reasonably practicable, the Board may make such final adjustments to the aggregate number of votes conferred by the Controlled Shares of any person that it considers fair and reasonable in all the circumstances to ensure that such votes represent less than 10% of the aggregate voting power of the votes conferred by all of the issued shares of the Company.
- 45. The Board may, before any meeting of Shareholders, determine the time set for a poll, the manner in which any poll is to be taken and the manner in which votes are to be counted, which may include provision for votes to be cast by electronic means by persons present in person or by proxy at the meeting and for the appointment of scrutineers. To the extent not so determined by the Board, such matters shall be determined by the chairman of the meeting. A person appointed to act as a scrutineer need not be a Shareholder.
  - 46. Votes may be cast on the poll either personally or by proxy. A person entitled to more than one vote need not use all of his votes or cast all of the votes he uses in the same way.
  - 47. The result of a poll shall, subject to any provisions of these articles or applicable law relating to approval thresholds, be deemed to be the resolution of the meeting.
  - 48. In the case of an equality of votes at a meeting, the motion shall be deemed to be lost and the chairman of the meeting shall not be entitled to a second or casting vote.
  - 49. In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding. Joint holders of more than one share shall, subject to any terms determined by the Board and subject to article 22(f), be entitled to split the holdings into several holdings with their names in different orders so as to enable one or more joint holders to attend and vote.
  - 50. Subject to article 51, a Shareholder who is a patient for any purpose of any statute or applicable law relating to mental health or in respect of whom an order has been made by any court in Ireland (or elsewhere having jurisdiction) for the protection or management of the affairs of persons incapable of managing their own affairs may vote, by his legal guardian, receiver, committee or other person in the nature of a legal guardian, receiver, committee or other person appointed by such court, and such legal guardian, receiver, committee or other person may vote by proxy and may otherwise act and be treated as such Shareholder for the purpose of meetings of Shareholders.
  - 51. Evidence to the satisfaction of the Board of the authority of any person claiming the right to vote under article 50 shall be produced at the Registered Office (or at such other place as may be specified for the deposit of instruments of proxy) not later than the last time by which an



instrument  
appointing a proxy  
must be deposited  
in order to be  
valid for use at the  
meeting or  
adjourned meeting  
or on the holding  
of the poll at or on  
which that person  
proposes to vote  
and, in default, the  
right to vote shall  
not be exercisable.

52. No objection may be raised to the qualification of any voter or to the counting of, or failure to count, any vote except at the meeting at which the vote objected to is given or tendered. Any objection so raised shall be referred to the chairman of the meeting, whose decision shall be final and conclusive. Except as otherwise decided by the chairman, every vote counted and not disallowed at the meeting shall be valid and every vote disallowed or not counted shall be invalid. Notwithstanding the foregoing, however, if the chairman of the meeting considers that such action is

necessary to determine accurately the vote count, the chairman may, in his discretion, whether or not an objection has been raised, defer until after the conclusion of the meeting a decision as to the proper application of article 44 to any vote at such meeting. If the decision has been so deferred, then the chairman of the meeting or, if the decision has not been reached within 90 days of the meeting, the Board, shall make the decision and the decision shall be final and conclusive.

#### **PROXIES AND CORPORATE REPRESENTATIVES**

53. (a) A Shareholder may appoint one or more persons as his proxy, with or without the power of substitution, to represent him and vote on his behalf in respect of all or some only of his shares at any meeting of Shareholders (including an adjourned meeting). A proxy need not be a Shareholder.
- (b) A Shareholder that is a corporation may appoint any individual (or two or more individuals in the alternative) as its representative to represent it and vote on its behalf at any meeting of Shareholders (including an adjourned meeting) and such a corporate representative may exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were a Shareholder who is an individual.
- (c) A Shareholder that is a corporation may appoint more than one such corporate representatives (with or without appointing any persons in the alternative) at any such meeting provided that such appointment specifies the number of shares in respect of which each such appointee is authorised to act as representative, not exceeding in aggregate the number of shares held by the appointor and carrying the right to attend and vote at the relevant meeting.
- (d) The appointment of a proxy or a corporate representative in relation to a particular meeting shall, unless the contrary is stated in the instrument of appointment, be valid for any adjournment of the meeting.

54.

A Shareholder may appoint a standing proxy, with or without the power of substitution, or (if a corporation) a standing representative (with or without appointing any persons in the alternative) by delivery to the Registered Office (or at such other place as the Board may from time to time specify for such purpose) of evidence of such appointment. The appointment of such a standing proxy or representative shall be valid for every meeting of Shareholders and adjourned meeting until such time as it is revoked by notice to the Company, but:

- (a) the appointment of a standing proxy or representative may be made on an irrevocable basis in which case the Company may recognise the vote of the proxy or representative given in accordance with the terms of the appointment, to the exclusion of the vote of the Shareholder, until such time as the appointment ceases to be effective in accordance with its terms;
- (b) notwithstanding article 54(a), the appointment of a standing proxy or representative shall be deemed to be suspended at any meeting (or any subsequent poll with respect to the business of such meeting) at which (i) the Shareholder is present in person and votes or (ii) in respect of which the Shareholder has specifically appointed another proxy or

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representative in respect of the same shares, which proxy or representative is present in person and votes in respect of such shares; and

- (c) the Board may from time to time require such evidence as it deems necessary as to the due execution and continuing validity of the appointment of any standing proxy or representative and, if it does so, the appointment of the standing proxy or representative shall be deemed to be suspended until such time as the Board determines that it has received the required evidence or other evidence satisfactory to it.
55. (a) A proxy may be appointed by an instrument in writing in any common form or in such other form as the Board may approve, such instrument being executed under the hand of the appointor or of his attorney or agent authorised by him in writing or, if the appointor is a corporation, either under its seal or under the hand of an officer, attorney or other person authorised to sign the same. A proxy may also be appointed in such other manner as the Board may from time to time approve.
- (b) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at such place or address as is specified for that purpose in the notice convening the meeting, before the time appointed for the taking of the poll and, in default, the instrument of proxy shall not be treated as valid. Where the instrument appointing a proxy is in electronic form, it may be so received where an address has been specified by the Company for that purpose: (i) in the notice convening the meeting; (ii) in any form of appointment of proxy sent out by the Company in relation to the meeting; or (iii) in any invitation contained in an electronic communication to appoint a proxy issued by the Company in relation to the meeting.
- (c) If the terms of appointment of a proxy include a power of substitution, any proxy appointed by substitution under such power shall be deemed to be the proxy of the Shareholder who conferred such power. All of the provisions of these articles relating to the execution and delivery of an instrument or other form of communication appointing or evidencing the appointment of a proxy shall apply, *mutatis mutandis*, to the instrument or other form of communication effecting or evidencing such an appointment by substitution.
56. A vote given by proxy or a representative, whether a standing proxy or a representative or proxy or representative relating to a particular meeting, shall be valid notwithstanding the previous death or insanity of the principal (in the case of a proxy), or revocation of the appointment of the proxy or representative or of the authority under which it was executed unless notice of such death, insanity or revocation was received by the Company at the Registered Office (or at any other place as may be specified for the delivery of instruments or other forms of communication appointing or evidencing the appointment of proxies and representatives in the notice convening the meeting or in any other information sent to Shareholders by or on behalf of the Board in relation to the meeting) before the commencement of the meeting or adjourned meeting at which the vote is given.
57. Without limiting the foregoing, the Board may from time to time permit appointments of a proxy to be made by means of a telephonic, electronic or internet communication or facility and may in a similar manner permit supplements to, or amendments or revocations of, any such telephonic, electronic or internet communication or facility to be made. The Board may in addition prescribe the method of determining the time at which any such telephonic, electronic or internet communication or facility is to be treated as received by the Company. The Board may treat any such telephonic, electronic or internet communication or facility which purports to be or is expressed to be sent on behalf of a Shareholder as sufficient evidence of the authority of the person sending that instruction to send it on behalf of that Shareholder.
58. Subject to the Companies Acts, the Board may also at its discretion waive any of the provisions of these articles relating to the execution and deposit of an instrument or other form of communication appointing or evidencing the appointment of a proxy or a representative or



any ancillary matter (including any requirement for the production or delivery of any instrument or other communication to any particular place or by any particular time or in any particular way) and, in any case in which it considers it appropriate, may accept such verbal or other assurances as it thinks fit as to the right of any person to attend and vote on behalf of any Shareholder at any meeting of Shareholders.

#### **APPOINTMENT OF DIRECTORS**

59. (a) The Board shall be divided into three classes. There is no distinction in the voting or other powers and authorities of Directors of different classes. All Directors will be designated as either class I, class II or class III Directors. The Board shall from time to time by resolution determine the respective numbers of class I Directors, class II Directors and class III Directors, but each class shall consist as nearly as possible of one-third of the total number of Directors constituting the Board. The resolution appointing any Director must designate the Director as a class I, class II or class III Director.
- (b) Upon the resignation or termination of office of any Director, if a new Director shall be appointed to the Board he will be designated to fill the vacancy arising and shall, for the purposes of these articles, constitute a member of the class of Directors represented by the person that he replaces.
60. (a) Each class I Director shall (unless his office is vacated in accordance with these articles) serve initially until the conclusion of the annual general meeting of the Company held in the calendar year 2011 and subsequently shall (unless his office is vacated in accordance with these articles) serve for three-year terms, each concluding at the third annual general meeting after the class I Directors together were last appointed or re-appointed.
- (b) Each class II Director shall (unless his office is vacated in accordance with these articles) serve initially until the conclusion of the annual general meeting of the Company held in the calendar year 2012 and subsequently shall (unless his office is vacated in accordance with these articles) serve for three-year

terms, each concluding at the third annual general meeting after the class II Directors together were last appointed or re-appointed.

- (c) Each class III Director shall (unless his office is vacated in accordance with these articles) serve initially until the conclusion of the annual general meeting of the Company held in the calendar year 2013 and subsequently shall (unless his office is vacated in accordance with these articles) serve for three-year terms, each concluding at the third annual general meeting after the class III Directors were last appointed or re-appointed.
  - (d) Any Director whose term of office is expiring at an annual general meeting will be eligible for re-appointment and will in any case retain office until the close of that meeting.
61. (a) No person shall be appointed a Director, unless nominated in accordance with the provisions of this article 61. Nominations of persons for appointment as Directors may be made:
- (i) by the Board;
  - (ii) with respect to election at an annual general meeting, by any Shareholder who holds Ordinary Shares or other shares carrying the general right to vote at general meetings of the Company, who is a Shareholder at the time of the giving of the notice provided for in article 61(b) and at the time of the relevant annual general meeting, and who timely complies with the notice procedures set forth in this article 61;

- (iii) with respect to election at an extraordinary general meeting requisitioned in accordance with Section 132 of the 1963 Act, by a Shareholder or Shareholders who hold Ordinary Shares or other shares carrying the general right to vote at general meetings of the Company and who make such nomination in the written requisition of the extraordinary general meeting in accordance with article 28 and in compliance with the other provisions of these articles and the Companies Acts relating to nominations of directors and the proper bringing of special business before an extraordinary general meeting; and
- (iv) by holders of any class or series of shares in the Company then in issue having special rights to nominate or appoint Directors in accordance with the terms of issue of such class or series, but only to the extent provided in such terms of issue

(clauses (ii), (iii) and (iv) being the exclusive means for a Shareholder to make nominations of persons for election to the Board).

***[If Proposal Number Three: The Director Nomination Procedures Proposal is approved at the extraordinary general meeting of ordinary shareholders of XL Capital Ltd scheduled to be held on [ ], 2010, these articles of association will include the following italicized provisions:]***

- (b) *Any Shareholder who holds Ordinary Shares or other shares carrying the general right to vote at general meetings of the Company may nominate a person or persons for election as Director at an annual general meeting only if (in addition to the requirements of article 61(a)(ii)) written notice of such Shareholder's intent to make such nomination is given in accordance with the procedures set forth in this article 61, either by personal delivery or by mail, postage prepaid, to the Secretary of the Company at the address of the Secretary (x) until a notice of the Company's 2011 annual general meeting has been sent to Shareholders, specified in the proxy statement sent to shareholders of XL Capital Ltd with respect to its 2010 annual general meeting and (y) thereafter, specified in the notice of an annual general meeting or accompanying proxy statement last sent to Shareholders prior to the delivery of such Shareholder's written notice of nomination (or, if no such address was specified, at the Registered Office) not later than the close of business not less than 90 and not more than 120 clear days prior to the one-year anniversary date of the immediately preceding annual general meeting (or, in the case of the 2011 annual general meeting, of the 2010 annual general meeting of XL Capital Ltd), provided, however, that if the date of the annual general meeting is more than 30 clear days before or after the anniversary date of the immediately preceding annual general meeting (or, in the case of the 2011 annual general meeting, of the 2010 annual general meeting of XL Capital Ltd), such notice of nomination shall be given not later than the later of (i) the close of business 30 clear days prior to the date of such annual general meeting or (ii) the close of business on the day that is 10 clear days after the first public announcement of the date of such annual general meeting. In no event shall any adjournment of an annual general meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a Shareholder's notice as described above.*
- (c) *Each notice of a Shareholder's intent to make a nomination delivered pursuant to article 61(b) and each requisition in writing delivered pursuant to article 28 that sets forth a notice of a Shareholder's or Shareholders' intent to nominate one or more persons for election as a Director shall, in each case, set forth:*
  - (i) *as to the Shareholder or Shareholders giving notice and each beneficial owner, if different, on whose behalf the nomination is made, (A) the name and address of each such Shareholder and each such beneficial owner, (B) the class or series and number of Shares of which each such Shareholder and each such beneficial owner, respectively (and their respective Affiliates, naming such Affiliates), is, directly or indirectly, the registered or beneficial owner as of the date of such notice or requisition in writing, (C) a description of the material terms of any Covered*

*Arrangement to which each such Shareholder and each such beneficial owner, and their respective Affiliates, directly or indirectly, is a party as of the date of such notice or such requisition in writing, (D) any other information relating to each such Shareholder and each such beneficial owner that would be required to be disclosed in a proxy statement in connection with a solicitation of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act (whether or not then applicable to the Company and whether or not any such Shareholder or beneficial owner intends to solicit proxies) (the disclosures to be made pursuant to the foregoing clauses (i)(B), (i)(C) and (i)(D), the Shareholder Disclosable Interests ), and (E) a representation that each such Shareholder is a registered holder of Shares entitled to vote at the relevant meeting of Shareholders and intends to appear in person or by proxy at the relevant meeting to nominate the person or persons specified in the notice or requisition in writing; provided, however, that Shareholder Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is giving such notice solely as a result of being the Shareholder directed to prepare and submit the notice required by this article 61 on behalf of one or more beneficial owners;*

- (ii) a description of all arrangements or understandings between each such Shareholder and each such beneficial owner, and their respective Affiliates, and each nominee or any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the Shareholder or Shareholders;*
  - (iii) as to each person whom the Shareholder or Shareholders propose to nominate for election as a Director, (A) all information relating to such person as would have been required to be included in a proxy statement filed in connection with a solicitation of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act (whether or not then applicable to the Company and whether or not the Shareholder or Shareholders intend to solicit proxies), (B) a description of the material terms of any Covered Arrangement to which such nominee or any of his or her Affiliates is a party as of the date of such notice or requisition in writing, and (C) the written consent of each nominee to being named in the notice or requisition in writing as a nominee and to serving as a Director if so elected; and*
  - (iv) an undertaking by each such Shareholder and each such beneficial owner to (A) notify the Company in writing of any changes in the information provided in such notice or requisition in writing pursuant to clauses (i), (ii) and (iii) above as of the record date for determining Shareholders entitled to vote at the relevant meeting of Shareholders promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public announcement and (B) deliver to the Company an updated notification of such information thereafter within two business days of any change in such information and, in any event, within five hours after the close of business (at the location at which the meeting is to take place) on the business day preceding the meeting date updated as of such close of business.*
- (d) No person shall be eligible for election as a Director of the Company unless nominated in accordance with the procedures set forth in these articles. Except as otherwise provided by law, the Board or the chairman of any meeting of Shareholders to elect Directors may determine in good faith that a nomination was not made in compliance with the procedures set forth in the foregoing provisions of this article 61; and if the Board or the chairman of the meeting should so determine, it shall be so declared to the meeting, and the defective nomination shall be disregarded. Notwithstanding anything in these articles to the contrary, unless otherwise required by law, if a Shareholder intending to make a nomination at a meeting of Shareholders in accordance with this article 61 does not timely*

*appear in person or by proxy at the meeting to present the nomination, such nomination shall be disregarded, notwithstanding that appointments of proxy in respect of such nomination may have been received by the Company or any other person.*

- (e) *Notwithstanding the foregoing provisions of this article 61, any Shareholder or Shareholders intending to make a nomination at a meeting of Shareholders in accordance with this article 61, and each related beneficial owner, if any, shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in these articles; provided, however, that any references in these articles to the Exchange Act are not intended to and shall not limit the requirements applicable to nominations made or intended to be made in accordance with clause (ii) or clause (iii) of article 61(a).*
- (f) *Nothing in this article 61 shall be deemed to affect any rights of the holders of any class or series of shares to elect or appoint Directors pursuant to any applicable terms of issue of any such shares.*

***[If Proposal Number Three: The Director Nomination Procedures Proposal is not approved at the extraordinary general meeting of ordinary shareholders of XL Capital Ltd scheduled to be held on [ ], 2010, these articles of association will include the following italicized provisions:]***

- (b) *Any Shareholder may nominate a person or persons for election as Directors at an annual general meeting only if (in addition to the requirements of article 61(a)(ii)) such Shareholder delivers to the Company, either by personal delivery or by mail, postage prepaid, to the Secretary of the Company at the address of the Secretary (x) until a notice of the Company's 2011 annual general meeting has been sent to Shareholders, specified in the proxy statement sent to shareholders of XL Capital Ltd with respect to its 2010 annual general meeting and (y) thereafter, specified in the notice of an annual general meeting or accompanying proxy statement last sent to Shareholders prior to the delivery of such Shareholder's written notice of nomination (or, if no such address was specified, at the Registered Office) (i) a notice in writing signed by such Shareholder of his intention to nominate such person for election at the annual general meeting and (ii) a notice in writing signed by the person nominated for election of his willingness to be elected, not later than the close of business not less than 5 and not more than 21 clear days before the date appointed for the annual general meeting.*
62. The number of Directors shall (subject to automatic increases to accommodate the exercise of the rights of holders of any class or series of shares then in issue having special rights to nominate or appoint Directors in accordance with the terms of issue of such class or series) not be less than 3 nor more than 13. The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below the fixed minimum number, the remaining Director or Directors shall appoint, as soon as practicable, an additional Director or additional Directors to make up such minimum or shall convene a general meeting of the Company for the purpose of making such appointment.
63. (a) Subject to articles 61 and 62, and subject to the rights of any holders of any class or series of Shares then in issue having special rights to nominate or appoint Directors in accordance with the terms of issue of such class or series, Directors shall be individuals appointed as follows:
- (i) by Shareholders by Ordinary Resolution at the annual general meeting in each year or at any extraordinary general meeting called for the purpose in accordance with the other provisions of these articles;
  - (ii) by the Board in accordance with the last sentence of article 62 and in accordance with article 83; or
  - (iii) so long as there are in office a sufficient number of Directors to constitute a quorum of the Board in accordance with article 82, the Directors shall have the power at any time and from time to time to appoint any person to be a Director, either to fill a vacancy in the Board or as an addition to the existing Directors,

but so that the total number of Directors shall not any time exceed the maximum number provided for in these articles.

- (b) If at any meeting of Shareholders (or on a subsequent poll with respect to the business of such meeting) resolutions are passed in respect of the election or re-election (as the case may be) of Directors which would result in the maximum number of Directors fixed in accordance with these articles being exceeded, then those Director(s), in such number as exceeds such maximum fixed number, receiving at that meeting (or on a subsequent poll with respect to the business of such meeting) the lowest number of votes in favour of election or re-election (as the case may be) shall, notwithstanding the passing of any resolution in their favour, not be elected or re-elected (as the case may be) to the Board; provided, that this article shall not limit the rights of holders of any class or series of shares then in issue having special rights to nominate or appoint Directors in accordance with the terms of issue of such class or series; provided, further, that nothing in this article 63(b) will require or result in the removal of a Director whose election or re-election to the Board was not voted on at such meeting.
- (c) A Director appointed by the Board under article 63(a)(ii) or 63(a)(iii) (unless he is removed from office or his office is vacated in accordance with these articles) will hold office until his term of office expires under article 60(a), 60(b) or 60(c) as relevant.
- (d) Directors are not entitled to appoint alternate directors.
- (e) A Director shall not require a share qualification.

#### **RESIGNATION, REMOVAL AND DISQUALIFICATION OF DIRECTORS**

- 64. The office of a Director shall be vacated:
  - (a) if he resigns his office, on the date on which notice of his resignation is delivered to the Secretary at the principal executive offices of the Company or tendered at a meeting of the Board or on such later date as may be specified in such notice; or
  - (b) on his being prohibited by law from being a Director; or
  - (c) on his ceasing to be a Director by virtue of any provision of the Companies Acts.
- 65. The Company may, in accordance with Section 182 of the 1963 Act, remove any Director before the expiration of his term of office notwithstanding anything in these articles or in any agreement between the Company and such Director. Such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company.

#### **DIRECTORS REMUNERATION AND EXPENSES**

- 66. Each Director shall be entitled to receive such fees for his services as a Director, if any, as the Board may from time to time determine. Each Director shall be paid all expenses properly and reasonably incurred by him in the conduct of the Company's business or in the discharge of his duties as a Director, including his reasonable traveling, hotel and incidental expenses in attending and returning from meetings of the Board or any committee of the Board or general meetings.
- 67. The Board may from time to time determine that, subject to the requirements of the Companies Acts, all or part of any fees or other remuneration payable to any Director of the Company shall be provided in the form of shares or other securities of the Company or any subsidiary of the Company, or options or rights to acquire such shares or other securities, on such terms as the Board may decide.



**DIRECTORS INTERESTS**

68. (a) A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall comply with the provisions of Section 194 of the 1963 Act.
- (b) A Director may vote in respect of any contract or proposed contract in which he has declared his interest in accordance with article 68(a) and will be counted in the quorum at any meeting on which any such vote is proposed.
69. (a) A Director of the Company may be or become a director or other officer of, or otherwise interested in, any corporation promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other corporation unless the Company otherwise directs.
- (b) A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Board may determine, and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established.
- (c) Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; but nothing herein contained shall authorise a director or his firm to act as Auditor.

**POWERS OF THE BOARD**

70. Subject to the provisions of the Companies Acts and these articles, the Board shall manage the business and affairs of the Company and may exercise all of the powers of the Company as are not required by the Companies Acts or by these articles to be exercised by the Company in general meeting. No alteration of these articles shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this article shall not be limited by any special power given to the Board by these articles and, except as otherwise expressly provided in these articles, a meeting of the Board at which a quorum is present shall be competent to exercise all of the powers, authorities and discretions vested in or exercisable by the Board.
71. The Board may exercise all of the powers of the Company to borrow or raise money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to Part III of the 1983 Act, to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any other person.
72. The Company may exercise the powers conferred by Section 41 of the 1963 Act with regard to having an official seal for use abroad and such powers shall be vested in the Board.
73. All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time determine.

74. The Board may exercise all of the powers of the Company to grant or procure the grant or provision of benefits, including pensions, annuities or other allowances, to or for any person, including any Director or former Director, who has held any executive office or employment with, or whose services have directly or indirectly been of benefit to, the Company or any Group Company or Affiliate or otherwise associated with any of them or a predecessor in business of the Company or of any such other corporation, and to or for any relation or dependant of any such person, and to contribute to any fund and pay premiums for the purchase or provision of any such benefit, or for the insurance of any such person.
75. The Board may cause the voting power conferred by the shares in any other corporation or other person held or owned by the Company to be exercised in such manner in all respects as the Board thinks fit, including the exercise of votes in favour of any resolution appointing the Directors or any of them to be directors or officers of such other corporation or person or voting or providing for the payment of remuneration to any such Directors as the directors or officers of such other corporation or person.

#### **DELEGATION OF THE BOARD S POWERS**

76. The Board may by power of attorney or otherwise (including by a duly passed resolution) appoint any person to be the attorney or agent of the Company and may delegate to such person any of the Board s powers, authorities and discretions (with power to sub-delegate) for such period and subject to such conditions as it may think fit. The Board may revoke or vary any such appointment or delegation. Any such power of attorney or resolution or other document may contain such provisions for the protection and convenience of persons dealing with any such attorney or agent as the Board may think fit.
77. The Board may from time to time provide for the management of the affairs of the Company in such manner as it shall think fit and the provisions contained in article 78 shall be without prejudice to the general powers conferred by this article.
78. (a) The Board may delegate any of its powers, authorities and discretions (with power to sub-delegate) to any committee, consisting of such person or persons (whether Directors or not) as it thinks fit. The Board may make any such delegation on such terms and conditions with such restrictions as it thinks fit and either collaterally with, or to the exclusion of, its own powers and may from time to time revoke or vary such delegation. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations or limitations that may be imposed on it by the Board. The power to delegate to a committee extends to all of the powers, authorities and discretions of the Board generally (including those conferred by article 71) and shall not be limited by the fact that in certain provisions of these articles, but not in others, express reference is made to a committee or to particular powers, authorities or discretions being exercised by the Board or by a committee of the Board.
- (b) The meetings and proceedings of any committee of the Board consisting of two or more members shall be governed by the provisions contained in these articles for regulating the meetings and proceedings of the Board so far as they are capable of applying and are not superseded by any regulations imposed by the Board except that, unless otherwise determined by the Board, the quorum necessary for the transaction of business at any committee meeting shall be two members.

#### **PROCEEDINGS OF THE BOARD**

79. The Board may meet to conduct business, adjourn and otherwise regulate its meetings (including notice thereof) as it thinks fit. Except where a greater majority is required by these articles, questions arising at any meeting shall be determined by a majority of the votes cast at a meeting at which there is a quorum. In the case of an equality of votes the motion shall be



deemed to be lost and the chairman of the meeting shall not be entitled to a second or casting vote.

80. A meeting of the Board may at any time be summoned by the chairman of the Board or by the chief executive officer, if he is a Director. The Secretary or any Assistant Secretary shall also summon a meeting of the Board on the requisition of a Director. Such meeting of the Board shall be summoned in such manner and with such prior notice as the Board may from time to time determine (including as to the manner of giving notice), which notice shall set forth the general nature of the business to be considered, unless notice is waived in accordance with the following article.
81. A Director may waive notice of any meeting either prospectively or retroactively or at the meeting in question. A Director in attendance at a meeting shall be deemed to have waived notice of such meeting. The provisions of article 33 shall apply *mutatis mutandis* with respect to notices of meetings of Directors.
82. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be one-third of the Directors currently in office.
83. The continuing Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to article 82 as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
84. At any meeting of the Board, the chairman of the Board shall preside or, in his absence, any Director holding the position of chief executive officer. However, if no chairman of the Board or Director holding the position of chief executive officer is present at the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.
85. A resolution in writing (in one or more counterparts), signed at the relevant time by all of the Directors then in office or all of the members of a committee of Directors then in office shall be as valid and effectual as if it had been passed at a meeting of the Directors or committee as the case may be duly convened and held.
86. A meeting of the Board or any committee thereof may be held by such electronic means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting. Such a meeting will be deemed to take place where the largest group of those participating in the meeting is physically present together or, if there is no such group, where the chairman of the meeting then is.
87. All acts done by the Board or by any committee or by any person acting as a Director or member of a committee or any person authorised by the Board or any committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated their office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director, member of such committee or person so authorised.

#### **OFFICERS AND EXECUTIVES**

88. (a) The Board may elect a chairman of the Board and determine the period for which he is to hold office and may appoint any person (whether or not a Director) to fill the position of chief executive officer (who may be the same person as the chairman of the Board). The chairman of the Board shall vacate that office if he vacates his office as a Director (otherwise than by the expiration of his term of office at a general meeting of the Company at which he is re-appointed).

- (b) The Board may from time to time appoint one or more of its body to hold any office or position with the Company for such period and on such terms as the Board may determine and may revoke or terminate any such appointment. Any such revocation or termination shall be without prejudice to any claim for damages that such Director may have against the Company or the Company may have against such Director for any breach of any contract of service between him and the Company that may be involved in such revocation or termination or otherwise. Any person so appointed shall receive such remuneration, if any (whether by way of salary, commission, participation in profits or otherwise), as the Board may determine.
- (c) In addition, the Board may appoint any person, whether or not he is a Director, to hold such executive or official position (except that of Auditor) as the Board may from time to time determine. The same person may hold more than one office or executive or official position.
- (d) Any person elected or appointed pursuant to this article 88 shall hold his office or other position for such period and on such terms as the Board may determine and the Board may revoke or vary any such election or appointment at any time by resolution of the Board. Any such revocation or variation shall be without prejudice to any claim for damages that such person may have against the Company or the Company may have against such person for any breach of any contract of service between him and the Company which may be involved in such revocation or variation. If any such office or other position becomes vacant for any reason, the vacancy may be filled by the Board.
- (e) Except as provided in the Companies Acts or these articles, the powers and duties of any person elected or appointed to any office or executive or official position pursuant to this article 88 shall be such as are determined from time to time by the Board.
- (f) The use or inclusion of the word officer (or similar words) in the title of any executive or other position shall not be deemed to imply that the person holding such executive or other position is an officer of the Company within the meaning of the Companies Acts.

#### MINUTES

- 89. (a) The Board shall cause minutes to be made and books kept for the purpose of recording all of the proceedings and attendance at meetings of the Board and of any committee of the Board and at meetings of the Shareholders and of any class or series of Shareholders of the Company.
- (b) Subject to the requirements of the Companies Acts, the Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the minutes of meetings of the Shareholders and of any class or series of Shareholders of the Company (but not minutes of meetings of the Board or any committee of it) shall be open to the inspection of Shareholders not being Directors and no Shareholder (who is not a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by applicable law or authorised by the Board or, in a general meeting, by the Company.

#### SECRETARY

- 90. The Secretary shall be appointed by the Board at such remuneration (if any) and on such terms as it may think fit and any Secretary so appointed may be removed by the Board. Any revocation or variation of such position shall be without prejudice to any claim for damages that such person may have against the Company or the Company may have against such person for any breach of any contract of service between him and the Company which may be involved in such revocation or variation or otherwise.

91. The duties of the Secretary shall be those prescribed by the Companies Acts, together with such other duties as shall from time to time be prescribed by the Board, and in any case, shall include the making and keeping of records of the votes, doings and proceedings of all meetings of the Shareholders and the Board of the Company, and committees, and the authentication of records of the Company.
92. A provision of the Companies Acts or these articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

#### **THE SEAL**

93. (a) The Company, in accordance with article 72, may have for use in any territory outside Ireland one or more additional Seals, each of which shall be a duplicate of the Seal with or without the addition on its face of the name of one or more territories, districts or places where it is to be used and a securities seal as provided for in the Companies (Amendment) Act 1977.
- (b) Any Authorized Person may affix the Seal of the Company over his signature alone to any document of the Company required to be authenticated or executed under Seal. Subject to the Companies Acts, any instrument to which a Seal is affixed shall be signed by one Authorized Person. As used in this article 93(b), Authorized Person means (i) any Director, the Secretary or any Assistant Secretary, and (ii) any other person authorized for such purpose by the Board from time to time (whether, in the case of this clause (ii), identified individually or collectively and whether identified by name, title, function or such other criteria as the Board may determine).

#### **DIVIDENDS AND OTHER PAYMENTS**

94. (a) The Board may from time to time declare and pay such dividends to the Shareholders as appear to the Directors to be justified by the profits of the Company.
- (b) The Board may declare and pay dividends in any currency that the Board in its discretion shall choose.
95. Except insofar as the terms of issue of any shares otherwise provide, all shares outstanding on the record date for a dividend shall rank equally for such dividend.
96. The Board may deduct from any dividend or other moneys payable to a Shareholder (either alone or jointly with another) by the Company on or in respect of any shares all sums of money (if any) due from him (either alone or jointly with another) to the Company in respect of shares of the Company.
97. No dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company, unless the terms of issue of that share otherwise expressly provide.
98. (a) Any dividend or other sum payable in cash to the holder of a share may be paid by cheque, wire transfer or other means approved by the Board and, in the case of a cheque, may be sent through the post addressed to the holder at his address in the Register (or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the share at his registered address as appearing in the Register).
- (b) Every such cheque or wire transfer shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of one or more of the holders and shall be sent at his or their risk and payment of the cheque or wire transfer by the bank on which it is drawn or from which it is transferred (as the case may be) shall constitute a good discharge to the Company.



- (c) In addition, any dividend or other sum payable to the holder of a share may be paid by a bank or other funds transfer system or by such other means as may be approved by the Board and to or through such person as the holder or joint holders may direct in writing, and the Company shall have no responsibility for any sums lost or delayed in the course of any such transfer or when it has acted on any such direction.
  - (d) Any one of two or more joint holders may give an effectual receipt for any dividend or other moneys payable or property distributable in respect of the shares held by such joint holders.
99. (a) If (i) a payment for a dividend or other sum payable in respect of a share sent by the Company to the person entitled to it in accordance with these articles is left uncashed or is returned to the Company and, after reasonable enquiries, the Company is unable to establish any new address or, with respect to a payment to be made by a funds transfer system, a new account, for that person or (ii) such a payment is left uncashed or returned to the Company on two consecutive occasions, the Company shall not be obliged to send any dividends or other sums payable in respect of that share to that person until he notifies the Company of an address or, where the payment is to be made by a funds transfer system, details of the account, to be used for the purpose.
- (b) Subject to any applicable abandoned property, escheat or similar laws, any dividend or other distribution in respect of a share which is unclaimed for a period of 6 years from the date on which it became payable shall be forfeited and shall revert to the Company. The payment by the Company of any unclaimed dividend or other distribution payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect of it.
100. The Board may, insofar as the Companies Acts permit, direct payment or satisfaction of any dividend or other distribution wholly or in part by the distribution of specific assets and, in particular, of fully or partly Paid Up shares or other securities of any other corporation; and, where any difficulty arises in regard to such dividend or distribution, the Board may settle it as it thinks expedient, and in particular may authorise any person to sell and transfer any fractions, or may ignore fractions altogether, and may fix the value for distribution or dividend purposes of any such specific assets, and may determine that cash payments shall be made to any Shareholders upon the footing of the values so fixed in order to secure equality of distribution, and may vest any such specific assets in trustees as may seem expedient to the Board.

#### **RESERVES**

101. The Board may, before declaring any dividend or other distribution, set aside out of the profits of the Company such sums as it thinks proper as reserves which shall, at the discretion of the Board, be applicable for any purpose of the Company and pending such application may, also at such discretion, either be employed in the business of the Company or be invested in such manner as the Board lawfully determines. The Board may also without placing the same to reserves carry forward any sums that it may think it prudent not to distribute.

#### **CAPITALISATION OF RESERVES**

102. (a) Upon the recommendation of the Board, the Company may, by Ordinary Resolution, authorize the Board to cause any sum then standing to the credit of any of the Company's reserves (including any capital redemption reserve fund or share premium account) or to the credit of the profit and loss account to be capitalised and applied on behalf of the Shareholders who would have been entitled to receive the same if the same had been distributed by way of dividend and in the same proportions either in or towards paying up amounts for then unpaid on any shares held by them respectively or



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in paying up in full unissued shares or debentures of the Company of a nominal amount equal to the sum capitalised (such shares or debentures to be allotted and distributed credited as fully paid up to and amongst such holders in the proportions aforesaid) or partly in one way and partly in another, so however, that the only purpose for which sums standing to the credit of the capital redemption reserve fund or the share premium account shall be applied shall be those permitted by Sections 62 and 64 of the 1963 Act.

- (b) Upon the recommendation of the Board, the Company may, by Ordinary Resolution, authorize the Board to capitalise any part of the amount then standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account which is not available for distribution by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares to those Shareholders of the Company who would have been entitled to that sum if it were distributed by way of dividend (and in the same proportions), and the Board shall give effect to such resolution.

103. Whenever an Ordinary Resolution is passed in pursuance of article 102, the Board shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the Board to make such provision as it shall think fit for the case of shares or debentures becoming distributable in fractions (and, in particular, without prejudice to the generality of the foregoing, to sell the shares or debentures represented by such fractions and distribute the net proceeds of such sale amongst the Shareholders otherwise entitled to such fractions in due proportions) and also to authorise any person to enter on behalf of all of the Shareholders concerned into an agreement with the Company providing for the allotment to them respectively credited as fully paid up of any further shares or debentures to which they may become entitled on such capitalisation or, as the case may require, for the payment up by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be effective and binding on all such Shareholders.

104. (a) Whenever a capitalisation issue of shares is authorized under article 102, the Board may, subject to the rights attached to any particular class or series of shares, also decide to offer any Shareholder the right to elect to forego his entitlement to receive additional shares under such capitalisation issue (or such part of his entitlement as the Board may determine) and to receive instead a payment in cash (a "cash option") in accordance with the following provisions of this article 104.
- (b) The amount payable under and all other terms of the cash option shall be decided by the Board, which may fix a limit on the extent to which an election for the cash option shall be effective (whether by reference to a part of any Shareholder's total entitlement to additional shares or to the total number of additional shares in respect of which all such elections may be made on any occasion).
  - (c) The Board shall give notice to the Shareholders of their rights of election in respect of the cash option and shall specify the procedure to be followed in order to make an election.
  - (d) Payments to those Shareholders who elect to receive cash instead of their entitlement to further shares under such a capitalisation issue ("cash electors") may, to the extent permitted by the Companies Acts, be made either (i) out of profits or reserves of the Company available for the payment of dividends or (ii) out of the net proceeds of sale of the shares to which the cash electors would have been entitled under such capitalisation issue but for their election to receive cash, or partly in one way and partly in the other, as the Board determines. To the extent that the Board determines that payment is to be made as in (ii) above, the Board shall be entitled to sell the additional shares to which the cash electors would have been entitled, to appoint some person to transfer those shares to the purchaser (who shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or

invalidity in the proceedings relating to the sale). The net proceeds of sale shall be applied in or towards payment of the amounts due to cash electors in respect of their cash entitlement and, to the extent that they exceed that entitlement, may be retained by the Company for its benefit.

- (e) The Board may decide that Shareholders resident in territories where, in the opinion of the Board, compliance with local laws or regulations would be unduly onerous if those Shareholders were to receive additional shares, shall be deemed to have exercised rights of election to receive cash.
  - (f) The Board may determine that any sums due in respect of a cash option to all or some of those Shareholders whose registered addresses are in a particular territory shall be paid in a currency or currencies other than US dollars and, if it does so, the Board may fix or otherwise determine the basis of conversion into the other currency or currencies and payment of that converted amount in that currency shall be in full satisfaction of the entitlement to such sum.
105. (a) The Board may, subject to the rights attached to any particular class or series of shares, offer any Shareholder the right to elect to receive further shares, credited as paid up, instead of cash in respect of all (or some part) of any dividend (a scrip dividend ) in accordance with the following provisions of this article 105.
- (b) The basis of allotment of the further shares shall be decided by the Board so that, as nearly as may be considered convenient, the value of the further shares, including any fractional entitlement, is equal to the amount of the cash dividend which would otherwise have been paid. For these purposes the value of the further shares shall be calculated in such manner as may be determined by the Board, but the value shall not in any event be less than the nominal value of a share.
  - (c) The Board shall give notice to the Shareholders of their rights of election in respect of the scrip dividend and shall specify the procedure to be followed in order to make an election.
  - (d) The dividend or that part of it in respect of which an election for the scrip dividend is made shall not be paid and instead further shares shall be allotted in accordance with elections duly made and the Board shall capitalise a sum equal to not less than the aggregate nominal value of, nor more than the aggregate value (as determined under article 105(b)) of, the shares to be allotted, as the Board may determine out of such sums available for the purpose as the Board may consider appropriate.
  - (e) The Board may decide that the right to elect for any scrip dividend shall not be made available to Shareholders resident in any territory where, in the opinion of the Board, compliance by the Company with local laws or regulations would be unduly onerous.
  - (f) The Board may do all acts and things considered necessary or expedient to give effect to the provisions of a scrip dividend election and the issue of any shares in accordance with the provisions of this article 105, and may make such provisions as it thinks fit for the case of shares becoming distributable in fractions (including provisions under which, in whole or in part, the benefit of fractional entitlements accrues to the Company rather than to the Shareholders concerned).
  - (g) The Board may from time to time establish or vary a procedure for election mandates, under which a holder of shares may, in respect of any future dividends for which a right of election pursuant to this article 105 is offered, elect to receive further shares in lieu of such dividend on the terms of such mandate.

#### **RECORD DATES**

106. (a) The Board may fix, in advance, a date as the record date for the purpose of determining the Shareholders entitled to notice of, or to vote at, any meeting of the Shareholders or



any adjournment thereof, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board.

- (b) The Board may fix, in advance, a date as the record date for the purpose of determining the Shareholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of shares, or in order to make a determination of the Shareholders for the purpose of any other lawful action, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 90 calendar days prior to such payment, allotment or other action.

107. If no record date is fixed for the determination of Shareholders entitled to notice of or to vote at a meeting of Shareholders or Shareholders entitled to receive payment of a dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of shares, or in order to make a determination of the Shareholders for the purpose of any other such lawful action, the date on which notice of the meeting is issued or the date on which the resolution of the Board declaring such dividend or approving any other such lawful action is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of Shareholders entitled to vote at any meeting of Shareholders has been made as provided in this article, such determination shall apply to any adjournment thereof.

#### **UNTRACED SHAREHOLDERS**

108. (a) The Company shall be entitled to sell at the best price reasonably obtainable at the time of sale the shares of a Shareholder or the shares to which a person is entitled by transmission if and provided that:
- (i) during a period of six years no dividend in respect of those shares has been claimed and at least three cash dividends have become payable on the shares in question;
  - (ii) on or after expiry of that period of six years the Company has inserted an advertisement in a newspaper circulating in the area of the last-registered address at which service of notices upon the Shareholder or person entitled by transmission may be effected in accordance with these articles and in a national newspaper published in the relevant country, giving notice of its intention to sell such shares;
  - (iii) during that period of six years and the period of three months following the publication of such advertisement the Company has not received any communication from such Shareholder or person entitled by transmission; and
  - (iv) if so required by the rules of any securities exchange upon which the shares in question are then listed, notice has been given to that exchange of the Company's intention to make such sale.
- (b) The Company's power of sale shall extend to any share which, on or before the date or first date on which any such advertisement appears, is issued in respect of a share to which article 108(c) applies.
- (c) To give effect to any such sale the Board may authorise some person to transfer the shares to the purchaser who shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The net proceeds of sale shall belong to the Company which shall be obliged to account to the former Shareholder or person entitled by transmission for an amount equal to such proceeds and shall enter the name of such former Shareholder or person entitled by transmission in the books of the Company as a creditor for such amount (and, provided that the Company shall have complied with this

article 108  
and any  
applicable  
abandoned  
property,  
escheat or  
similar laws,  
the Company  
shall have no  
other liability  
to any  
person). No  
trust shall be  
created in  
respect of the  
debt, no  
interest shall  
be payable in  
respect of the  
same and the  
Company  
shall not be  
required to  
account for  
any money  
earned on the  
net proceeds,  
which may be  
employed in  
the business  
of the  
Company or  
invested in  
such  
investments  
as the Board  
may from  
time to time  
think fit.

#### **SERVICE OF NOTICES AND OTHER DOCUMENTS**

109. Any notice or other document may be sent to, served on or delivered to any Shareholder by the Company either personally or by sending it by electronic record, facsimile, through the post (by airmail where applicable) in a pre-paid letter addressed to such Shareholder at his address as appearing in the Register or by any other means permitted under applicable law. Acknowledgement of receipt shall not be required and is not a condition of valid service of due notice.
110. Any notice or other document shall be deemed to have been served or delivered:

- (a) if given by facsimile, 24 hours after the time such facsimile is transmitted and the appropriate confirmation is received
- (b) if mailed, 24 hours after deposited in the mail, in a postage-prepaid letter addressed to the Shareholder at his address as it appears in the Register;
- (c) if sent by email or other electronic transmission, 24 hours after such email or other electronic submission is transmitted; or
- (d) if published as an electronic record on a website, 24 hours after the time that the notice or other document is published on the website, provided the Shareholder has previously consented to receipt of notice by means of such delivery as provided in article 113 or otherwise; and
- (e) if given by any other means, when delivered at the applicable address;

and in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed, stamped and put in the post, except for electronic means where the record of the Company's or its agent's system shall be deemed to be the definitive record of delivery.

- 111. For purposes of these articles and the 1963 Act, a document shall be deemed to have been sent to a Shareholder if a notice is given, served, sent or delivered to the Shareholder in accordance with article 109 and the notice specifies the website or hyperlink or other electronic link at or through which the Shareholder may obtain a copy of the relevant document.
- 112. Any notice of a general meeting of the Company shall be deemed to be duly given to a shareholder, or other person entitled to it, if it is sent to him by cable, telex, telecopier, electronic mail or other mode of representing or reproducing words in a legible and non-transitory form at his address as appearing in the Register or any other address given by him to the Company for this purpose. Any such notice shall be deemed to have been served 24 hours after its dispatch.
- 113. Any requirement in these articles for the consent of a Shareholder in regard to the receipt by such Shareholder of electronic mail or other means of electronic communications approved by the Board, including the receipt of the Company's audited accounts and the Directors' and auditors' reports thereon, shall be deemed to have been satisfied where the Company has sent written notice to the Shareholder informing him of its intention to use electronic communications for such purposes and the Shareholder has not, within four weeks of the issue of such notice, served an objection in writing to the Company to such proposal. Where a Shareholder has given, or is deemed to have given, his consent to the receipt by such Shareholder of electronic mail or other means of electronic communications approved by the Board, he may revoke such consent at any time by requesting the Company to communicate

with him in written form; provided, however, that such revocation shall not take effect until 5 days after written notice of the revocation is received at the Registered Office (or at such other place as may be specified by the Board from time to time).

114. In the case of joint holders of a Share, service or delivery of any notice or other document on or to the joint holder first named on the Register shall for all purposes be deemed as sufficient service on or delivery to all the joint holders.
115. Any notice or other document delivered, sent or given to a shareholder in any manner permitted by these articles shall, notwithstanding that such shareholder is then dead or bankrupt or that any other event has occurred, and whether or not the



Company has notice of the death or bankruptcy or other event, be deemed to have been duly served or delivered in respect of any share registered in the name of such shareholder as sole or joint holder unless his name shall, at the time of the service or delivery of the notice or document, have been removed from the Register as the holder of the share, and such service or delivery shall for all purposes be deemed as sufficient service or delivery of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

116. In the case of a person entitled by transmission to a share whose entitlement has been noted in the Register, any notice or other document shall be served on or delivered to him as if he were the

holder of that share and his address noted in the Register were his registered address. A notice may be given by the Company to any other person entitled by transmission to a share by sending it through the post in a prepaid letter addressed to such person by name or by title of representatives of the deceased or official assignee in bankruptcy or by any like description at the address supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

117. The signature (whether electronic signature, an advanced electronic signature or otherwise) to any notice to be given by the Company may be written (in electronic

form or  
otherwise) or  
printed.

### **SHAREHOLDER RIGHTS PLAN**

118. Subject to applicable law, the Board is hereby expressly authorised to adopt any shareholder rights plan or similar plan, agreement or arrangement pursuant to which, under circumstances provided therein, some or all shareholders will have rights to acquire Shares or interests in Shares at a discounted price, upon such terms and conditions as the Board deems expedient and in the best interests of the Company.

### **WINDING UP**

119. If the Company is wound up, the liquidator may, with the sanction of a Special Resolution and any other sanction required under applicable law:
- (a) divide among the Shareholders in cash or in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and for such purposes set such value as he deems fair on any property to be so divided and determine how such division shall be carried out as between the Shareholders or different classes or series of Shareholders (without prejudice to the rights attaching to any class or series of shares by virtue of these articles or the terms of issue of any such shares); and
  - (b) vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Shareholder shall be compelled to accept any shares or other assets upon which there is any liability.
120. In case of a sale by the liquidator under Section 260 of the 1963 Act, the liquidator may by the contract of sale agree to bind all of the Shareholders

direct of the proceeds of sale in proportion to their respective interests in the Company and may further by the contract set a time at the expiration of which obligations or shares not accepted or required to be sold shall be deemed to have been irrevocably refused and be at the disposal of the Company, but so that nothing herein contained shall be taken to diminish, prejudice or affect the rights of dissenting Shareholders conferred by the said Section.

121. The power of sale of the liquidator shall include a power to sell wholly or partially for debentures, debenture stock, or other obligations of

another  
corporation,  
either then  
already  
constituted or  
about to be  
constituted for  
the purpose of  
carrying out  
the sale.

## INDEMNIFICATION

122. (a) Subject to articles 122(g) and 122(h), the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action, suit or proceeding by or in the right of the Company) by reason of the fact that he or she is or was an Indemnified Person, against expenses (including legal fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding if such Indemnified Person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, or reasonably believed to be in or not opposed to the best interests of the relevant employee benefit plan of the Company or any Group Company, and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Indemnified Person (i) did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, or reasonably believed to be in or not opposed to the best interests of such employee benefit plan, and (ii) with respect to any criminal proceeding, had reasonable cause to believe his or her conduct was unlawful.
- (b) Subject to articles 122(g) and 122(h), the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favour by reason of the fact that he or she is or was an Indemnified Person, against expenses (including legal fees) actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding if such Indemnified Person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, or reasonably believed to be in or not opposed to the best interests of the relevant employee benefit plan of the Company or any Group Company, and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Indemnified Person shall have been adjudged to be liable for willful neglect or willful default in the performance of his or her duty to the Company or to such employee benefit plan unless and only to the extent that the Irish High Court or the court in which such action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Indemnified Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- (c) Subject to articles 122(g) and 122(h), to the extent that an Indemnified Person shall be successful on the merits or otherwise in defense, of any action, suit or proceeding referred to in articles 122(a) and 122(b) above, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including legal fees) actually and reasonably incurred by him or her in connection therewith.
- (d)

Any indemnification under articles 122(a) and 122(b) above (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a

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determination that indemnification of the Indemnified Person is proper in the circumstances because he or she has met the applicable standard of conduct set forth in articles 122(a) and 122(b). Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable (or, even if obtainable, if a quorum of disinterested Directors so directs), by independent legal counsel in a written opinion, or (iii) by the Shareholders entitled to vote at general meetings of the Company.

- (e) The Board shall have power to purchase and maintain insurances for the benefit of any persons who are or were at any time Indemnified Persons or employees or agents of the Company, or any Group Company or of any other corporation or employee benefit plan in which the Company or any Group Company has any direct or indirect interest, including insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported performance of their duties or powers or offices in relation to the Company or such other corporation.
- (f) Subject to articles 122(g) and 122(h), expenses incurred by an Indemnified Person in defending a civil or criminal action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the manner provided in article 122(d), upon receipt of an undertaking by or on behalf of the Indemnified Person to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Company as authorized in this article 122.
- (g) The provisions for indemnity contained in these articles shall have effect to the fullest extent permitted by law, but shall not extend to any matter which would render them void pursuant to the Companies Acts.
- (h) The rights to indemnification and reimbursement of expenses provided by these articles are in addition to (i) any other rights to which a person may be entitled, including any other rights under these articles, under any other applicable bye-laws or articles of any other corporation, under any agreement, under any insurance purchased by the Company or any Group Company, pursuant to any vote of shareholders or disinterested Directors, or pursuant to the direction (however embodied) of any court of competent jurisdiction, both as to action in his or her official capacity while holding such office and as to action in another capacity while holding such office, and (ii) the power of the Company to indemnify or otherwise make payments (without prior commitment upon the authorization of the Board) of the type contemplated by this article 122 in respect of any person who is or was an employee, office holder or director of the Company or of another corporation, any joint venture, trust or other enterprise which he is serving or has served at the request of the Company. The indemnification provided by this article shall continue as to a person who has ceased to be an Indemnified Person and shall inure to the benefit of his heirs, executors and administrators.
- (i) In this article 122, the term Indemnified Person means any officer of the Company (including any Director or Secretary) or any other person appointed pursuant to article 88, any member of a committee constituted under article 78, any person acting as an office holder of the Company, any person holding any other executive or official position of the Company, any employee or agent of the Company, and any person serving at the request of the Company as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise or in a fiduciary or other capacity with respect to any employee benefit plan maintained by the Company or any Group Company. As used in this article, references to the Company include all constituent companies in a consolidation or merger in which the Company or a predecessor to the Company by consolidation or merger was involved.
- (j) To the fullest extent permitted under Irish law, no Director, officer of the Company or other person appointed pursuant to article 88 (each, a Covered Person ) shall be liable

or answerable for the acts, receipts, neglects, or defaults of any other Covered Person or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage, or misfortune whatever which shall happen in or about the execution of the duties of his or her office or other position with the Company or in relation thereto, unless the same happen through his or her own willful neglect or willful default.

**ALTERATION OF ARTICLES**

123. The Company may by Special Resolution amend or alter these articles of association.

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**XL Capital plc**  
**Terms of Issue of**  
**Series C Preference Shares**

**1. General**

The Series C Preference Shares shall be cumulative preference shares with a nominal par value of US\$0.01 per share and, subject to the articles of association (**Articles**) of XL Capital plc (the **Company**) and the provisions of and restrictions contained in the Companies Acts 1963 to 2009 of Ireland and every statutory modification or re-enactment thereof for the time being in force (the **Law**), shall have the following preferences and rights and shall be subject to the following restrictions. Capitalized terms that are not defined herein shall have the meanings set forth in the Articles, as they are in effect on the date of the first issuance of any Series C Preference Shares (the **original issuance date**).

**2. Liquidation Preference**

On any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company, the assets of the Company legally available for distribution among shareholders shall be applied first in repaying to the holders of the Series C Preference Shares (the **Holder**s) an amount equal to US\$25.00 per Series C Preference Share (inclusive of the nominal amount thereof) plus all accrued and unpaid dividends (whether or not earned or declared), if any, to the date fixed for distribution, in preference to the repayment of such nominal amount of and any share premium or other amounts paid on Ordinary Shares or any other shares ranking junior in right of payment to the Series C Preference Shares as to the voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company or as to dividends (including the Ordinary Shares, the **Junior Shares**) to the holders of such Junior Shares, without interest on such unpaid dividends. In the event that upon any such voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise, the assets of the Company available are insufficient to pay the amount of the liquidation distributions on all Series C Preference Shares in issue as referred to above and the corresponding amounts payable on all other shares ranking *pari passu* with the Series C Preference Shares with respect to the payment of dividends and amounts upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company (including, without limitation, the Series E Preference Shares, nominal value US\$0.01 per share, of the Company (the **Series E Preference Shares**)) (**Parity Shares**), then the Holders of the Series C Preference Shares and all such Parity Shares shall share ratably in such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. The Series C Preference Shares shall not be convertible into or exchangeable for any other shares of the Company. For purposes of this paragraph 2, a consolidation, merger, arrangement or reconstruction involving the Company or the sale or transfer of all or substantially all of the shares or property or business of the Company will not be deemed to constitute a liquidation, dissolution or winding-up.

**3. Dividend Rights**

- 3.1 (a) During  
the period  
from and  
including the  
original  
issuance date  
to and  
including  
July 15,

2013 (or, if such day is not a Business Day (as defined below), the next Business Day) (the **Fixed Rate Period**), Holders of the Series C Preference Shares, if any, will be entitled to receive, when, and if declared by the Board of Directors of the Company (the **Board**), cumulative preferential cash dividends at a rate per annum of 6.102%. During the period from and including the day immediately following the last day of the Fixed Rate Period to but excluding July 15, 2033 (or, if such day is not a Business Day, the

next  
Business  
Day) (the  
**Floating  
Rate  
Period**), and  
thereafter if  
any Series C  
Preference  
Shares  
remain in  
issue,  
Holders of  
the Series C  
Preference  
Shares will  
be entitled to  
receive,  
when, as and  
if declared  
by the  
Board,  
cumulative  
preferential  
cash  
dividends at

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a rate per annum equal to LIBOR for the applicable dividend period plus 3.145%.

**LIBOR** means the London Interbank Offered Rate for U.S. dollar deposits for each dividend period as determined by the Company, as calculation agent, as follows:

(b) On or as of the second London banking day prior to each dividend payment date with respect to a dividend period ending during the Floating Rate Period and thereafter if any Series C Preference Shares remain in issue, the Company will obtain the rate for deposits in U.S. dollars for three months commencing on such dividend payment date, which appears on the Telerate Page 3750, or

such page as  
may have  
replaced  
Telerate Page  
3750, as of  
11:00 a.m.,  
London time,  
on such date,  
which will be  
the LIBOR rate  
for such  
dividend  
period.

**London  
banking day**  
means any day  
on which  
dealings in  
deposits in  
United States  
dollars are  
transacted in  
the London  
interbank  
market.

(c) If the  
Company  
determines that  
Telerate Page  
3750 or such  
page as may  
replace  
Telerate Page  
3750 is not  
available on  
such date, the  
Company will  
request the  
principal  
London offices  
of each of four  
major banks in  
the London  
interbank  
market selected  
by the  
Company to  
provide the  
Company with  
its offered

quotations for deposits in U.S. dollars for a period of three months commencing on such dividend payment date, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on such date and in a principal amount of not less than US\$1,000,000 that is representative of a single transaction in such market at such time. If at least two such quotations are provided, LIBOR for such dividend period will be the arithmetic mean of such quotations. If fewer than two such quotations are provided, LIBOR for such dividend period will be the arithmetic mean of rates quoted by three major banks in The City of New York selected by the Company at

approximately  
11:00 a.m.,  
New York City  
time, on such  
date for loans  
in U.S. dollars  
to leading  
European  
banks, for a  
period of three  
months  
commencing  
on such  
dividend  
payment date,  
and in a  
principal  
amount of not  
less than  
US\$1,000,000  
that is  
representative  
of a single  
transaction in  
such market at  
such time;  
provided,  
however, that  
if the banks  
selected as  
aforesaid by  
the Company  
are not quoting  
rates as  
mentioned in  
this sentence,  
LIBOR for  
such dividend  
period will be  
the same as  
LIBOR for the  
immediately  
preceding  
dividend  
period (except  
that, in the case  
of the first  
dividend  
period during  
the Floating  
Rate Period,

LIBOR will be the same as determined on the most recent London banking day, as of which the applicable rate appeared on Telerate Page 3750 or such page as may have replaced Telerate Page 3750).

(d) The dividend rates applicable during the Fixed Rate Period and the Floating Rate Period are referred to collectively as the **Dividend Rate**.

Dividends on the Series C Preference Shares issued on the original issuance date will begin to accrue and will be cumulative from the Applicable Date.

**Applicable Date** means the dividend payment date for the last dividend period on the Cayman Series C Shares (as defined below) beginning prior



to the original  
issuance date  
with respect to  
which a  
dividend was  
paid in full;  
provided, that  
if the dividend  
that would  
ordinarily have  
been payable  
on July 15,  
2010 with  
respect to the  
Cayman Series  
C Shares was  
paid in full  
prior to July  
15, 2010, the  
Applicable  
Date means  
July 15, 2010.

**Cayman  
Series C**

**Shares** means  
the Series C  
Preference  
Ordinary  
Shares,  
nominal value  
US\$0.01 per  
share, of XL  
Capital Ltd.  
Dividends will  
be payable  
semi-annually,  
during the  
Fixed Rate  
Period, and  
quarterly,  
during the  
Floating Rate  
Period and  
thereafter if  
any Series C  
Preference  
Shares remain  
in issue, in  
each case  
when, as and if  
declared by the

Board, in arrears, on January 15 and July 15 (or if such date is not a Business Day, on the Business Day immediately after such date), during the Fixed Rate Period, and on January 15, April 15, July 15, and October 15 (or if such date is not a Business Day, on the Business Day immediately after such date), during the Floating Rate Period and thereafter if any Series C Preference Shares remain in issue, of each year; provided, that that if the Applicable Date is July 15, 2010, in no event will any dividends be payable on July 15, 2010, and in that case July 15, 2010 will not be deemed to be a dividend payment date for any purpose hereunder. The first dividend

for any Series  
C Preference  
Shares issued  
on the original  
issuance date  
will

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represent the period of time from and will accrue from and including the Applicable Date to but excluding the dividend payment date on or next succeeding the original issuance date, calculated as described below. The first dividend for any Series C Preference Shares issued after the original issuance date will represent the period of time from and will accrue from and including their date of issuance to but excluding the following dividend payment date, calculated as described below.

(e) Subject to paragraphs 3.1(f) and 3.1(g) below, with respect to each dividend payment date occurring during the Fixed Rate Period, the amount of the dividend that is to be paid to the Holder of each Series C Preference Share with respect to

the related dividend period will be calculated as follows: the product of (i) 6.102%, (ii) US\$25 and (iii) a fraction, (A) the numerator of which will be 180 (or, in the case of a partial dividend period, the actual number of days elapsed in such dividend period), and (B) the denominator of which will be 360.

(f) However, subject to paragraph 3.1(g) below, if all or a portion of the Series C Preference Shares are issued during the Fixed Rate Period, unless such shares are issued on a dividend payment date, the amount of the dividend that is to be paid to the Holder of each Series C Preference Share with respect to the dividend period during which the Series C Preference Shares are so issued will be calculated as

follows: the product of (i) 6.102%, (ii) a fraction, (x) the numerator of which is the product of (1) the number of days during which such share is in issue during such dividend period and (2) US\$25 and (y) the denominator of which is the total number of days in such dividend period and (iii) a fraction (x) the numerator of which will be 180 and (y) the denominator of which will be 360.

(g)  
Notwithstanding paragraphs 3.1(e) and 3.1(f) above, the amount of the dividend that is to be paid to the Holder of each Series C Preference Share with respect to the first dividend period ending on or after the original issuance date will be calculated as follows: the product of (i) 6.102%, (ii) US\$25 and (iii) a fraction, (A) the numerator of

which will be the total number of days in such dividend period (or, in the case of a partial dividend period, the actual number of days elapsed in such dividend period), and (B) the denominator of which will be 360.

(h) Each dividend period during the Fixed Rate Period will commence on and include each January 15 and July 15 (whether or not a Business Day) and will end on and exclude the first day of the next dividend period (whether or not a Business Day); provided, however, that the first dividend period for Series C Preference Shares issued on the original issuance date shall mean the period from and including the Applicable Date to but excluding the payment date on or next succeeding the original issuance date.

(i) Subject to paragraph 3.1(j) below, during the Floating Rate Period and thereafter if any Series C Preference Shares remain in issue, the amount of the dividend that is to be paid to the Holder of each Series C Preference Shares with respect to each dividend period will be calculated as follows: the product of (i) LIBOR for such dividend period plus 3.145%, (ii) US\$25 and (iii) a fraction, (A) the numerator of which will be the actual number of days in the dividend period, and (B) the denominator of which will be 360.

(j) However, if all or a portion of the Series C Preference Shares are issued during the Floating Rate Period, unless such shares are issued on a dividend payment date, the amount of



the dividend that is to be paid to the Holder of each Series C Preference Share with respect to the dividend period during which the Series C Preference Shares are so issued will be calculated as follows: the product of (i) LIBOR for such dividend period plus 3.145%, (ii) a fraction, (x) the numerator of which is the product of (1) the number of days during which such share is in issue during such dividend period and (2) US\$25 and (y) the denominator of which is the total number of days in such dividend period and (iii) a fraction, (A) the numerator of which will be the actual number of days in the dividend period, and (B) the denominator of which will be 360.

(k) Each dividend period during the Floating Rate Period and thereafter if any Series C Preference Shares remain in issue will commence on and include the dividend payment date for the preceding period and end on and exclude the then current dividend payment date.

(l) Notwithstanding the foregoing, if the Series C Preference Shares are issued on a date that is not a dividend payment date, the first dividend period will begin on and include the date on which the relevant Series C Preference Shares are issued and will end on and exclude the date on which the Series C Preference Shares are redeemed; provided, however, that this paragraph 3.1(l) does not apply to the first

dividend period  
for Series C  
Preference  
Shares issued on  
the original  
issuance date,  
which is the  
subject of the  
proviso to  
paragraph 3.1(h)  
above.

(m) Dividends  
will be payable  
to Holders of  
record as they  
appear in the  
Company's  
register of  
members at the  
close of business  
on the applicable  
record date,  
which will be  
one day prior to  
the dividend  
payment date as  
long as all of the  
Series C  
Preference  
Shares remain in  
book-entry form.  
If any of the  
Series C  
Preference  
Shares are not in  
book-entry form,  
the record date  
will be 15 days  
prior to the  
dividend  
payment date  
(whether or not  
such date is a  
Business Day).  
Holders of Series  
C Preference  
Shares will not  
be entitled to any  
dividends in  
excess of full

cumulative dividends as described above. Dividends on the Series C Preference Shares will accrue and will be fully cumulative, whether or not there are funds legally available for the payment of such dividends and whether or not the dividends are declared. No interest or sum of money in lieu of interest will be payable on any dividend payment or on any payment on Series C Preference Shares which is in arrears. Any dividend payment made on Series C Preference Shares will first be credited against the earliest accrued but unpaid dividend due with respect to Series C Preference Shares which remains payable.

(n) **Business Day** means any day on which the New York Stock Exchange is

open for trading and which is not a Saturday, Sunday or any other day on which banks in New York, New York, London, England or Bermuda are authorized or obligated by law, regulation or executive order to close for business or are closed for business due to an act of God, natural disaster, act of war, civil or military disturbance, act of terrorism, sabotage, riots or a loss or malfunction of utilities or communications services or the distribution payable on such date cannot be paid for any such reason.

- 3.2 As long as any Series C Preference Shares are in issue, no dividends or other distributions may be declared or paid or set apart for payment on any class or series of Parity Shares for any period unless either (1) full cumulative dividends have been or

contemporaneously  
are declared and  
paid or declared and  
a sum sufficient for  
the payment thereof  
set apart for such  
payments on the  
Series C Preference  
Shares for all  
dividend periods  
terminating on or  
prior to the  
dividend payment  
date on such Parity  
Shares, or (2) all  
dividends declared  
upon the Series C  
Preference Shares  
and any Parity  
Shares are declared  
pro rata so that the  
amount of  
dividends declared  
per share on the  
Series C Preference  
Shares and any  
Parity Shares will in  
all cases bear to  
each other the same  
ratio that accrued  
and unpaid  
dividends per share  
on the Series C  
Preference Shares  
and such Parity  
Shares bear to each  
other.

- 3.3 As long as any  
Series C Preference  
Shares are in issue  
(1) no dividends  
(other than those  
paid in Ordinary  
Shares or other  
shares ranking  
junior in right of  
payment to the  
Series C Preference  
Shares as to  
dividends and as to

any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company (including the Ordinary Shares, **Fully Junior Shares**), may be declared or paid or set apart for payment upon any Junior Shares, (2) no other distribution (other than those paid in Fully Junior Shares) may be declared or paid or set apart for payment upon any Junior Shares and (3) no Junior Shares will be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Ordinary Shares made for purposes of any employee incentive, stock, benefit or any similar plan of the Company or any of its

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subsidiaries) for any consideration (or any moneys be paid to or made available for a sinking fund or the redemption of any Junior Shares) by the Company (except by conversion into or exchange for Fully Junior Shares), unless, in any such case, full cumulative dividends on the Series C Preference Shares and any Parity Shares have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment, for all dividend periods terminating on or prior to the date such dividends or distributions are declared or paid on the Junior Shares, or such Junior Shares are redeemed, purchased or otherwise acquired.

#### **4. Voting Rights**

- 4.1 Subject to paragraphs 4.2 and 4.3 below, and unless required by law or court order, the Holders shall not be entitled to



receive notice of  
nor to attend nor  
to vote at any  
general meeting  
of the Company.

- 4.2 Subsequent to  
the issuance of  
the Series C  
Preference  
Shares, the  
Holders shall be  
entitled to one  
vote for each  
share held at any  
separate meeting  
of that class or  
series (i.e.,  
preference shares  
or Series C  
Preference  
Shares,  
respectively),  
subject to the  
provisions of  
Article 44 of the  
Articles. Subject  
to the applicable  
provisions of the  
Articles and the  
Law, unless the  
Series C  
Preference  
Shares have been  
previously  
redeemed or  
called for  
redemption (and  
funds necessary  
for such  
redemption have  
been set apart by  
the Company in  
trust for the  
benefit of the  
Series C  
Preference  
Shares so called  
for redemption),  
the Company  
may not take any

action which would vary the rights attached to the Series C Preference Shares and no class or series of shares may be created which ranks senior to the Series C Preference Shares as to dividend rights or as to the return of assets on liquidation, dissolution, winding-up or otherwise of the Company, in each case, without the approval of a resolution in writing by the Holders of 100% of the Series C Preference Shares or the sanction of a resolution passed by the affirmative votes of at least two-thirds of the Series C Preference Shares voted at a separate meeting of the Holders. At every separate meeting of the Holders, the necessary quorum shall be any two or more persons (or, if there is only one holder of that class, one

person) present in person or by proxy holding not less than 50% of the issued shares of that class (or such other quorum as required by applicable Law on the date of such meeting). Notwithstanding the foregoing and subject to the applicable provisions of the Articles and the Law, Holders are not entitled to vote on any sale of all or substantially all of the assets of the Company or the issuance of any shares that are in parity with the Series C Preference Shares with respect to payment of dividends and distribution of assets in liquidation.

- 4.3 If at any time dividends payable on the Series C Preference Shares shall be in arrears (whether or not such dividends shall have been earned or declared) in an

aggregate amount equivalent to dividends for six or more full quarterly periods, which, during the Fixed Rate Period, shall mean three or more dividend periods and, during the Floating Rate Period and thereafter if any Series C Preference Shares remain in issue, shall mean six or more dividend periods (in each case, whether or not consecutive), then during such period until all such arrearages in dividends shall have been paid in full, and only during such period (the **Voting Period**), the Holders of the Series C Preference Shares voting together with any other series or classes of preference shares also in arrears and having such right shall be entitled by Ordinary Resolution at a separate meeting of such Holders to elect two

persons and  
nominate such  
elected persons  
for appointment  
by the Board as  
additional  
Directors of the  
Company (and  
the Board will  
take all  
necessary steps  
to procure the  
appointment of  
any person so  
elected and  
nominated). In  
no event shall  
there be more  
than two  
Directors elected  
by the holders of  
the preference  
shares (whether  
voting alone as a  
series or class or  
with another  
series or class so  
in arrears and  
having such  
right). Dividends  
on the Series C  
Preference  
Shares may not  
be deemed due  
and payable and  
in arrears for any  
reason unless  
and until Series  
C Preference  
Shares are issued  
and such an  
arrearage shall  
thereafter have  
occurred.

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4.4 Any Director who shall have been elected pursuant to paragraph 4.3 above may be removed at any time during a Voting Period, either for or without cause, by, and only by, Ordinary Resolution of the holders of the preference shares of the relevant series in issue at a special separate meeting of such holders called for that purpose. Any vacancy thereby created may be filled during such Voting Period by Ordinary Resolution of the holders of preference shares of all relevant series at such a meeting. Any Director elected by holders of preference shares pursuant to this provision, or by any Director so

elected as  
herein  
contemplated,  
who dies,  
resigns or  
otherwise  
ceases to be a  
Director  
during a  
Voting Period  
shall, except  
as otherwise  
provided in  
the preceding  
sentence, be  
replaced by  
the remaining  
Director  
theretofore  
elected by the  
holders of  
preference  
shares  
nominating a  
replacement  
for  
appointment  
by the Board,  
provided that  
if no  
remaining  
additional  
Director is  
then in office,  
additional  
Directors will  
be elected in  
accordance  
with the  
procedures  
described  
above. At the  
end of the  
Voting Period,  
the holders of  
preference  
shares of all  
the relevant  
series shall be  
automatically  
divested of all

voting powers  
vested in them  
by the  
provision, but  
subject always  
to subsequent  
vesting of  
such voting  
power in the  
holders of  
preference  
shares in the  
event of any  
similar  
cumulated  
arrearage in  
payment of  
quarterly  
dividends  
occurring  
thereafter. The  
term of all  
Directors  
elected and  
appointed  
pursuant to  
this provision  
shall in all  
events expire  
at the end of  
the applicable  
Voting Period  
and if the size  
of the Board  
was increased  
for the  
purpose of the  
additional  
Directors, the  
number of  
Directors  
constituting  
the Board  
shall be  
reduced  
accordingly.  
The provisions  
of the Articles  
relating to  
general  
meetings and



the provisions of Article 44 of the Articles shall apply, *mutatis mutandis*, to every such separate meeting, except that the necessary quorum shall be any two or more persons (or, if there is only one holder of the relevant series, one person) present in person or by proxy holding not less than fifty percent (50%) of the issued preference shares of the relevant series (or such other quorum as required by applicable Law on the date of such meeting).

## **5. Redemption**

The Company shall be entitled to redeem all or any of the Series C Preference Shares as follows:

### **5.1 General.**

Subject to paragraphs 5.2, 5.3 and 5.4 and paragraph 11 below, the Series C Preference Shares shall not

be redeemable  
by the Company  
prior to July 15,  
2013. On or  
after such date,  
but subject to  
paragraph 5.5  
below, the  
Company shall  
be entitled at  
any time in  
whole or from  
time to time in  
part by not less  
than thirty (30)  
days nor more  
than sixty (60)  
days prior  
written notice to  
the relevant  
Holders, in such  
form and given  
in such manner  
as the Board  
shall from time  
to time  
determine and in  
accordance with  
paragraph 6  
below, to  
redeem all or  
any of the Series  
C Preference  
Shares pursuant  
to this paragraph  
5.1 for cash at a  
redemption  
price of  
US\$25.00 per  
share being  
redeemed  
(inclusive of the  
nominal value  
thereof) plus all  
accrued and  
unpaid  
dividends, if  
any, thereon to  
the date of  
redemption,  
without interest

on such unpaid dividends.

5.2 **Redemption on Merger.** At any time prior to July 15, 2013, and provided that at such time, some or all of the Series C Preference Shares are in issue, if the Company shall have submitted to the holders of Ordinary Shares a proposal for an amalgamation, consolidation, merger, arrangement, reconstruction, reincorporation, deregistration or any other similar transaction involving the Company that requires, or shall have submitted any proposal for any matter that, as a result of any change in Irish law after the date of the notice of meeting of the special, court-ordered class meeting of the Cayman Series C Shares to approve the scheme of arrangement pursuant to which the

Company shall have become the owner of the Cayman Series C Shares (the **Notice Date**) (whether by enactment or official interpretation), requires, in each case, a vote of the Holders of the Series C Preference Shares voting separately as a single class (alone or with one or more class or series of preference shares, including, without limitation, the Series E Preference Shares), the Company shall be entitled by not less than thirty (30) days nor more than sixty (60) days prior written notice to the relevant Holders, in such form and given in

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such manner as the Board shall from time to time determine and in accordance with paragraph 6 below, to redeem all Series C Preference Shares pursuant to this paragraph 5.2 for cash at a redemption price of US\$26.00 per share being redeemed (inclusive of the nominal value thereof), plus all accrued and unpaid dividends, if any, to the date of redemption, without interest on such unpaid dividends.

**5.3 Redemption on Tax Event.** If there is a change in tax law that would require the Company or any successor company to pay additional amounts with respect to any Series C Preference Shares then in issue on the next succeeding dividend payment date,

and the payment of those additional amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the Company shall be entitled at any time thereafter by not less than thirty (30) days nor more than sixty (60) days prior written notice to the relevant Holders, in such form and given in such manner as the Board shall from time to time determine and in accordance with paragraph 6 below, to redeem any or all Series C Preference Shares pursuant to this paragraph 5.3 for cash at a redemption price of US\$25.00 per share being redeemed (inclusive of the nominal value thereof) plus accrued and unpaid dividends, if

any, to the date of redemption, without interest on such unpaid dividends.

For the purpose of this provision a **change in tax law** shall be (a) a change in or amendment to laws, regulations or rulings of any jurisdiction, political subdivision or taxing authority described in the next sentence, (b) a change in the official application or interpretation of those laws, regulations or rulings, or (c) any execution of or amendment to any treaty affecting taxation to which any jurisdiction, political subdivision or taxing authority described in the next sentence is party after the Notice Date.

The jurisdictions, political subdivisions and taxing authorities referred to in the previous

sentence are (a) the Republic of Ireland or any political subdivision or governmental authority of or in the Republic of Ireland with the power to tax (including, without limitation, the Revenue Commissioners of the Republic of Ireland), (b) any jurisdiction from or through which the Company or its paying agent is making payments on the Series C Preference Shares or any political subdivision or governmental authority of or in that jurisdiction with the power to tax, or (c) any other jurisdiction in which the Company or its successor company is organized or generally subject to taxation or any political subdivision or governmental authority of or in that jurisdiction



with the power  
to tax.

**5.4 Tax Event on Consolidation.**

If the entity formed by a consolidation, merger or amalgamation involving the Company or the entity to which the Company conveys, transfers or leases substantially all of its properties and assets is required to pay additional amounts in respect of any tax, assessment or governmental charge imposed on any Holder as a result of a change in tax law that occurred after the date of the consolidation, merger, amalgamation, conveyance, transfer or lease, and the payment of those amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the

Company shall be entitled to at any time thereafter by not less than thirty (30) days nor more than sixty (60) days prior written notice to the relevant Holders, in such form and given in such manner as the Board shall from time to time determine and in accordance with paragraph 6 below to redeem any or all Series C Preference Shares in issue at such time, if any pursuant to this paragraph 5.4 for cash at a redemption price of US\$25.00 per share being redeemed, (inclusive of the nominal value thereof), plus all accrued and unpaid dividends, if any, to the date of redemption.

The Company shall be required to redeem all or any of the Series C Preference Shares as

follows:

5.5 **Redemption at Option of Holder.** Each Holder of Series C Preference Shares will have the right to have all or a portion of its Series C Preference Shares redeemed by the Company during the period from and including July 15, 2033 to but excluding the 45th day thereafter (or, if such 45th day is not a Business Day, the next Business Day) at a redemption price of US\$25 per share being redeemed (inclusive of the nominal value

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thereof) plus accrued and unpaid dividends, if any. During this 45-day period, the Company will not have the option to redeem any Series C Preference Shares in accordance with paragraph 5.1 above. In the event that the Series C Preference Shares are not redeemable at any time during such 45-day period due to paragraph 10 below, such 45-day period shall begin anew on the first day on which such shares are redeemable.

## **6. Notices of Redemption**

Notice of any redemption at the option of the Company described herein will be mailed at least thirty (30) days but not more than sixty (60) days before the redemption date to each Holder of record of Series C Preference Shares to be redeemed at the address shown in the register of members of the Company. Each notice will state as appropriate: (1) the redemption date; (2) the number of Series C Preference Shares to be redeemed; (3) the redemption price; (4) the place or places where certificates for Series C Preference Shares are to be surrendered for payment of the redemption price if any such certificates are outstanding; and (5) where applicable, that dividends on the Series C Preference Shares to be redeemed will cease to accrue on such redemption date. If fewer than all Series C Preference Shares are to be redeemed, the notice mailed to each such Holder thereof will

also specify the number of Series C Preference Shares to be redeemed from such Holder. The notice shall contain (i) the name and address of the relevant bank or trust company to be used for purposes of redemption (if any) and (ii) a statement as to the deposit or intent to deposit the redemption funds in such trust account.

Notice of any redemption at the option of the Holders described herein will be mailed by the Company at least thirty (30) days but not more than sixty (60) days before the redemption date (or the first day of the 45-day period during which Holders may redeem their Series C Preference Shares pursuant to paragraph 5.5 above to each Holder of record of Series C Preference Shares at the address shown in the register of members of the Company. Each notice will state as appropriate: (1) the redemption date and period; (2) the address to which the Holders should send any requested response to the notice; (3) the redemption price; (4) the place or places where certificates for Series C Preference Shares are to be surrendered for payment of the redemption price if any such certificates are outstanding; (5) where applicable, that dividends on the Series C Preference Shares to be redeemed will cease to accrue on such redemption date; and (6) such other matters as the Company may deem relevant. The notice shall contain (i) the name and address of the relevant bank or trust company to be used for purposes of redemption (if any) and (ii) a statement as to the deposit or intent to deposit the redemption funds in such trust account.

**7. Directors Determine Shares Redeemed**

If fewer than all of the Series C Preference Shares are to be redeemed at the option of the Company, the number of shares to be redeemed will be determined by the Board in its absolute discretion and such Series C Preference Shares may be redeemed *pro rata* from the Holders of record in proportion to the number of Series C Preference Shares held by such Holders (with adjustments to avoid redemption of fractional shares) or by lot.

**8. Dividends Cease**

If notice of redemption of any Series C Preference Shares at the option of the Company has been given and if the funds necessary for such redemption have been set apart by the Company in trust for the benefit of the Holders of Series C Preference Shares so called for redemption, then from and after the redemption date, dividends will cease to accrue on the Series C Preference Shares being redeemed, the Series C Preference Shares will no longer be deemed to be in issue and all rights of the Holders of such shares will terminate, except the right to receive the redemption price.

**9. Dividends Payable to Record Date**

If a redemption date falls after a dividend record date and prior to the corresponding dividend payment date, the Holders of Series C Preference Shares at the close of business on the dividend record date will be entitled to receive the dividend payable with respect to such Series C Preference Shares on the corresponding dividend payment date notwithstanding the redemption thereof between the dividend record date and the corresponding dividend payment date or a default in the payment of the dividend due on such dividend payment date.

**10. Dividends Paid**

Unless full cumulative dividends on all Series C Preference Shares and all Parity Shares shall have been declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods terminating on or prior to the date of a redemption, purchase or other acquisition, no Series C Preference Shares or Parity Shares may be redeemed, purchased or otherwise acquired by the Company unless all Series C Preference Shares and any Parity Shares in issue are redeemed; provided, that, the Company may acquire fewer than all of the Series C Preference Shares or any Parity Shares in issue pursuant to a purchase or exchange offer made on the same terms to Holders of all Series C Preference Shares and Parity Shares as determined in good faith by the Board.

**11. Right to Purchase Series C Preference Shares**

The Company, subject to (1) certain limitations contained in the Articles, (2) the special rights granted to any of the Company's issued shares, (3) applicable law and (4) the Company's requirement pursuant to paragraph 10 above to make a purchase or exchange offering on the same terms to Holders of all Series C Preference Shares and Parity Shares in issue, may purchase Series C Preference Shares. Any such purchase made by the Company may be made in the open market, by tender to all Holders of Series C Preference Shares, by private agreement or otherwise as the Board sees fit. Further, the Company shall have the right to carry out any acquisition pursuant to this paragraph 11 in the form of a purchase or, subject to paragraph 11.1 and 11.2 below, as a redemption. Any Series C Preference Shares acquired by the Company for its own account pursuant to this paragraph 11 (other than in the ordinary course of business of dealing in securities) will be cancelled by the Company and will no longer be in issue.

11.1 If any Series C Preference Share being acquired pursuant to paragraph 11 is not listed on a recognised stock exchange within the meaning of the Companies Act 1990 of Ireland (the **1990 Act**), such Series C Preference Share shall be automatically converted into a redeemable share on, and from the time of, the existence or

creation of an agreement, transaction or trade **(arrangement)** between the Company and any third party pursuant to which the Company acquires or will acquire such Series C Preference Share, or an interest in such Series C Preference Share, from the relevant third party. In these circumstances, such Series C Preference Share that is the subject of the relevant arrangement shall have the same characteristics as any other Series C Preference Shares in accordance with these terms of issue, save that it shall be redeemable in accordance with the arrangement (notwithstanding anything to the contrary contained in paragraphs 5, 6, 7, 8 or 9 above, which paragraphs shall not apply to such arrangement or the redemption of such Series C

Preference Share pursuant to such arrangement. The acquisition of a Series C Preference Share in accordance with this paragraph 11.1 by the Company shall constitute the redemption of a redeemable share in accordance with Part XI of the 1990 Act.

- 11.2 If any Series C Preference Share being acquired pursuant to paragraph 11 is listed on a recognised stock exchange within the meaning of the 1990 Act, the provisions of paragraph 11.1 above shall apply to the acquisition of such Series C Preference Share unless the Board resolves, prior to the existence or creation of any relevant arrangement with respect to such Series C Preference Share, that the arrangement concerned is to be



treated as a purchase of shares and not a redemption, in which case the arrangement shall be so executed.

**12. Redemption Payment**

The Series C Preference Shares may be purchased or redeemed by the Company either out of profits available for distribution (which are sometimes referred to as distributable reserves) or from the proceeds of a fresh issue of shares out of capital made for the purpose of the redemption.

**13. Cancellation of Share Certificates**

Payment of the redemption amount shall only be effected upon surrender to the Company for cancellation of any share certificate in respect of the Series C Preference Shares (to the extent such certificates are outstanding) to be redeemed and shall be made as promptly as practicable. If any certificate so surrendered includes Series C Preference Shares not being redeemed, a new certificate for the remaining Series C Preference Shares shall be issued to the Holder in accordance with the Articles without charge to such Holder.

**14. Redemption Process**

The Board may make such further regulations concerning the administrative process of redemption as it shall from time to time deem necessary so long as the rights of the Holders are not varied.

**15. Rights Not Varied**

The rights conferred upon the Holders of the Series C Preference Shares shall not be deemed to be varied by the creation or issue of any Parity Shares, Junior Shares or Fully Junior Shares.

**16. Payments of Additional Amounts**

Payments on the Series C Preference Shares shall be made free and clear of and without deduction or withholding for or on account of any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 5.3 above, unless the deduction or withholding of such taxes, assessments or other governmental charges is required by law, regulations or rulings or the application or official interpretation of such law, regulations or rulings. In that event, the Company shall, subject to paragraphs 16.1, 16.2 and paragraph 17 below, pay or cause to be paid additional amounts to the Holders of the Series C Preference Shares as additional dividends to make up for any deduction or withholding for any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 5.3 above in respect of any amounts that the Company or the successor company must pay with respect to the Series C Preference Shares, so that the net amounts paid to the Holders of the Series C Preference Shares, after that deduction or withholding, shall equal the respective amounts that would have been receivable by such Holders had no such withholding or deduction been required. However, the Company shall not be obligated to pay additional amounts to any Holder that:

- 16.1 resides in or is a citizen of the jurisdiction, political

subdivision or  
taxing  
authority  
imposing the  
taxes,  
assessments  
or other  
governmental  
charges that  
would  
otherwise  
trigger the  
Company's  
obligation to  
pay additional  
amounts; or

16.2 is a fiduciary,  
partnership,  
limited  
liability  
company or  
other  
pass-through  
entity if, and  
to the extent  
that, the  
payment of  
additional  
amounts  
would be  
required by a  
jurisdiction,  
political  
subdivision or  
taxing  
authority  
described in  
paragraph 5.3  
above to be  
included in  
the income for  
tax purposes  
of a  
beneficiary or  
settlor with  
respect to that  
fiduciary or a  
member of  
that  
partnership,

limited  
liability  
company or  
other  
pass-through  
entity who  
would not  
have been  
entitled to any  
additional  
amounts had  
that  
beneficiary,  
settlor or  
member held  
those Series C  
Preference  
Shares  
directly.

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**17. No Payment of Additional Amounts**

In addition, the Company shall not be obligated to pay any additional amounts to a Holder of Series C Preference Shares on account of:

- 17.1 any tax, assessment or other governmental charge that would not have been imposed but for the existence of any present or former connection between the Holder of a Series C Preference Share, or certain other persons, and the taxing jurisdiction or political subdivision or any Series C Preference Share presented for payment more than thirty (30) days after the Relevant Payment Date, which means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of moneys

payable has not been received by the depositary on or prior to such due date, it means the first date on which the full amount of such moneys having been so received and being available for payments to Holders of Series C Preference Shares, and notice to that effect shall have been duly given to the Holders;

17.2 any estate, inheritance, gift, sales, transfer, personal property or similar tax, assessment or other governmental charge;

17.3 any tax, assessment or other governmental charge that is payable otherwise than by withholding or deduction from payment of the liquidation

preference of  
or any  
dividends on  
the Series C  
Preference  
Shares;

- 17.4 any tax,  
assessment or  
other  
governmental  
charge that is  
imposed or  
withheld by  
reason of the  
failure by the  
Holder or the  
beneficial  
owner of the  
Series C  
Preference  
Shares to  
promptly  
comply with a  
request by the  
Company to  
(a) provide  
information,  
documents,  
certifications  
or other  
evidence  
concerning the  
nationality,  
residence or  
identity of the  
Holder or  
beneficial  
owner of such  
Series C  
Preference  
Shares or (b)  
make and  
deliver any  
declaration or  
other similar  
claim, other  
than a claim  
for refund of a  
tax,  
assessment or

other governmental charge withheld by the Company, or satisfy any information or reporting requirements, which, in the case of clauses (a) or (b) of this paragraph 17.4, is required or imposed by a statute, treaty, regulation or administrative practice of the taxing jurisdiction as a precondition to exemption from all or part of that tax, assessment or other governmental charge; or

- 17.5 any combination of the items identified by the paragraphs above.

The **Relevant Payment Date** means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the

moneys payable has not been received by the depositary on or prior to such due date, it means the first date on which, the full amount of such moneys having been so received and being available for payment to Holders, notice to that effect shall have been duly given to the Holders of the Series C Preference Shares.

**18. No Preemptive Rights**

The Series C Preference Shares shall not be entitled to the benefits of any sinking fund. No Holder, solely by reason of being a Holder, has or will have any preemptive right to subscribe for any additional issue of the Company's shares of any class or series or to any security convertible into or carrying rights or options to purchase any such shares.

**19. Ranking**

Any class or series of shares of the Company shall be deemed to rank (1) prior to the Series C Preference Shares, as to the payment of dividends and as to any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise, as the case may be, in preference or priority to the Holders of the Series C Preference Shares, (2) on a parity with the Series C Preference Shares as to the payment of dividends and as to distribution of assets upon any voluntary or involuntary return



of assets on liquidation, dissolution, winding-up or otherwise of the Company, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof shall be different from those of the Series C Preference Shares, if the holders of such class or series and the Series C Preference Shares shall be entitled to the receipt of dividends and of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other or (3) junior to the Series C Preference Shares, as to the payment of dividends and as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company, if such class or series is ordinary shares or other shares ranking junior in right of payment to Series C Preference Shares as to dividends and/or as to the distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company. The Series C Preference Shares will rank on a parity with the Series E Preference Shares as to the payment of dividends and as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution, winding-up or otherwise of the Company.

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**XL Capital plc**  
**Terms of Issue of**  
**Series E Preference Shares**

**1. General**

The Series E Preference Shares will be non-cumulative preference shares with a nominal par value of US\$0.01 per share and subject to the Memorandum and Articles of Association of the Company (the **Articles**) and the provisions of, and restrictions contained in, the Companies Acts 1963 to 2009 of Ireland and every statutory modification or re-enactment thereof for the time being in force (the **Law**), the following preferences and rights and be subject to the following restrictions. Capitalized terms that are not defined herein shall have the meanings set forth in the Articles, as they are in effect on the date of the first issuance of any Series E Preference Shares (the **original issuance date**).

**2. Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company legally available for distribution among shareholders shall be applied first in repaying to the holders of the Series E Preference Shares (the **Series E Holders**) an amount equal to US\$1,000 per Series E Preference Share (inclusive of the nominal amount thereof) plus any declared but unpaid dividends with respect to the then-current Series E Dividend Period (as defined below) to the date fixed for distribution (in preference to the repayment of the nominal amount of and any share premium or other amounts paid on ordinary shares of the Company (the **Ordinary Shares**) or any other shares ranking junior in right of payment to the Series E Preference Shares as to dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (together with the Ordinary Shares, the **Series E Junior Shares**) to the holders of such Series E Junior Shares), without interest on such declared but unpaid dividends and without accumulation of dividends for any prior Series E Dividend Period (as defined below) to the extent not declared and payable in respect of such Series E Dividend Period. In the event that upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company available are insufficient to pay the amount of the liquidating distributions on all Series E Preference Shares in issue as referred to above and the corresponding amounts payable on all other shares ranking pari passu on a pro rata basis with the Series E Preference Shares with respect to the payment of dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (including, without limitation, the Series C Preference Shares, nominal value of US\$0.01 per share, of the Company (the **Series C Preference Shares**) (**Series E Parity Shares**), then the Series E Holders, and all such Series E Parity Shares shall share on a pro rata basis in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. The Series E Preference Shares will not be convertible into, exchangeable for or carry rights or options to purchase, any Ordinary Shares or any other class or series of securities of the Company or any other entity. For purposes of this paragraph 2, a consolidation, amalgamation, merger, arrangement or reconstruction involving the Company or the sale or transfer of all or substantially all of the shares or property or business of the Company will not be deemed to constitute a liquidation, dissolution or winding up.

**3. Dividend Rights**

- 3.1 (a) During  
the Series  
E Fixed  
Rate  
Period (as  
defined

below),  
Series E  
Holders  
will be  
entitled to  
receive,  
when, as  
and if  
declared by  
the Board  
of  
Directors  
of the  
Company  
(the  
**Board**),  
cash  
dividends  
at a fixed  
annual rate  
equal to  
6.500% of  
the  
US\$1,000  
liquidation  
preference  
per share  
on April 15  
and  
October  
15. During  
the Series  
E Floating  
Rate  
Period (as  
defined  
below),  
Series E  
Holders  
will be  
entitled to  
receive,  
when, as  
and if  
declared by  
the Board,  
cash  
dividends  
at a  
floating  
annual rate

equal to

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Three-Month  
LIBOR for the  
applicable Series  
E Dividend  
Period, plus  
2.4575% on the  
liquidation  
preference of  
US\$1,000 per  
share.

**Three-Month  
LIBOR** with  
respect to any  
Series E  
Dividend Period  
shall be the rate  
(expressed as a  
percentage per  
annum) for  
deposits in  
United States  
dollars for a  
three-month  
period beginning  
on the first day  
of such Series E  
Dividend Period  
that appears on  
Reuters  
LIBOR01 Page  
(as defined  
below) as of  
11:00 a.m.,  
London time, on  
the  
Determination  
Date (as defined  
below). If the  
Reuters  
LIBOR01 Page  
as of 11:00 a.m.,  
London time,  
does not include  
the applicable  
rate or is  
unavailable on  
the  
Determination  
Date (as defined  
below), the

Calculation

Agent (as defined below) will request the principal London office of each of four major banks in the London interbank market, as selected by the Calculation

Agent, to provide that bank's offered quotation (expressed as a percentage per annum) as of approximately 11:00 a.m., London time, on the

Determination Date to prime banks in the London interbank market for deposits in a Representative Amount (as defined below)

for a three-month period beginning on the first day of such Series E Dividend Period.

If at least two offered quotations are so provided, LIBOR for such Series E Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest

whole multiple of 0.00001%) of those quotations. If fewer than two quotations are so provided, the Calculation Agent will request each of three major banks in New York City, as selected by the Calculation Agent, to provide that bank's rate (expressed as a percentage per annum), as of approximately 11:00 a.m., New York City time, on the Determination Date for loans in a Representative Amount to leading European banks for a three-month period beginning on the first day of such Series E Dividend Period. If at least three rates are so provided, LIBOR for such Series E Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of those rates. If fewer than three

rates are so provided, then LIBOR for the Series E Dividend Period will be LIBOR in effect with respect to the immediately preceding Series E Dividend Period.

**Business Day**

means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in Bermuda, Ireland, London and New York City.

**Calculation**

**Agent** means the Company, unless and until the Company appoints an independent investment banking institution of national standing to serve as the Calculation Agent with respect to the Series E



Preference  
Shares.

**Determination**

**Date** with respect to any Series E Dividend Period will be the second London Banking Day preceding the first day of that Series E Dividend Period. London Banking Day is any day in which dealings in United States dollars are transacted or, with respect to any future date, are expected to be transacted in the London interbank market.

**Representative**

**Amount** means a principal amount of not less than US\$1,000,000 for a single transaction in the relevant market at the relevant time.

**Reuters**

**LIBOR01 Page** means the display designated on page LIBOR01 on the Reuters Page (or such other page as

may replace the LIBOR01 page on the Reuters Page or such other service as may be nominated by the British Bankers Association for the purpose of displaying London interbank offered rates for U.S. Dollar deposits).

**Reuters Page**

means the display on Reuters Money 3000 Service, or any successor service.

(b) The dividend rates applicable during the Series E Fixed Rate Period and the Series E Floating Rate Period are referred to collectively as the **Series E Dividend Rate**. The rights of the Series E Holders to receive dividends are non-cumulative. Accordingly, to the extent dividends are neither declared nor paid in respect of any Series E Dividend Period

in respect of the  
Series E  
Preference  
Shares, Series E  
Holders will  
have no right to  
receive  
dividends in  
respect of that  
Series E  
Dividend Period  
in respect of the  
Series E  
Preference  
Shares and the  
Company will  
have no  
obligation to pay  
dividends in  
respect of that  
Series E  
Dividend Period  
in respect of the  
Series E  
Preference  
Shares, whether  
or

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not dividends are payable in respect of any future Series E Dividend Period in respect of the Series E Preference Shares. Subject to the next sentence, dividends will be payable semi-annually, during the Series E Fixed Rate Period, and quarterly, during the Series E Floating Rate Period, in each case when, as and if declared by the Board, in arrears, on April 15 and October 15 (or if such date is not a Business Day, on the Business Day immediately after such date), during the Series E Fixed Rate Period, and on January 15, April 15, July 15, and October 15 (or if such date is not a Business Day, on the Business Day immediately after such date), during the Series E Floating Rate Period, of each year (each such date during the Series E Fixed Rate Period or the Series E

Floating Rate  
Period a **Series  
E Dividend  
Payment Date**).

The first  
dividend will  
represent the  
period of time  
from and  
including the  
Applicable Date  
(as defined  
below) to but  
excluding the  
Series E  
Dividend  
Payment Date on  
or next  
succeeding the  
original issuance  
date, calculated  
as described  
below.

**Applicable Date**  
means the last  
Series E  
Dividend  
Payment Date  
(as defined in the  
terms and  
conditions of the  
Series E  
Preference  
Ordinary Shares,  
nominal value  
US\$0.01 per  
share, of XL  
Capital Ltd (the  
**Cayman Series  
E Shares**))

occurring prior  
to the original  
issuance date,  
whether or not  
any dividend was  
paid in respect of  
the Cayman  
Series E Shares  
on such date.

(c) Subject to paragraph 3.1(d) below, during the Series E Fixed Rate Period, the amount of the dividend that is to be payable to the Series E Holder of each Series E Preference Share with respect to each Series E Dividend Period in respect of Series E Preference Shares will be calculated as follows: the product, rounded to the nearest cent (half a cent being rounded upwards), of (i) 6.500%, (ii) US\$1,000 and (iii) a fraction, (A) the numerator of which will be 180 (or, in the case of a long or partial Series E Dividend Period in respect of Series E Preference Shares, the actual number of days elapsed in such Series E Dividend Period), and (B) the denominator of which will be 360.

(d) Notwithstanding paragraph 3.1(c) above, the amount of the dividend that is to be paid to Series E Holders with respect to the first Series E Dividend Period ending on or after the original issuance date will be calculated as follows: the product, rounded to the nearest cent (half a cent being rounded upwards), of (i) 6.500%, (ii) US\$1,000 and (iii) a fraction, (A) the numerator of which will be 180, and (B) the denominator of which will be 360.

(e) Except as otherwise provided in the definition of Series E Dividend Period, each Series E Dividend Period in respect of Series E Preference Shares during the Series E Fixed Rate Period will commence on and include each April 15 and October 15

(whether or not a Business Day) and will end on and exclude the first day of the next Series E Dividend Period in respect of Series E Preference Shares (whether or not a Business Day).

(f) During the Series E Floating Rate Period, the amount of the dividend that is to be payable to the Series E Holder of each Series E Preference Share with respect to each Series E Dividend Period in respect of Series E Preference Shares will be calculated as follows: the product, rounded to the nearest cent (half a cent being rounded upwards), of (i) three-Month LIBOR for such Dividend Period in respect of Series E Preference Shares plus 2.4575%, (ii) US\$1,000 and (iii) a fraction, (A) the numerator of which will be the



actual number of days in the Series E Dividend Period, and (B) the denominator of which will be 360.

(g) Each Series E Dividend Period in respect of Series E Preference Shares during the Series E Floating Rate Period will commence on and include each January 15, April 15, July 15 and October 15 for the preceding period and end on and exclude the first day of the next Series E Dividend Period in respect of Series E Preference Shares (whether or not a Business Day).

(h) If declared, dividends will be payable to Series E Holders of record as they appear in the Company's register of members at the close of business on the applicable record date, which will be one day prior to the Series E Dividend

Payment Date as  
long as all of the

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Series E Preference Shares remain in book-entry form. If all of the Series E Preference Shares are not in book-entry form, the record date with respect to the Series E Preference Shares will be 15 days prior to the Series E Dividend Payment Date (whether or not such date is a Business Day). Series E Holders will not be entitled to any dividends other than as described above. Dividends on the Series E Preference Shares will be non-cumulative, but will be payable only if there are funds legally available for the payment of such dividends and such dividends are declared. No interest or sum of money in lieu of interest will be payable on any dividend payment.

**Series E Dividend Period** shall mean the period from and including a Series E Dividend Payment Date to but excluding the immediately succeeding Series E Dividend Payment Date; provided, however, that the first Series E

Dividend Period ending on or after the original issuance date shall mean the period from and including the Applicable Date to but excluding the Series E Dividend Payment Date on or next succeeding the original issuance date.

**Series E Fixed Rate Period** means the period from and including the original issuance date to but excluding April 15, 2017.

**Series E Floating Rate Period** means the period from and after April 15, 2017.

- 3.2 As long as any Series E Preference Shares are in issue, no dividends or other distributions may be declared or paid or set apart for payment on any class or series of Series E Parity Shares for any period unless either (1) full dividends have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for such payments on the Series E Preference

Shares for the then-current Series E Dividend Period or (2) all dividends declared upon the Series E Preference Shares and any Series E Parity Shares are declared pro rata so that the amount of dividends declared per share on the Series E Preference Shares and any Series E Parity Shares will in all cases bear to each other the same ratio that accrued but unpaid dividends per share on the Series E Preference Shares (with respect to the then-current Series E Dividend Period) and such Series E Parity Shares bear to each other.

- 3.3 As long as any Series E Preference Shares are outstanding (1) no dividends (other than those paid in Ordinary Shares or other shares ranking junior in right of payment to the Series E Preference Shares as to dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (together with the Ordinary

Shares, **Series E Fully Junior Shares**)), may be declared or paid or set apart for payment upon any Series E Junior Shares, (2) no other distribution (other than those paid in Series E Fully Junior Shares) may be declared or paid or set apart for payment upon any Series E Junior Shares and (3) no Series E Junior Shares may be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Ordinary Shares made for purposes of any employee incentive, stock, benefit or any similar plan of the Company or any of its subsidiaries) for any consideration (or any moneys be paid to or made available for a sinking fund or the redemption of any Series E Junior Shares) by the Company (except by conversion into or exchange for Series E Fully Junior Shares), unless, in any such case, full dividends on the Series E Preference Shares

and any Series E Parity Shares have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment, for the then-current Series E Dividend Period.

#### **4. Voting Rights**

- 4.1 Subject to paragraphs 4.2 and 4.3 below, and unless required by law or court order, the Series E Holders shall not be entitled to receive notice of nor to attend nor to vote at any general meeting of the Company.
- 4.2 The Series E Holders shall be entitled to one vote for each Series E Preference Share held at any separate meeting of that class or series (i.e., preference shares or Series E Preference Shares,

respectively),  
subject to the  
provisions of  
Article 44 of  
the Articles.

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Subject to the applicable provisions of the Articles and the Law, unless the Series E Preference Shares have been previously redeemed or called for redemption (and funds necessary for such redemption have been set apart by the Company in trust for the benefit of the Series E Preference Shares so called for redemption), the Company may not take any action which would vary the rights attached to the Series E Preference Shares and no class or series of shares may be created which ranks senior to the Series E Preference Shares as to dividend rights or as to the liquidation, dissolution or winding up of the Company, in each case, without the approval of a resolution in writing by the Series E Holders of 100% of the

Series E  
Preference  
Shares or the  
sanction of a  
resolution passed  
by the  
affirmative votes  
of at least  
two-thirds of the  
Series E  
Preference  
Shares voted at a  
separate meeting  
of the Series E  
Holders.

At every separate  
meeting of Series  
E Holders, the  
necessary  
quorum shall be  
any two or more  
persons (or, if  
there is only one  
holder of that  
class, one  
person) present  
in person or by  
proxy holding  
not less than  
50% of the  
issued shares of  
that class (or  
such other  
quorum as  
required by  
applicable Law  
on the date of  
such meeting).  
Notwithstanding  
the foregoing  
and subject to  
the applicable  
provisions of the  
Articles and the  
Law, Series E  
Holders are not  
entitled to vote  
on any sale of all  
or substantially  
all of the assets

of the Company  
or the issuance  
of any shares  
that rank pari  
passu with the  
Series E  
Preference  
Shares as to the  
payment of  
dividends and  
the distribution  
of assets upon  
the liquidation,  
dissolution or  
winding up of  
the Company.

- 4.3 If at any time  
dividends  
payable on the  
Series E  
Preference  
Shares shall not  
have been paid  
(whether or not  
such dividends  
shall have been  
declared) in an  
aggregate  
amount  
equivalent to  
dividends for six  
or more full  
quarterly  
periods, which,  
during the Series  
E Fixed Rate  
Period, shall  
mean three or  
more Series E  
Dividend Periods  
and, during the  
Series E Floating  
Rate Period,  
shall mean six or  
more Series E  
Dividend Periods  
(in each case,  
whether or not  
consecutive),  
then during such

period until all such dividends shall have been paid in full, and only during such period (the **Series E Voting Period**), the Series E Holders voting together with any other series or classes of preference shares also not having been paid and having such right shall be entitled by Ordinary Resolution at a separate meeting of such holders to elect two persons and nominate such elected persons for appointment by the Board as additional Directors of the Company (and the Board will take all necessary steps to procure the appointment of any persons so elected and nominated). In no event shall there be more than two Directors elected by the holders of the Series E Preference Shares (whether voting alone as a series or class or with another series or class so

in arrears and having such right). The right of the holders of the Series E Preference Shares will cease (subject always to the same provision for the vesting of such rights if dividends on the Series E Preference Shares are not paid in future periods) upon the earlier to occur of (i) the first date as of which full dividends on the Series E Preference Shares have been paid for at least four consecutive quarterly periods, which, during the Series E Fixed Rate Period, shall mean two or more Series E Dividend Periods and, during the Series E Floating Rate Period, shall mean four or more Series E Dividend Periods, and (ii) the redemption of all Series E Preference Shares.

- 4.4 Any Director who shall have been elected pursuant to

paragraph 4.3  
above may be  
removed at any  
time during a  
Series E Voting  
Period, either for  
or without cause,  
by, and only by,  
Ordinary  
Resolution of the  
holders of the  
preference shares  
of the relevant  
class or series in  
issue at a special  
separate meeting  
of such holders  
called for that  
purpose. Any  
vacancy thereby  
created may be  
filled during  
such Series E  
Voting Period by  
Ordinary  
Resolution of the  
holders of  
preference shares  
of all relevant  
series at such a  
meeting. Any  
Director elected  
by holders of  
preference shares  
pursuant to this  
provision, or by  
any Director so  
elected as herein  
contemplated,  
who dies, resigns  
or otherwise  
ceases to be a  
Director during a  
Series E Voting  
Period shall,  
except as  
otherwise  
provided in the  
preceding  
sentence, be  
replaced by the

remaining  
Director  
theretofore  
elected by the  
holders of  
preference shares  
nominating a  
replacement for  
appointment by  
the Board;  
provided that, if  
no remaining  
additional  
Director is then  
in office,  
additional

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Directors will be elected in accordance with the procedures described above. At the end of the Series E Voting Period, the holders of preference shares of all the relevant series shall be automatically divested of all voting powers vested in them by the provision, but subject always to subsequent vesting of such voting power in the holders of preference shares in the event of any similar cumulated arrearage in payment of quarterly dividends occurring thereafter. The term of all Directors elected and appointed pursuant to this provision shall in all events expire at the end of the applicable Series E



Voting Period  
and if the size  
of the Board  
was increased  
for the  
purpose of the  
additional  
Directors, the  
number of  
Directors  
constituting  
the Board  
shall be  
reduced  
accordingly.

The  
provisions of  
the Articles  
relating to  
general  
meetings and  
the provisions  
of Article 44  
of the Articles  
shall apply,  
mutatis  
mutandis, to  
every such  
separate  
meeting,  
except that  
the necessary  
quorum shall  
be any two or  
more persons  
(or, if there is  
only one  
holder of the  
relevant class  
or series, one  
person)  
present in  
person or by  
proxy holding  
not less than  
fifty percent  
(50%) of the  
issued shares  
of the relevant  
series (or such  
other quorum

as required by  
applicable  
Law on the  
date of such  
meeting).

## **5. Redemption**

The Company shall be entitled to redeem all or any of the Series E Preference Shares as follows:

### **5.1 General.**

Subject to paragraphs 5.2, 5.3, 5.4 and 5.5 and paragraph 11 below, the Series E Preference Shares shall not be redeemable by the Company prior to April 15, 2017. From or after such date, the Company shall be entitled at any time in whole or from time to time in part, upon not less than thirty (30) days nor more than sixty (60) days prior written notice to the Series E Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph 6 below, to redeem all or any of the Series E Preference Shares pursuant

to this paragraph 5.1 for cash at a redemption price of US\$1,000 per share being redeemed (inclusive of the nominal value thereof) plus any declared but unpaid dividends with respect to the then-current Series E Dividend Period to the date of redemption, without interest on such declared but unpaid dividends and without accumulation of dividends for any prior Series E Dividend Period to the extent not declared and payable in respect of such Series E Dividend Period.

**5.2 Redemption upon the Submission of Certain Shareholder Proposals.** At any time prior to April 15, 2017, provided that at such time some or all of the Series E Preference Shares are in

issue, if the Company shall have (i) submitted to holders of Ordinary Shares a proposal for an amalgamation, consolidation, merger, arrangement, reconstruction, reincorporation, deregistration or any other similar transaction involving the Company that requires or (ii) submitted any proposal for any other matter that, as a result of any change in Irish law after the date of the notice of meeting of the special, court-ordered class meeting of the Cayman Series E Shares to approve the scheme of arrangement pursuant to which the Company shall have become the owner of the Cayman Series E Shares (the **Notice Date**) (whether by enactment or official interpretation) requires, in each case, a vote of

Series E Holders  
voting  
separately as a  
single class  
(alone or with  
one or more  
class or series of  
preference  
shares,  
including,  
without  
limitation, the  
Series C  
Preference  
Shares), the  
Company shall  
be entitled, upon  
not less than  
thirty (30) days  
nor more than  
sixty (60) days  
prior written  
notice to the  
Series E  
Holders, in such  
form and given  
in such manner  
as the Board  
shall from time  
to time  
determine and in  
accordance with  
paragraph 6  
below, to  
redeem all of the  
Series E  
Preference  
Shares in issue  
pursuant to this  
paragraph 5.2  
for cash at a  
redemption  
price equal to  
the Make Whole  
Amount for the  
Series E  
Preference  
Shares described  
in paragraph 5.6  
below, plus any  
declared but

unpaid  
dividends with  
respect to the  
then-current  
Series E  
Dividend Period  
to the date of  
redemption,  
without interest  
on such declared  
but unpaid  
dividends and  
without  
accumulation of  
dividends for  
any prior Series  
E Dividend  
Period to the  
extent not  
declared and  
payable in  
respect of such  
Series E  
Dividend  
Period.

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**5.3 Redemption on Tax Event.** If

(a) there is a change in tax law that would require the Company or any successor company to pay any additional amounts with respect to any then issued Series E Preference Shares and (b) the payment of those additional amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the Company shall be entitled at any time thereafter, upon not less than thirty (30) days nor more than sixty (60) days prior written notice to the Series E Holders, in such form and given in such manner as the Board shall from time to time determine and in accordance with paragraph 6 below, to redeem, in whole but not in

part, the Series  
E Preference  
Shares pursuant  
to this  
paragraph 5.3  
for cash at a  
redemption  
price equal to  
the Make  
Whole Amount  
for the Series E  
Preference  
Shares  
described in  
paragraph 5.6  
below, plus any  
declared but  
unpaid  
dividends with  
respect to the  
then-current  
Series E  
Dividend  
Period to the  
date of  
redemption,  
without interest  
on such  
declared but  
unpaid  
dividends and  
without  
accumulation of  
dividends for  
any prior Series  
E Dividend  
Period to the  
extent not  
declared in  
respect of such  
Series E  
Dividend  
Period.

For the purpose  
of this provision  
a **change in tax  
law** shall be (a)  
a change in or  
amendment to  
laws,



regulations or rulings of any jurisdiction, political subdivision or taxing authority described in the next sentence, (b) a change in the official application or interpretation of those laws, regulations or rulings, or (c) any execution of or amendment to any treaty affecting taxation to which any jurisdiction, political subdivision or taxing authority described in the next sentence is party after the Notice Date.

The jurisdictions, political subdivisions and taxing authorities referred to in the previous sentence are (a) the Republic of Ireland or any political subdivision or governmental authority of or in the Republic of Ireland with the power to tax (including, without limitation, the

Revenue Commissioners of the Republic of Ireland), (b) any jurisdiction from or through which the Company or its paying agent is making payments on the Series E Preference Shares or any political subdivision or governmental authority of or in that jurisdiction with the power to tax, or (c) any other jurisdiction in which the Company or its successor company is organized or generally subject to taxation or any political subdivision or governmental authority of or in that jurisdiction with the power to tax.

5.4 **Tax Event on Consolidation.**

If the entity formed by a consolidation, merger or amalgamation involving the Company or the entity to which

the Company conveys, transfers or leases substantially all of its properties and assets would be required to pay additional amounts in respect of any tax, assessment or governmental charge imposed on any Series E Holder as a result of a change in tax law that occurred after the date of the consolidation, merger, amalgamation, conveyance, transfer or lease, and the payment of those amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the Company shall be entitled to at any time thereafter, upon not less than thirty (30) days nor more than sixty (60) days prior written notice to the Series E

Holder, in such form and given in such manner as the Board shall from time to time determine and in accordance with paragraph 6 below, to redeem, in whole but not in part, the Series E Preference Shares in issue at such time, if any, pursuant to this paragraph 5.4 for cash at a redemption price equal to the Make Whole Amount for the Series E Preference Shares described in paragraph 5.6 below, plus any declared but unpaid dividends with respect to the then-current Series E Dividend Period to the date of redemption, without interest on such declared but unpaid dividends and without accumulation of dividends for any prior Series E Dividend Period to the extent not

declared and payable in respect of such Series E Dividend Period.

**5.5 Redemption upon the Occurrence of a Rating Agency Event.**

At any time prior to April 15, 2017, provided that at such time some or all of the Series E Preference Shares are in issue (or, prior to the original issuance date, provided that at such time some or all of the Cayman Series E Shares are in issue), if there shall occur a Rating Agency Event in respect of the Series E Preference Shares (or if, prior to the original issuance date, there shall have occurred a Rating Agency Event (as defined in the terms of the Cayman Series

E Shares) in respect of the Cayman Series E Shares), the Company shall be entitled, upon not less than thirty (30) days nor more than sixty (60) days prior written notice to the Series E Holders, in such form and given in such manner as the Board shall from time to time determine and in accordance with paragraph 6 below, to redeem all of the Series E Preference Shares in issue pursuant to this paragraph 5.5 for cash at a redemption price equal to the Make Whole Amount for the Series E Preference Shares described in paragraph 5.6 below, plus any declared but unpaid dividends with respect

to the  
then-current  
Series E  
Dividend  
Period to the  
date of  
redemption,  
without  
interest on  
such declared  
but unpaid  
dividends and  
without  
accumulation  
of dividends  
for any prior  
Series E  
Dividend  
Period to the  
extent not  
declared and  
payable in  
respect of  
such Series E  
Dividend  
Period.

For purposes  
of the  
preceding  
paragraph,  
**Rating  
Agency  
Event** means  
a change (at  
any time  
since the date  
on which the  
Cayman  
Series E  
Shares were  
first issued)  
by any  
nationally  
recognized  
statistical  
rating  
organization  
within the  
meaning of  
Rule 15c3-1

under the  
U.S.  
Securities  
Exchange Act  
of 1934, as  
amended (the  
**Exchange  
Act**), that  
published a  
rating for XL  
Capital Ltd  
on the date on  
which the  
Cayman  
Series E  
Shares were  
first issued (a  
**Rating  
Agency**) to  
the  
Company's  
equity credit  
criteria for the  
Series E  
Preference  
Shares, as  
such criteria  
were in effect  
for XL  
Capital Ltd  
with respect  
to the  
Cayman  
Series E  
Shares on the  
date of the  
final  
Prospectus  
Supplement  
(as defined  
below) (the  
**Original  
Criteria**),  
which change  
results in (a)  
the shortening  
of the length  
of time for  
which such  
current equity  
credit is



scheduled to be in effect with respect to the Series E Preference Shares, or (b) a lower equity credit being given to the Series E Preference Shares as of the date of such change than the equity credit that would have been assigned to the Series E Preference Shares as of the date of such change by such Rating Agency pursuant to its Original Criteria.

**Prospectus Supplement**

means the prospectus supplement (relating to the Cayman Series E Shares) to the prospectus filed with the Securities and Exchange Commission as part of XL Capital Ltd's registration Statement on Form S-3 ASR, File No. 333-130036

under the Securities Act of 1933, as amended, and the rules and regulations thereunder.

**5.6 Make Whole Amount.**

With respect to the Series E Preference Shares, the Make Whole Amount will be in US dollars and will be equal to the greater of (i) the aggregate liquidation preference of the Series E Preference Shares to be redeemed and (ii) the sum of the present values of the aggregate liquidation preference of the Series E Preference Shares to be redeemed and the remaining scheduled payments of dividends on the Series E Preference Shares to be redeemed up to but excluding April 15, 2017 discounted to

the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a rate equal to the Treasury Rate (as defined below) plus 50 basis points.

For the purposes of the preceding paragraph:

**Comparable Treasury**

**Issue** means the United States Treasury security selected by the Reference Treasury Dealer as having a maturity comparable to the period from and including the redemption date to but excluding April 15, 2017 that would be utilized, at the time of selection and in accordance with customary

financial practice, in pricing new issues of corporate debt securities of comparable maturity to such period of time. If no United States Treasury security has a maturity which is within a period from three months before to three months after the remaining life, the two most closely corresponding United States Treasury securities, as selected by the Reference Treasury Dealer, shall be used as the Comparable Treasury Issue, and the adjusted Treasury Rate shall be interpolated or extrapolated on a straight-line basis, rounding to the nearest month, using such securities.

**Comparable Treasury**

**Price** means, with respect to any redemption date, (i) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third Business Day preceding such distribution date, as set forth in the H.15 Daily Update published on

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such  
Business  
Day, or (ii)  
if such  
release (or  
any  
successor  
release) is  
not  
published or  
does not  
contain  
prices on  
such  
Business  
Day, the  
Reference  
Treasury  
Dealer  
Quotation  
actually  
obtained by  
the  
Calculation  
Agent for  
such  
redemption  
date.

**H.15 (519)**  
means the  
weekly  
statistical  
release  
entitled H.15  
(519)  
Selected  
Interest  
Rates, or  
any  
successor  
publication,  
published by  
the Board of  
Governors  
of the  
Federal  
Reserve  
System.

**H.15 Daily Update**

means the daily update of H.15 (519) available through the world wide website of the Board of Governors of the Federal Reserve System or any successor site or publication.

**Reference Treasury Dealer**

means a nationally recognized investment bank that is a primary U.S. government securities dealer in New York City selected by the Company.

**Reference Treasury Dealer Quotation**

means, with respect to the Reference Treasury Dealer and redemption date, the

average, as determined by the Calculation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Calculation Agent by the Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

**Treasury Rate** means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable



Treasury  
Issue,  
assuming a  
price for the  
Comparable  
Treasury  
Issue  
(expressed  
as a  
percentage  
of its  
principal  
amount)  
equal to the  
Comparable  
Treasury  
Price for  
such  
redemption  
date.

#### **6. Notices of Redemption**

Notice of any redemption at the option of the Company described herein will be mailed at least thirty (30) days but not more than sixty (60) days before the redemption date to each Series E Holder of record of Series E Preference Shares to be redeemed at the address shown in the register of members of the Company; provided that, if the Series E Preference Shares are then held in book-entry form through The Depository Trust Company (DTC), the Company may give notice to the Series E Holders in any manner permitted by DTC. Each notice will state as appropriate: (1) the redemption date; (2) the number of Series E Preference Shares to be redeemed; (3) the redemption price; (4) the place or places where certificates for Series E Preference Shares are to be surrendered for payment of the redemption price if any such certificates are outstanding; and (5) where applicable, that dividends on the Series E Preference Shares to be redeemed will cease to accrue on such redemption date. If fewer than all Series E Preference Shares are to be redeemed, the notice provided to each such Series E Holder will also specify the number of Series E Preference Shares to be redeemed from such Series E Holder. The notice shall contain (i) the name and address of the relevant bank or trust company to be used for purposes of redemption (if any) and (ii) a statement as to the deposit or intent to deposit the redemption funds in such trust account.

#### **7. Directors Determine Shares Redeemed**

If fewer than all of the Series E Preference Shares are to be redeemed at the option of the Company, the number of shares to be redeemed will be determined by the Board in its absolute discretion and such Series E Preference Shares may be redeemed pro rata from the Series E Holders of record in proportion to the number of Series E Preference Shares held by such Series E Holders (with adjustments to avoid redemption of fractional shares), or by lot.

#### **8. Dividends Cease**

If notice of redemption of any Series E Preference Shares has been given and if the funds necessary for such redemption have been set apart by the Company in trust for the benefit of the Series E Holders of such Series E Preference Shares so called for redemption, then from

and after the redemption date, dividends will cease to accrue on the Series E Preference Shares being redeemed, the Series E Preference Shares so redeemed will no longer be deemed to be in issue and all rights of the Series E Holders of such Series E Preference Shares will terminate, except the right to receive the redemption price.

**9. Dividends Payable to Record Date**

If a redemption date falls after a dividend record date with respect to which a dividend has been declared and prior to the corresponding Series E Dividend Payment Date, the Series E Holders at the close of business on the dividend record date will be entitled to receive the dividend payable with respect to such Series E Preference Shares on the corresponding Series E Dividend Payment Date notwithstanding the redemption thereof between the dividend record date and the corresponding Series E Dividend Payment Date or a default in the payment of the dividend due on such Series E Dividend Payment Date.

**10. Dividends Paid**

Unless full dividends on the Series E Preference Shares and all Series E Parity Shares for the then-current Series E Dividend Period shall have been declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment for all such dividends on or prior to the date of a redemption, purchase or other acquisition, no Series E Preference Shares or Series E Parity Shares may be redeemed, purchased or otherwise acquired by the Company unless all Series E Preference Shares and any Series E Parity Shares in issue are redeemed; provided that the Company may acquire fewer than all of the Series E Preference Shares or any Series E Parity Shares in issue pursuant to a purchase or exchange offer made on the same terms to Series E Holders of all Series E Preference Shares and Series E Parity Shares in issue as determined in good faith by the Board.

**11. Right to Purchase Series E Preference Shares**

Subject to (1) certain limitations contained in the Articles, (2) the special rights granted to any of the Company's issued shares, (3) applicable law and (4) the Company's requirement pursuant to paragraph 10 above to make a purchase or exchange offering on the same terms to Series E Holders of all Series E Preference Shares and Series E Parity Shares in issue, the Company may, at any time and from time to time, purchase Series E Preference Shares in issue. Any such purchase made by the Company may be made in the open market, by tender to all Series E Holders, by private agreement or otherwise as the Board sees fit. Further, the Company shall have the right to carry out any acquisition pursuant to this paragraph 11 in the form of a purchase or, subject to paragraphs 11.1 and 11.2 below, as a redemption. Any Series E Preference Shares acquired by the Company for its own account pursuant to this paragraph 11 (other than in the ordinary course of business of dealing in securities) will be cancelled by the Company and will no longer be in issue.

- 11.1 If any Series E Preference Share being acquired pursuant to paragraph 11 is not listed on a recognised stock exchange within the meaning of the Companies Act 1990 of Ireland (the **1990 Act**), such Series E Preference Share shall be

automatically converted into a redeemable share on, and from the time of, the existence or creation of an agreement, transaction or trade **(arrangement)** between the Company and any third party pursuant to which the Company acquires or will acquire such Series E Preference Share, or an interest in such Series E Preference Share, from the relevant third party. In these circumstances, such Series E Preference Share that is the subject of the relevant arrangement shall have the same characteristics as any other Series E Preference Shares in accordance with these terms of issue, save that it shall be redeemable in accordance with the arrangement (notwithstanding anything to the contrary contained in paragraphs 5, 6,

7, 8 or 9 above,  
which paragraphs  
(including any  
requirement to  
pay the Make  
Whole Amount)  
shall not apply to  
such arrangement  
or the redemption  
of such Series E  
Preference Share  
pursuant to such  
arrangement. The  
acquisition of a  
Series E  
Preference Share  
in accordance  
with this  
paragraph 11.1  
by the Company  
shall constitute  
the redemption of  
a redeemable  
share in  
accordance with  
Part XI of the  
1990 Act.

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11.2 If any Series E Preference Share being acquired pursuant to paragraph 11 is listed on a recognised stock exchange within the meaning of the 1990 Act, the provisions of paragraph 11.1 above shall apply to the acquisition of such Series E Preference Share unless the Board resolves, prior to the existence or creation of any relevant arrangement with respect to such Series E Preference Share, that the arrangement concerned is to be treated as a purchase of shares and not a redemption, in which case the arrangement shall be so executed.

**12. Redemption Payment**

The Series E Preference Shares may be purchased or redeemed by the Company either out of profits available for distribution (which are sometimes referred to as distributable reserves) or from the proceeds of a new issue of shares made for the purpose of the redemption.

**13. Cancellation of Share Certificates**

Payment of the redemption amount shall only be effected upon surrender to the Company for cancellation of any share certificate in respect of the Series E Preference Shares (to the extent such certificates are outstanding) to be redeemed and shall be made as promptly as practicable. If any certificate so surrendered includes Series E Preference Shares not being redeemed, a new certificate for the remaining Series E Preference Shares shall be issued to the Series E Holder in accordance with the Articles without charge to such Series E Holder.

**14. Redemption Process**

The Board may make such further regulations concerning the administrative process of redemption as they shall from time to time deem necessary so long as the rights of the Series E Holders are not varied.

**15. Rights Not Varied**

The rights conferred upon the Series E Holders of the Series E Preference Shares shall not be deemed to be varied by the creation or issue of any Series E Parity Shares, Series E Junior Shares or Series E Fully Junior Shares.

**16. Payments of Additional Amounts**

All payments on the Series E Preference Shares shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 5.3 above, unless the deduction or withholding of such taxes, assessments or other governmental charges is required by law, regulations or rulings or the application or official interpretation of such law, regulations or rulings. In that event, the Company shall pay, or cause to be paid, additional amounts to the registered Series E Holders as additional dividends to make up for any deduction or withholding for any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 5.3 above in respect of any amounts that the Company or a successor company must pay with respect to the Series E Preference Shares, so that the net amounts paid to the Series E Holders, after that deduction or withholding, shall equal the respective amounts that would have been receivable by such Series E Holders had no such withholding or deduction been required. For the avoidance of doubt, all references to payments on the Series E Preference Shares, including without limitation, payments of liquidation amounts, redemptions prices and dividends, shall be deemed to include the payment of any such additional dividends in respect of additional amounts. However, the Company shall not be obligated to pay additional amounts to any Series E Holder that:

- 16.1 resides in or is  
a citizen of  
the  
jurisdiction,  
political  
subdivision or  
taxing  
authority  
imposing the  
taxes,  
assessments  
or other

governmental  
charges that  
would  
otherwise  
trigger the  
Company's  
obligation to  
pay additional  
amounts; or

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16.2 is a fiduciary, partnership, limited liability company or other pass-through entity if, and to the extent that, the payment of additional amounts would be required by a jurisdiction, political subdivision or taxing authority described in paragraph 5.3 above to be included in the income for tax purposes of a beneficiary or settlor with respect to that fiduciary or a member of that partnership, limited liability company or other pass-through entity who would not have been entitled to any additional amounts had that beneficiary, settlor or



member held  
those Series  
E Preference  
Shares  
directly.

**17. No Payment of Additional Amounts**

In addition, the Company shall not be obligated to pay any additional amounts to a Series E Holder on account of:

- 17.1 any tax, assessment or other governmental charge that would not have been imposed but for the existence of any present or former connection between the Series E Holder and the taxing jurisdiction or political subdivision, or any Series E Preference Share presented for payment more than thirty (30) days after the relevant date, which means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has

not been received by the depositary on or prior to such due date, it means the first date on which the full amount of such moneys having been so received and being available for payments to Series E Holders, and notice to that effect shall have been duly given to the Series E Holders;

17.2 any estate, inheritance, gift, sales, transfer, personal property or similar tax, assessment or other governmental charge;

17.3 any tax, assessment or other governmental charge that is payable other than by withholding or deduction from payment of the liquidation preference of or any dividends on the Series E

Preference  
Shares;

- 17.4 any tax, assessment or other governmental charge that is imposed or withheld by reason of the failure by the Series E Holder or the beneficial owner of the Series E Preference Shares to promptly comply with a request by the Company to (a) provide information, documents, certifications or other evidence concerning the nationality, residence or identity of the Series E Holder or beneficial owner of such Series E Preference Shares or (b) make and deliver any declaration or other similar claim, other than a claim for refund of a tax, assessment or other governmental

charge withheld by the Company, or satisfy any information or reporting requirements, which, in the case of clause (a) or (b) of this subparagraph, is required or imposed by a statute, treaty, regulation or administrative practice of the taxing jurisdiction as a precondition to exemption from all or part of that tax, assessment or other governmental charge; or

17.5 any combination of the items identified by the subparagraphs above.

**18. No Preemptive Rights**

The Series E Preference Shares shall not be entitled to the benefits of any sinking fund. No Series E Holder, solely by reason of being a Series E Holder, has or will have any preemptive right to subscribe for any additional issue of the Company's shares of any class or series or to any security convertible into or carrying rights or options to purchase any such shares.

**19. Ranking**

Any class or series of shares of the Company shall be deemed to rank (1) senior to the Series E Preference Shares and the Series E Parity Shares, as to the payment of dividends and as to any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, if holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up, as the case may be, of the Company in preference or priority to the Series E Holders and the holders of the Series E Parity Shares, (2) *pari passu* with the



Series E Preference Shares and the Series E Parity Shares as to the payment of dividends and as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof shall be different from those of the Series E Preference Shares or the Series E Parity Shares, if holders of such class or series, the Series E Preference Shares and the Series E Parity Shares shall be entitled to the receipt of dividends and of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company in proportion to their respective amounts of accrued but unpaid dividends per share or liquidation preferences, without preference or priority of one over the other or (3) junior to the Series E Preference Shares and the Series E Parity Shares, as to the payment of dividends or as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, if such class or series is ordinary shares or other shares ranking junior in right of payment to the Series E Preference Shares and the Series E Parity Shares as to dividends or as to the distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up on the basis set out above of the Company. The Series E Preference Shares will therefore rank pari passu on the basis set out above with the Series C Preference Shares including as to the payment dividends and as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company.

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**PROPOSED AMENDED ARTICLE 81  
OF THE XL CAPITAL LTD ARTICLES OF ASSOCIATION**

81. (a) The Directors shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist as nearly as possible of one-third of the total number of Directors constituting the entire Board of Directors. The initial term of office for each Director in Class I shall expire at the Annual General Meeting of the Company in 1999; the initial term of office for each Director in Class II shall expire at the Annual General Meeting in 2000; and the initial term of office for each Director in Class III shall expire at the Annual General Meeting in 2001. At each Annual General Meeting, commencing with the Annual General Meeting to be held in 1999, the successors of the class of Directors whose term expires at that meeting shall be elected to hold office for a term expiring at the Annual General Meeting to be held in the third year of their election, so that the term of one class of Directors shall expire in each year. Each Director shall hold office for the term for which he or she is elected or appointed and until his or her successor shall be elected or appointed and qualify or until he or she shall vacate office in accordance with Article 80. If the number of Directors is changed, an increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible, but in no case shall a decrease in the number of Directors shorten the term of an incumbent Director. The term of a Director appointed to fill a newly created directorship, or other vacancy, shall expire at the same time as the term of the other Directors of the class for which the new directorship is created or in which the vacancy occurred.
- (b) No person shall be appointed a Director, unless nominated in accordance with the provisions of this Article 81. Nominations of persons for appointment as Directors may be made:
- (i) by the Directors;
  - (ii) with respect to election at an annual general meeting, by any Member of the Company owning Class A shares or other shares carrying the general right to vote at general meetings of the Company, who is a Member at the time of the giving of the notice provided for in Article 81(c) and at the time of the relevant annual general meeting, and who timely complies with the notice procedures set forth in this Article 81;
  - (iii) with respect to election at an extraordinary general meeting requisitioned in accordance with Article 31(b), by a Member or Members owning Class A shares or other shares carrying the general right to vote at general meetings of the Company and who make such nomination in the written requisition of the extraordinary general meeting in accordance with Article 31(b) and in compliance with the other provisions of these Articles and the Statute relating to nominations of directors and the proper bringing of special business before an extraordinary general meeting; and
  - (iv) by holders of any class or series of shares in the Company then in issue having special rights to nominate or appoint Directors in accordance with the terms of issue of such class or series, but only to the extent provided in such terms of issue
- (clauses (ii), (iii) and (iv) being the exclusive means for a Member to make nominations of persons for election to the Board of Directors).
- (c) Any Member who holds Class A shares or other shares carrying the general right to vote at general meetings of the Company may nominate a person or persons for election as Director at an annual general meeting only if (in addition to the requirements of Article 81(b)(ii)) written notice of such Member's intent to make such nomination is given in accordance with the procedures set forth in this Article 81, either by personal delivery or





by mail, postage prepaid, to the Secretary of the Company at the address of the Secretary specified in the notice of an annual general meeting or accompanying proxy statement last sent to Members prior to the delivery of such Member's written notice of nomination (or, if no such address was specified, at the Registered Office of the Company) not later than the close of business not less than 90 and not more than 120 clear days prior to the one-year anniversary date of the immediately preceding annual general meeting, provided, however, that if the date of the annual general meeting is more than 30 clear days before or after the anniversary date of the immediately preceding annual general meeting, such notice of nomination shall be given not later than the later of (i) the close of business 30 clear days prior to the date of such annual general meeting or (ii) the close of business on the day that is 10 clear days after the first public announcement of the date of such annual general meeting. In no event shall any adjournment of an annual general meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a Member's notice as described above.

- (d) Each notice of a Member's intent to make a nomination delivered pursuant to Article 81(c) and each requisition in writing delivered pursuant to Article 31(b) that sets forth a notice of a Member's or Members' intent to nominate one or more persons for election as a Director shall, in each case, set forth:
- (i) as to the Member or Members giving notice and each beneficial owner, if different, on whose behalf the nomination is made, (A) the name and address of each such Member and each such beneficial owner, (B) the class or series and number of shares of the Company which each such Member and each such beneficial owner, respectively (and their respective Affiliates, naming such Affiliates), is, directly or indirectly, the registered or beneficial owner as of the date of such notice or requisition in writing, (C) a description of the material terms of any Covered Arrangement to which each such Member and each such beneficial owner, and their respective Affiliates, directly or indirectly, is a party as of the date of such notice or such requisition in writing, (D) any other information relating to each such Member and each such beneficial owner that would be required to be disclosed in a proxy statement in connection with a solicitation of proxies for the election of directors in a contested election pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (whether or not then applicable to the Company and whether or not any such Member or beneficial owner intends to solicit proxies) (the disclosures to be made pursuant to the foregoing clauses (i)(B), (i)(C) and (i)(D), the Member Disclosable Interests), and (E) a representation that each such Member is a registered holder of shares of the Company entitled to vote at the relevant meeting of Members and intends to appear in person or by proxy at the relevant meeting to nominate the person or persons specified in the notice or requisition in writing; provided, however, that Member Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is giving such notice solely as a result of being the Member directed to prepare and submit the notice required by this Article 81 on behalf of one or more beneficial owners;
  - (ii) a description of all arrangements or understandings between each such Member and each such beneficial owner, and their respective Affiliates, and each nominee or any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the Member or Members;
  - (iii) as to each person whom the Member or Members propose to nominate for election as a Director, (A) all information relating to such person as would have been required to be included in a proxy statement filed in connection with a solicitation of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act (whether or not then applicable to the Company and whether or not the Member or Members intend to solicit proxies), (B) a description of the material terms of any Covered Arrangement to which such nominee or any of his or her Affiliates is a party

as of the date of such notice or requisition in writing, and (C) the written consent of each nominee to being named in the notice or requisition in writing as a nominee and to serving as a Director if so elected; and (iv) an undertaking by each such Member and each such beneficial owner to (A) notify the Company in writing of any changes in the information provided in such notice or requisition in writing pursuant to clauses (i), (ii) and (iii) above as of the record date for determining Members entitled to vote at the relevant meeting of Members promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public announcement and (B) deliver to the Company an updated notification of such information thereafter within two business days of any change in such information and, in any event, within five hours after the close of business (at the location at which the meeting is to take place) on the business day preceding the meeting date updated as of such close of business.

- (e) No person shall be eligible for election as a Director of the Company unless nominated in accordance with the procedures set forth in these Articles. Except as otherwise provided by law, the Board or the chairman of any meeting of Members to elect Directors may determine in good faith that a nomination was not made in compliance with the procedures set forth in the foregoing provisions of this Article 81; and if the Board or the chairman of the meeting should so determine, it shall be so declared to the meeting, and the defective nomination shall be disregarded. Notwithstanding anything in these Articles to the contrary, unless otherwise required by law, if a Member intending to make a nomination at a meeting of Members in accordance with this Article 81 does not timely appear in person or by proxy at the meeting to present the nomination, such nomination shall be disregarded, notwithstanding that appointments of proxy in respect of such nomination may have been received by the Company or any other person.
- (f) Notwithstanding the foregoing provisions of this Article 81, any Member or Members intending to make a nomination at a meeting of Members in accordance with this Article 81, and each related beneficial owner, if any, shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in these Articles; provided, however, that any references in these Articles to the Exchange Act are not intended to and shall not limit the requirements applicable to nominations made or intended to be made in accordance with clause (ii) or clause (iii) of Article 81(b).
- (g) Nothing in this Article 81 shall be deemed to affect any rights of the holders of any class or series of shares to elect or appoint Directors pursuant to any applicable terms of issue of any such shares.
- (h) For purposes of this Article 81,
  - (i) an Affiliate of any person means any other person that directly or indirectly controls, is controlled by, or is under common control with, such person; and
  - (ii) a Covered Arrangement means, with respect to any person and as of any date, any agreement, arrangement or understanding (including any swaps or other derivative or short positions, profit interests, options, hedging transactions, and securities lending or borrowing arrangement) to which such person or its Affiliates is, directly or indirectly, a party as of such date (A) with respect to shares of the Company or (B) the effect or intent of which is to mitigate loss to, manage the potential risk or benefit of share price changes (increases or decreases) for, or increase or decrease the voting power of such person or any of its Affiliates with respect to securities of the Company or which may have payments based in whole or in part, directly or indirectly, on the value (or change in value) of any securities of the Company (other than, in each such case, interests in investment companies registered under the U.S. Investment Company Act of 1940, as amended);

- (i) At any time the Company may by Special Resolution of the total voting power of the issued shares of the Company determined in accordance with these Articles, including Article 41, remove any Director and may in like manner appoint another person in his stead (provided that nominations of such persons be made in compliance with the provisions of this Article 81).

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**RELEVANT TERRITORIES**

- |                         |                 |                        |
|-------------------------|-----------------|------------------------|
| 1. Australia            | 20. Greece      | 39. Pakistan           |
| 2. Austria              | 21. Hungary     | 40. Poland             |
| 3. Bahrain              | 22. Iceland     | 41. Portugal           |
| 4. Belarus              | 23. India       | 42. Romania            |
| 5. Belgium              | 24. Israel      | 43. Russia             |
| 6. Bosnia & Herzegovina | 25. Italy       | 44. Serbia             |
| 7. Bulgaria             | 26. Japan       | 45. Slovak Republic    |
| 8. Canada               | 27. Korea       | 46. Slovenia           |
| 9. Chile                | 28. Latvia      | 47. South Africa       |
| 10. China               | 29. Lithuania   | 48. Spain              |
| 11. Croatia             | 30. Luxembourg  | 49. Sweden             |
| 12. Cyprus              | 31. Macedonia   | 50. Switzerland        |
| 13. Czech Republic      | 32. Malaysia    | 51. Republic of Turkey |
| 14. Denmark             | 33. Malta       | 52. United Kingdom     |
| 15. Estonia             | 34. Mexico      | 53. United States      |
| 16. Finland             | 35. Moldova     | 54. Vietnam            |
| 17. France              | 36. Netherlands | 55. Zambia             |
| 18. Georgia             | 37. New Zealand |                        |
| 19. Germany             | 38. Norway      |                        |

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**Expected Timetable**

<b>Description</b>	<b>Proposed Date</b>
Record date for determining the XL Capital Ltd ordinary shareholders eligible to vote at the ordinary shareholder special meetings	, 2010
Proxy statement and form of proxy first mailed to XL Capital Ltd ordinary shareholders	On or about , 2010
Latest time for receiving forms of proxy: via Internet or telephone via mail, courier or hand delivery	[a.m.], Bermuda time, on , 2010 Any time prior to the commencement of the applicable ordinary shareholder special meeting
Special court-ordered class meeting of XL Capital Ltd s ordinary shareholders	[a.m.], Bermuda time, on , 2010
Extraordinary general meeting of XL Capital Ltd s ordinary shareholders	[a.m.], Bermuda time, on , 2010 (or as soon thereafter as the special court-ordered class meeting concludes or is adjourned)
Court hearing to sanction the Scheme of Arrangement	10:00 a.m., Cayman Islands time, on , 2010
Anticipated Effective Time of the Scheme of Arrangement	Before the opening of trading of the XL Capital Ltd ordinary shares on the New York Stock Exchange on July 1, 2010

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**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD OF 2010**

**IN THE MATTER OF XL CAPITAL LTD**

**AND IN THE MATTER OF SECTION 86 OF THE COMPANIES LAW (2009 REVISION)**

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**NOTICE IS HEREBY GIVEN** that, by an order dated , 2010 (the **Order** ) made in the above matter, the Grand Court of the Cayman Islands (the **Grand Court** ) has directed a meeting (the **Ordinary Shareholder Scheme Meeting** ) to be convened of the holders of Class A ordinary shares, par value \$0.01 per share, of XL Capital Ltd (the **Ordinary Shareholders** ), for the purpose of considering and, if thought fit, approving, with or without condition, modification or amendment, a scheme of arrangement (the **Scheme of Arrangement** ) proposed to be made between XL Capital Ltd, XL Capital plc, the Ordinary Shareholders and, should the Scheme of Arrangement as it relates to the Preference Share Exchange (as defined in the Scheme of Arrangement) also be approved by them, the Series C Preference Shareholders and the Series E Preference Shareholders (as defined in the Scheme of Arrangement) and that the Ordinary Shareholder Scheme Meeting will be held on , 2010 at [a.m.], Bermuda time, at XL House, One Bermudiana Road, Hamilton HM 08, Bermuda, at which place and at such time all such Ordinary Shareholders are requested to attend.

A copy of the Scheme of Arrangement is included in the proxy statement, which explains the effect of the Scheme of Arrangement on the parties thereto, and of which this Notice also forms part. A copy of the proxy statement can be obtained by the Ordinary Shareholders from Georgeson Inc., XL Capital Ltd's proxy solicitor in the United States, at:

Georgeson Inc.  
199 Water Street  
New York, NY 10038  
Toll-free within the United States: 1-800-509-1390  
Outside the United States: +1 (212) 440-9800

The above-mentioned Ordinary Shareholders as of the close of business on , 2010, the record date set by the Grand Court, may vote in person at the Ordinary Shareholder Scheme Meeting or they may appoint one or more proxies, whether a member of XL Capital Ltd or not, to attend and vote in their place. A form of proxy for use at the Ordinary Shareholder Scheme Meeting is enclosed with the proxy statement.

If such ordinary shares are held in joint names, then either the holder whose name appears first in the Register of Members of XL Capital Ltd or each holder should sign. If signing as executor, administrator, attorney, trustee or guardian, please give your full title as such. If the signer is a corporation, please sign in the full corporate name by a duly authorized officer, giving your full title as such. If the signer is a partnership, please sign in the partnership name by an authorized person.

It is requested that forms appointing proxies be lodged with XL Capital Ltd by mail, courier or hand delivery, by telephone or via the Internet in accordance with the instructions set out in the form of proxy. Such proxy forms must be received prior to the start of the Ordinary Shareholder Scheme Meeting, if lodged by mail, courier or hand delivery, or by [a.m.], Bermuda time, on , 2010, if lodged by telephone or via the Internet, but if such proxy forms are not so lodged they may be handed to the chairman of the Ordinary Shareholder Scheme Meeting at the meeting.

By the Order, the Grand Court has appointed Michael S. McGavick, Chief Executive Officer and a director of XL Capital Ltd, or failing him, Kirstin Romann Gould, Secretary of XL Capital

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Ltd, or failing her, any other person who is a director of XL Capital Ltd as at the date of the Order to act as the chairman of the Ordinary Shareholder Scheme Meeting and has directed the chairman of the Ordinary Shareholder Scheme Meeting to report the results thereof to the Grand Court.

The Scheme of Arrangement will be subject to a subsequent application seeking the sanction of the Grand Court which shall be heard at 10:00 a.m., Cayman Islands time, on , 2010 or as soon thereafter as it may be heard.

Dated the day of , 2010.

**MAPLES AND CALDER**

*Cayman Islands Attorneys for XL Capital Ltd*

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**XL CAPITAL LTD**

XL House, One Bermudiana Road, Hamilton HM 08, Bermuda

, 2010

**NOTICE OF MEETING OF MEMBERS HOLDING CLASS A SHARES**

**To Be Held On , 2010**

To the Ordinary Shareholders of XL Capital Ltd:

A meeting (the **meeting** ) of the holders of Class A ordinary shares (the **Ordinary Shareholders** ) of XL Capital Ltd, a Cayman Islands exempted company limited by shares, will be held on , 2010, at [a.m.], Bermuda time, at XL House, One Bermudiana Road, Hamilton HM 08, Bermuda at which place and time all such Ordinary Shareholders are requested to attend:

1. to approve  
the  
Distributable  
Reserves  
Proposal (as  
defined in the  
proxy  
statement  
dated , 2010  
to which this  
notice is  
attached) (the  
**Proxy  
Statement** ));

2. to approve  
the Director  
Nomination  
Procedures  
Proposal (as  
defined in the  
Proxy  
Statement)  
and to pass a  
special  
resolution in  
the following  
terms:

THAT Article 81 of the Articles of Association of XL Capital Ltd be amended to read substantially in the form attached to the Proxy Statement as Annex E.

3. to approve the Name Change Proposal (as defined in the Proxy Statement) and to pass a special resolution in the following terms:

THAT the name of XL Capital Ltd be changed to XL Group Ltd, such name change to take effect in July 2010 or at such other time as may be determined by XL Capital Ltd under authority granted by the Board of Directors of XL Capital Ltd.

4. to approve a motion to adjourn the meeting to a later date to solicit additional proxies if there are insufficient proxies to approve the Distributable Reserves Proposal, the Director Nomination Procedures Proposal and/or the Name Change Proposal at the time of the meeting or if there are insufficient shares present, in person or by proxy, to

conduct the  
vote on the  
Director  
Nomination  
Procedures  
Proposal and  
the Name  
Change  
Proposal.

The Board of Directors has set , 2010 as the record date for the determination of members entitled to notice of and to vote at the meeting or any adjournment thereof. Only holders of record of ordinary shares of XL Capital Ltd at the close of business on the record date are entitled to notice of and to vote at the meeting.

Your vote is important. All members are cordially invited to attend the meeting. We urge you, whether or not you plan to attend the meeting, to submit your proxy by telephone or via the Internet, or by marking, dating, signing and returning the enclosed gold proxy or voting instruction card in the postage-paid envelope provided. If a member who has submitted a proxy attends the meeting in person, such member may revoke the proxy and vote in person on all matters submitted at the meeting.

By Order of the Board of Directors

Kirstin Romann Gould  
Secretary

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**PRELIMINARY FORM OF PROXY SUBJECT TO COMPLETION**

**XL CAPITAL LTD**

**SPECIAL COURT-ORDERED CLASS MEETING  
AND EXTRAORDINARY GENERAL MEETING OF  
XL CAPITAL LTD CLASS A ORDINARY SHAREHOLDERS  
TO BE HELD ON , 2010**

**YOUR VOTE IS IMPORTANT**

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

**PLEASE REVIEW THE PROXY STATEMENT  
AND VOTE TODAY IN ONE OF THREE WAYS**

**(See reverse side for instructions)**

**q DETACH PROXY CARD HERE TO VOTE BY MAIL q**

The undersigned Class A ordinary shareholder(s) of XL Capital Ltd, a Cayman Islands exempted company ( **XL** ), hereby appoints Michael S. McGavick or, failing him, Kirstin Romann Gould as proxies for the undersigned, with full power of substitution in each of them, to attend the special court- ordered class meeting of XL 's Class A ordinary shareholders (the **special scheme meeting** ) and the extraordinary general meeting of XL 's Class A ordinary shareholders (the **EGM** ), each scheduled to be held on , 2010, and any adjournments thereof, to cast on behalf of the undersigned all votes that the undersigned is entitled to cast at the meetings, as a holder of Class A ordinary shares, par value \$0.01 per share, of XL (the **ordinary shares** ) registered in the name of the undersigned on , 2010, and otherwise to represent the undersigned at the meetings with all powers of the undersigned as if the undersigned were present and voting its ordinary shares.

**THIS PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED AS DIRECTED HEREIN BY THE UNDERSIGNED SHAREHOLDER(S). IF NO DIRECTION IS GIVEN, THIS PROXY WILL BE VOTED FOR EACH OF THE PROPOSALS LISTED ON THE REVERSE SIDE OF THIS PROXY CARD. IN ADDITION, IF ANY OTHER MATTERS ARE PROPERLY BROUGHT UP AT THE SPECIAL SCHEME MEETING OR AT THE EGM (OTHER THAN THE PROPOSALS LISTED ON THE REVERSE SIDE OF THIS PROXY CARD), THEN THE INDIVIDUALS LISTED ABOVE WILL HAVE THE AUTHORITY TO VOTE YOUR ORDINARY SHARES ON SUCH MATTERS IN HIS OR HER DISCRETION. THIS PROXY WILL REVOKE ANY PREVIOUSLY EXECUTED PROXY GRANTED WITH RESPECT TO THE SPECIAL SCHEME MEETING AND THE EGM, BUT DOES NOT REVOKE ANY PREVIOUSLY EXECUTED PROXY GRANTED WITH RESPECT TO THE 2010 ANNUAL GENERAL MEETING OF XL 'S CLASS A ORDINARY SHAREHOLDERS.**

(CONTINUED AND TO BE SIGNED ON THE REVERSE SIDE)

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**THERE ARE THREE WAYS TO VOTE: BY INTERNET, TELEPHONE OR MAIL**

Internet and telephone voting is available 24 hours a day, 7 days a week through [a.m.], Bermuda time, on , 2010.

Your Internet or telephone vote authorizes Michael S. McGavick or, failing him, Kirstin Romann Gould to vote your shares in the same manner as if you marked, signed, dated and returned your **GOLD** proxy card.

**INTERNET**

**<https://www.proxyvotenow.com/xlcapital>**

Go to the website listed above.

Have your **GOLD** proxy card ready. You will need to enter the number from the box above.

Follow the simple instructions that appear on your computer screen.

**TELEPHONE**

**1-866-598-8809**

Use any touch-tone telephone.

Have your **GOLD** proxy card ready. You will need to enter the number from the box above.

Follow the simple recorded instructions.

**MAIL**

Mark, sign and date your **GOLD** proxy card.

Detach your **GOLD** proxy card.

Return your **GOLD** proxy card in the postage-paid envelope provided.

**Please Mark, Sign, Date and Return Promptly in the Enclosed Postage-Paid Envelope**

Please submit you proxy via the Internet or by telephone using the instructions printed above or mark, sign, date and return the proxy card printed below in the postage-paid envelope provided. In order for your mailed, couriered or hand-delivered proxy to be counted, your proxy must be received prior to the start of the applicable ordinary shareholder special meeting. In order for your proxy submitted via the Internet or by telephone to be counted, your proxy must be received no later than [a.m.], Bermuda time, on , 2010.

(continued from other side)

q **DETACH PROXY CARD HERE TO VOTE BY MAIL** q  
**THE BOARD OF DIRECTORS RECOMMENDS THAT SHAREHOLDERS VOTE FOR EACH OF THE PROPOSALS LISTED ON THIS PROXY CARD.**

**Special Court-Ordered Class Meeting  
of XL Capital Ltd s Class A Ordinary Shareholders**

**FOR    AGAINST    ABSTAIN**

PROPOSAL	£	£	£
NUMBER ONE To			
approve the Scheme			
of Arrangement			
Proposal, as			
described in the			
accompanying			

proxy statement.

SPECIAL  
SCHEME  
MEETING  
ADJOURNMENT  
PROPOSAL To  
approve a motion to  
adjourn the special  
scheme meeting to  
a later date to solicit  
additional proxies if  
there are  
insufficient proxies  
to approve the  
Scheme of  
Arrangement  
Proposal at the time  
of the special  
scheme meeting.

£                      £                      £

Please check this  
box if you plan to  
attend the meetings.

£

**This proxy is solicited on behalf of the Board of Directors of XL. This proxy, when properly executed, will be voted in accordance with the instructions given above. If no instructions are given, this proxy will be voted FOR each of the proposals listed on this proxy card. In addition, if any other matters are properly brought up at the special scheme meeting or at the EGM (other than the proposals listed above), then Michael S. McGavick or, failing him, Kirstin Romann Gould will have the authority to vote your ordinary shares on such matters in his or her discretion.**

If you do not wish to vote all of your ordinary shares in the same manner on any particular proposal(s), you may specify your vote by clearly hand-marking this proxy card to indicate how you want to vote your ordinary shares. You may not split your vote if you are voting via the Internet or by telephone.

**Extraordinary General Meeting  
of XL Capital Ltd's Class A Ordinary Shareholders**

	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
PROPOSAL NUMBER TWO To approve the Distributable Reserves Proposal, as described in the accompanying proxy statement.	£	£	£
PROPOSAL NUMBER THREE To approve the Director Nomination Procedures Proposal, as described in the accompanying proxy statement.	£	£	£
PROPOSAL NUMBER FOUR To approve the Name Change Proposal, as described in the accompanying proxy statement.	£	£	£
EGM ADJOURNMENT PROPOSAL To approve a motion to adjourn the EGM to a later date to solicit additional proxies if there are insufficient proxies to approve the Distributable Reserves Proposal, the Director Nomination Procedures Proposal and/or the Name Change Proposal at the time of the EGM or if there are insufficient shares present, in person	£	£	£

or by proxy, to  
conduct the vote  
on the Director  
Nomination  
Procedures  
Proposal and the  
Name Change  
Proposal.

**NOTE:** Please sign exactly as your name or names appear on this proxy. When shares are held jointly, either (i) the holder whose name appears first in the Register of Members of XL Capital Ltd or (ii) each holder should sign. When signing as executor, administrator, attorney, trustee or guardian, please give your full title as such. If the signer is a corporation, please sign in the full corporate name by a duly authorized officer, giving your full title as such. If the signer is a partnership, please sign in the partnership name by an authorized person.

Dated: \_\_, 2010

Signature: \_

Title or Authority: \_

Signature (if held jointly): \_

**PLEASE MARK, SIGN, DATE AND RETURN THIS PROXY  
IN THE  
ENCLOSED POSTAGE PAID ENVELOPE TODAY**