

Amended and Restated  
Bye-laws of

McDermott International, Ltd

**Adopted: January 23, 2025**

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## INTERPRETATION

### 1. DEFINITIONS

1.1. In these Amended and Restated Bye-laws (these “Bye-laws”), the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

<b>“Act”</b>	the Bermuda Companies Act 1981, as amended;
<b>“Advisory Committee”</b>	the advisory committee established pursuant to Bye-law 64.1;
<b>“Advisory Committee Eligible Members”</b>	has the meaning given to it in Bye-law 64.1;
<b>“Affiliates”</b>	an “Affiliate” of, or a person “Affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
<b>“Associates”</b>	the term “Associate” used to indicate a relationship with a person, means (1) any corporation, company, entity or organization (other than the Company or a Subsidiary of the Company) of which such person is an officer, director or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is an officer, a director or a partner of the Company or any of its parents or Subsidiaries;
<b>“Auditor”</b>	includes an individual, company or partnership;

<p><b>“beneficially owned,”</b> <b>“beneficial ownership,”</b> <b>“beneficial owner”</b></p>	<p>and similar phrases have the same meanings as such terms have under Rule 13d-3 and 13d-5 (or any successor rule then in effect) promulgated under the Securities Exchange Act, except that in calculating the beneficial ownership of any Member, such Member shall be deemed to have beneficial ownership of all securities that such Member has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition, and the calculation of beneficial ownership for a Member shall also include any Affiliate of such Member;</p>
<p><b>“Board”</b></p>	<p>the board of directors (including, for the avoidance of doubt, a sole director) of the Company appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the Directors present at a meeting of Directors at which there is a quorum;</p>
<p><b>“Business Day”</b></p>	<p>any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York, New York or Hamilton, Bermuda;</p>
<p><b>“CEO”</b></p>	<p>the chief executive officer of the Company from time to time who, as at the date of adoption of these Bye-laws, shall be Michael McKelvy;</p>
<p><b>“CFC”</b></p>	<p>has the meaning given to it in Bye-law 68.7;</p>
<p><b>“Class A Ordinary Shares”</b></p>	<p>the Class A ordinary shares of par value of US\$0.125 each of the Company in issue from time to time;</p>
<p><b>“Class B Ordinary Shares”</b></p>	<p>the Class B ordinary shares of par value of US\$0.125 each of the Company in issue from time to time;</p>
<p><b>“Code”</b></p>	<p>has the meaning given to it in Bye-law 14.1;</p>
<p><b>“Company”</b></p>	<p>McDermott International, Ltd, a Bermuda exempted company limited by shares and the company for which these Bye-laws are approved and confirmed;</p>

<b>“Company Sale”</b>	a bona fide sale of the Company (other than an IPO) whether by (i) a sale, lease, transfer, exclusive license, conveyance or other disposition, in one or a series of related transactions, of more than fifty percent (50%) of the consolidated assets of the Company and its Subsidiaries (which may be effected by a merger, amalgamation, equity sale, asset sale or otherwise); or (ii) a transaction or series of related transactions (including by way of merger, amalgamation, consolidation, sale of shares or otherwise) the result of which is the transfer to any person or “group” (as defined in Section 13 of the Securities Exchange Act) of beneficial ownership, directly or indirectly, of more than (A) fifty percent (50%) of the Ordinary Shares issued and outstanding and (B) fifty percent (50%) of the general voting power of the Company’s issued and outstanding share capital;
<b>“Competitor”</b>	a person that, together with its controlled Affiliates, provides engineering, procurement, construction and installation solutions, and/or designs and builds end-to-end infrastructure solutions, to customers in the energy industry and related industries;
<b>“Data Room”</b>	an electronic data room to be hosted by a data room provider selected by the Company from time to time;
<b>“Direct Listing”</b>	a direct listing of Ordinary Shares on the NYSE or the NASDAQ in connection with which the Class A Ordinary Shares are first registered under Section 12(b) of the Securities Exchange Act;
<b>“Directed Opportunity”</b>	has the meaning given to it in Bye-law 84.1;
<b>“Director”</b>	a director of the Company appointed or elected pursuant to these Bye-laws;
<b>“Discretionary Consent Matters”</b>	has the meaning given to it in Bye-law 65.1;
<b>“Drag Along Notice”</b>	has the meaning given to it in Bye-law 15.2;
<b>“Drag Along Right”</b>	has the meaning given to it in Bye-law 15.1;
<b>“DTC”</b>	the Depository Trust Company;
<b>“EcoPetrol”</b>	EcoPetrol, S.A., a mixed-economy company (sociedad de economía mixta) organized under the

laws of Colombia;

**“Eligible Member”**

a Member, other than a Reficar Member, who, at the time of measurement (such measurement to include the submission by Members of an affidavit of ownership to the Company in a form and substance reasonably acceptable to the Company along with customary proof of ownership (e.g., customary brokers’ letters) of any securities of which such Member is a Holder as of the time of measurement within ten (10) Business Days of receipt of any written request for such information by the Company), that, together with its Affiliates, is a Holder of at least 0.5% of the issued and outstanding Ordinary Shares, subject to dilution by any securities convertible into, exchangeable or exercisable for Ordinary Shares (without giving regard to any conditions to such conversion, exchangeability or exercisability), but not subject to dilution by any unvested securities issued under equity incentive plans or other equity incentive arrangements adopted by the Company from time to time;

**“ERISA”**

has the meaning given to it in Bye-law 14.1;

**“Escrow Letter of Credit Agreement”**

means the Credit Agreement, dated as of December 31, 2020, among Lealand Finance Company B.V., a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid) incorporated under the laws of the Netherlands, the Company, the financial institutions from time to time parties thereto, as Participants (as defined therein), the Issuers (as defined therein) from time to time parties thereto, Credit Agricole Corporate and Investment Bank, as LC Administrative Agent (as defined therein), and Wells Fargo Bank, N.A., as Administrative Agent (as defined therein), as amended on or prior to the date hereof, on the terms thereof as of the date hereof;

**“Exchange Control Act”**

the Exchange Control Act of 1972 of Bermuda, as amended, and applicable regulations thereunder;

<b>“Exit Credit Agreement”</b>	the Credit Agreement, dated as of June 30, 2020, among Lealand Finance Company B.V., a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) incorporated under the laws of the Netherlands, the Company, the financial institutions from time to time parties thereto, as Lenders (as defined therein), the Issuers (as defined therein) from time to time parties thereto, Credit Agricole Corporate and Investment Bank, as LC Administrative Agent (as defined therein), and Barclays Bank PLC, as Term Loan Administrative Agent (as defined therein), as amended on or prior to the date hereof, on the terms thereof as of the date hereof;
<b>“Holder”</b>	a holder of Ordinary Shares (for the avoidance of doubt, excluding street name holders);
<b>“Initial Offering”</b>	the first to occur of (i) an IPO or (ii) a Direct Listing;
<b>“Initiating Transferors”</b>	has the meaning given to it in Bye-law 16.1;
<b>“Interested Director”</b>	has the meaning given to it in Bye-law 54.2;
<b>“IPO”</b>	the closing of the Company’s first firm commitment underwritten public offering of Class A Ordinary Shares pursuant to an effective registration statement under the Securities Act; provided that an IPO shall not include any registration of Class A Ordinary Shares on Form S-4 or S-8 or any similar or successor forms;
<b>“Member”</b>	shall mean as the context requires: (i) the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires, or (ii) to the extent such construction would not be contrary to the provisions of the Act applicable to the registered holders of shares, where shares of the Company are registered in the name of a nominee, the Holder of such shares;
<b>“New Issue Securities”</b>	has the meaning given to it in Bye-law 5.1(a);

<b>“Notice”</b>	written notice as further provided in these Bye-laws unless otherwise specifically stated (provided that, any notice to the Company shall be sent to the Company’s Chief Legal Officer by courier service or registered mail);
<b>“Notice of Acceptance”</b>	has the meaning given to it in Bye-law 5.2;
<b>“NYSE”</b>	has the meaning given to it in Bye-law 1.1;
<b>“NYSE Listing”</b>	a listing of the Company’s issued and outstanding Class A Ordinary Shares on the New York Stock Exchange (“NYSE”);
<b>“Observer”</b>	has the meaning given to it in Bye-law 50.2;
<b>“Officer”</b>	any person appointed by the Board to hold an office in the Company;
<b>“Ordinary Shares”</b>	means together the Class A Ordinary Shares and the Class B Ordinary Shares of the Company in issue from time to time;
<b>“Other Members”</b>	has the meaning given to it in Bye-law 16.1;
<b>“Permitted Investors”</b>	means each Person who is not the Colombian government, an Affiliate of the Colombian government or acting under the control or direction of the Colombian government or any Affiliate thereof. To avoid doubt, EcoPetrol and its directly or indirectly wholly-owned Subsidiaries shall in all cases constitute Permitted Investors;
<b>“PFIC”</b>	has the meaning given to it in Bye-law 68.10;
<b>“Preemptive Offeree”</b>	has the meaning given to it in Bye-law 5.1(a);
<b>“Preemptive Right Notice”</b>	has the meaning given to it in Bye-law 5.1(b);
<b>“Proportionate Percentage”</b>	with respect to any Eligible Member or any Reficar Member, as of the record date with respect to the applicable Preemptive Right Notice, the ratio of the number of Ordinary Shares then owned by such Eligible Member or such Reficar Member to the aggregate number of issued and outstanding Ordinary Shares;
<b>“Proposed Transferee”</b>	has the meaning given to it in Bye-law 15.1;
<b>“QEF”</b>	has the meaning given to it in Bye-law 68.10;

<b>“Qualifying Confidentiality Agreement”</b>	a customary confidentiality agreement reasonably acceptable to the Company, which shall include an agreement in substantially the form attached hereto as <u>Annex A</u> , which shall include an acknowledgement of, and agreement to comply with the provisions of, these Bye-laws, including without limitation, Bye-law 11; provided that a “click through” confidentiality agreement that would otherwise constitute a Qualifying Confidentiality Agreement shall be sufficient as long as the Company’s outside counsel concludes such “click through” confidentiality agreement is enforceable;
<b>“Reficar”</b>	Refineria de Cartagena S.A.S., as holder of the Series B Redeemable Preference Shares or any Class B Ordinary Shares resulting from the conversion thereof;
<b>“Reficar Maximum Control Level”</b>	has the meaning given to it in Bye-law 88.1;
<b>“Reficar Member”</b>	means, as of any time of determination, each of the following persons who, as of such time of determination, holds Series B Redeemable Preference Shares or any Class B Ordinary Shares resulting from the conversion thereof: (a) Reficar and (b) following any Transfer required by Bye-law 89.1 or that is otherwise permitted under these Bye-laws, EcoPetrol and any of its wholly-owned Subsidiaries, in the case of each of the preceding clauses (a) and (b), as holder of the Series B Redeemable Preference Shares or any Class B Ordinary Shares resulting from the conversion thereof;
<b>“Register of Directors and Officers”</b>	the register of Directors and officers of the Company referred to in these Bye-laws;
<b>“Register of Members”</b>	the register of members of the Company referred to in these Bye-laws;
<b>“Related Party”</b>	(a) Affiliates of the Company (other than the Company’s Subsidiaries); and (b) members of the Board and their respective Affiliates and Associates;

<b>“Related Party Transaction”</b>	transactions between the Company and/or any of its Subsidiaries, on the one hand, and a Related Party, on the other hand; provided that no offering of securities that is subject to a Preemptive Rights Notice shall be deemed to be a Related Party Transaction;
<b>“Resident Representative”</b>	any person ordinarily resident in Bermuda appointed to act as resident representative in accordance with the Act and includes any deputy or assistant resident representative;
<b>“RRA”</b>	has the meaning given to it in Bye-law 6.2;
<b>“Secretary”</b>	the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary;
<b>“Securities Act”</b>	the U.S. Securities Act of 1933, as amended;
<b>“Securities Exchange Act”</b>	the U.S. Securities Exchange Act of 1934, as amended;
<b>“Series A Preference Shares”</b>	the Series A preference shares of par value of US\$0.001 each of the Company in issue from time to time, having the rights, restrictions and privileges as set out in the Series A Preference Share Certificate of Designation;
<b>“Series A Preference Share Certificate of Designation”</b>	means that certain third amended and restated certificate of designation in relation to the Series A Preference Shares adopted on November 11, 2024 (as amended and restated from time to time);
<b>“Series B Redeemable Preference Shares”</b>	the Series B redeemable preference shares of par value of US\$0.001 each of the Company in issue from time to time, having the rights, restrictions and privileges as set out in the Series B Redeemable Preference Share Certificate of Designation;
<b>“Series B Redeemable Preference Share Certificate of Designation”</b>	means that certain certificate of designation of Series B Redeemable Preference Shares of the Company adopted on March 25, 2024 (as amended or amended and restated from time to time);

<b>“Specified Party”</b>	has the meaning given to it in Bye-law 84.1;
<b>“Subsidiary”</b>	with respect to any person, any corporation, company or any other business entity (e.g., a joint venture, a general or limited partnership, or a limited liability company), in which such person, one or more Subsidiaries of such person or such person and one or more Subsidiaries of such person, directly or indirectly, at the date of determination, of which more than 50.0% of the total voting power of the equity interests (or, in the case of a joint venture, at least 50.0% of the total voting power of the equity interests) entitled to vote in the election of directors, managers or trustees thereof (or other persons performing such functions) or act as the general partner or managing member of such business entity;
<b>“Transfer”</b>	any transfer, sale, assignment, pledge, encumbrance, hypothecation, granting a security interest of any kind, conveyance in trust, gift, transfer by bequest, devise or descent, or other disposition of any kind, whether directly or indirectly (pursuant to the transfer of an economic or other interest, the creation of a derivative security or otherwise), the grant of an option or other right or the imposition of a restriction on disposition or voting or by operation of law; <i>provided</i> that a Transfer shall not include any indirect Transfer as a result of a Transfer of publicly traded equity securities;
<b>“Transferred Reficar Member”</b>	Has the meaning given to it in Bye-law 89.1;

<b>“Transfer Notice”</b>	an irrevocable notice in writing given by a Reficar Member to the Company providing details of the total issued Series B Redeemable Preference Shares and Class B Ordinary Shares held by such Reficar Member to Transfer (or enter into an agreement to Transfer) to the Company and appointing the Company to act as agent to Transfer the shares identified in such Transfer Notice;
<b>“Transferring Investors”</b>	has the meaning given to it in Bye-law 15.1; and
<b>“Treasury Share”</b>	a share of the Company that was or is treated as having been acquired and held by the Company and has been held continuously by the Company since it was so acquired and has not been cancelled.

1.2. In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and *vice versa*;
- (b) words denoting the masculine gender include the feminine and neuter genders;
- (c) words importing persons and any reference to “person” or “persons” include individuals, corporations, companies, other business entities (e.g., a joint venture, a general or limited partnership or a limited liability company), associations and bodies of persons whether corporate or not;
- (d) the words:
  - (i) “may” shall be construed as permissive; and
  - (ii) “shall” shall be construed as imperative;
- (e) a reference to a statutory provision shall be deemed to include any amendment or re-enactment thereof or successor thereto;
- (f) the word “corporation” means a corporation whether or not a company within the meaning of the Act;
- (g) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws; and
- (h) the exercise of any rights that require a specific level of shareholding shall be subject to Member(s) providing the Company with evidence, reasonably satisfactory to the Company (including customary brokers letters), that such Member is a Holder of the requisite number of shares as of the applicable measurement time.

1.3. In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other

modes of representing words in visible form.

- 1.4. The index to and headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.
- 1.5. In the event of inconsistency between the provisions of these Bye-laws and the Series B Redeemable Preference Share Certificate of Designation, the Series B Redeemable Preference Share Certificate of Designation shall prevail.

## **SHARES**

### **2. POWER TO ISSUE SHARES**

- 2.1. Subject to these Bye-laws (including Bye-law 65.1(c)) and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares, including preference shares in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the terms, including designation, powers, preferences, rights, qualifications, limitation and restrictions of the shares of each such series, whether in regard to dividend, voting, return of capital, or otherwise as the Company may by resolution of the Board prescribe (and, for the avoidance of doubt, where so approved by resolution of the Board, the issuance of any preference shares shall not be deemed to vary the rights attached to the Class A Ordinary Shares or Class B Ordinary Shares or, subject to the terms of any other series of preference shares, to vary the rights attached to any other series of preference shares).
- 2.2. Subject to the Act, any preference shares may be issued or converted into shares that (at a determinable date or at the option of the Company or the holder) are liable to be redeemed on such terms and in such manner as may be determined by the Board (before the issue or conversion).

### **3. POWER OF THE COMPANY TO PURCHASE ITS SHARES**

- 3.1. The Company may purchase its own shares for cancellation or acquire them as Treasury Shares in accordance with the Act on such terms as the Board shall think fit.
- 3.2. The Board may exercise all the powers of the Company to purchase or acquire all or any part of its own shares in accordance with the Act.

### **4. RIGHTS ATTACHING TO ORDINARY SHARES**

- 4.1. At the date these Bye-laws are adopted, the share capital of the Company shall be divided into:  
(i) Series A Preference Shares and Series B Redeemable Preference Shares, the holders of which shall have the rights set out in the Series A Preference Share Certificate of Designation and Series B Redeemable Preference Share Certificate of Designation respectively, and (ii) Class A Ordinary Shares and Class B Ordinary Shares, the holders of which shall, subject to these Bye-laws, have the following rights:

- (a) holders of Class A Ordinary Shares shall:

- (i) be entitled to one vote per Class A Ordinary Share;
  - (ii) be entitled to such dividends and other distributions, on a pro rata basis with the holders of Class B Ordinary Shares, as the Board may from time to time declare with respect to the Class A Ordinary Shares;
  - (iii) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled, with the holders of Class B Ordinary Shares, to a pro rata portion of the surplus assets of the Company (after any distributions on shares that have a preference to the Class A Ordinary Shares, and on a *pari passu* basis with any shares that are *pari passu* with the Class A Ordinary Shares, including the Class B Ordinary Shares); and
  - (iv) generally be entitled to enjoy all of the rights attaching to shares.
- (b) holders of Class B Ordinary Shares shall:
- (i) not be entitled to any voting rights on, and no voting rights shall attached to, the Class B Ordinary Shares (including having no entitlement to vote on Discretionary Consent Matters), except to the extent required by applicable Law;
  - (ii) be entitled to such dividends and other distributions, on a pro rata basis with the holders of Class A Ordinary Shares, as the Board may from time to time declare with respect to the Class B Ordinary Shares;
  - (iii) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled, with the holders of Class A Ordinary Shares, to a pro rata portion of the surplus assets of the Company (after any distributions on shares that have a preference to the Class B Ordinary Shares, and on a *pari passu* basis with any shares that are *pari passu* with the Class B Ordinary Shares, including the Class A Ordinary Shares);
  - (iv) have their Class B Ordinary Shares converted into Class A Ordinary Shares in accordance with Bye-law 14.6;
  - (v) be entitled to receive the same consideration per Class B Ordinary Share in any Company Sale as that payable to the per Class A Ordinary Share to holders of the Class A Ordinary Shares; and
  - (vi) subject to Bye-law 4.1(b)(i), generally be entitled to enjoy all of the rights attaching to shares.

4.2. At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any

person or persons owning or offering to acquire a specified number or percentage of the issued and outstanding Ordinary Shares, other shares, option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.

- 4.3. All the rights attaching to a Treasury Share shall be suspended and shall not be exercised by the Company while it holds such Treasury Share and, except where required by the Act, all Treasury Shares shall be excluded from the calculation of any percentage or fraction of the share capital, or shares, of the Company.
- 4.4. Unless otherwise specifically provided for herein, the Class B Ordinary Shares shall not be counted for purposes of calculating any quorums or the satisfaction of any voting or consent thresholds.

## 5. PREEMPTIVE RIGHTS

- 5.1. Subject to the exceptions set forth in Bye-laws 5.5 and 5.7 below:
  - (a) The Company shall not issue (or in the case of shares held in treasury by the Company, sell) shares in the Company, any option, warrant or other right to subscribe for, purchase or otherwise acquire shares in the Company, or any securities convertible, exchangeable or exercisable for or into, shares in the Company, in each case unless the Company shall have first offered to sell such securities (the "New Issue Securities") to each Eligible Member and Reficar Member as determined based on a record date to be set by the Company as reasonably close to the date of the Preemptive Right Notice as possible ("Preemptive Offeree") as set out in Bye-law 5.1(b) below.
  - (b) The Company shall offer to sell to each Preemptive Offeree its Proportionate Percentage of any proposed issuance of New Issue Securities at the same price and on the same terms (excluding, for the avoidance of doubt, any backstop or similar commitment fees solely payable in cash) at which the Company proposes to sell such New Issue Securities, which price and terms shall have been specified by the Company in a written offer delivered to the Preemptive Offerees setting forth all of the terms and conditions of the offering of the New Issue Securities (the "Preemptive Right Notice"), which offer by its terms shall remain open and irrevocable for a period of thirty (30) days from receipt of the Preemptive Right Notice. The offer of the Company to sell the New Issue Securities shall expire after such thirty (30) day period.
- 5.2. Notice of Acceptance. Within thirty (30) days after receipt of the Preemptive Right Notice, the Preemptive Offeree shall give notice to the Company of its intent to accept (a "Notice of Acceptance") the Company's offer to purchase up to its Proportionate Percentage of New Issue Securities, which communication shall be delivered to the Company in writing. If the Company does not receive a Notice of Acceptance within such thirty (30)-day period with respect to any New Issue Securities, such Preemptive Offeree shall be deemed to have waived its opportunity to purchase such New Issue Securities, and the Company shall be free to issue and sell such New Issue Securities to any person at the same price and otherwise on terms and conditions substantially as set forth in the Preemptive Right Notice (but in no event more favourable in the

aggregate to any such person), at any time within ninety (90) days after the expiration of such thirty (30)-day period. Any New Issue Securities not sold (or under contract to be sold) within ninety (90) days after the expiration of such thirty (30)-day period shall again become subject to the requirements of this Bye-law 5.

- 5.3. Closing. Upon the closing of any such purchase of New Issue Securities, which shall include full payment to the Company of the purchase price therefor, which shall not be less than the par value of such New Issue Securities, the Preemptive Offeree shall subscribe for, and the Company shall allot and issue to such Preemptive Offeree, the number of New Issue Securities specified in the Preemptive Offeree's Notice of Acceptance, upon the terms and conditions specified in the Preemptive Right Notice.
- 5.4. Assignability. A Preemptive Offeree, other than a Reficar Member, may assign its right to purchase up to its Proportionate Percentage of the Ordinary Shares to any person or persons (whether or not a Member) pursuant to a written assignment and Notice of Acceptance delivered to the Company prior to the end of the thirty (30)-day exercise window; *provided* that the acquisition by such person of the New Issue Securities shall not violate Bye-law 14.
- 5.5. Exceptions. The rights of the Preemptive Offerees under this Bye-law 5 shall not apply to any New Issue Securities issued:
- (a) as a pro rata bonus issue to holders of Ordinary Shares or upon any pro rata subdivision, combination or similar recapitalization of shares;
  - (b) pursuant to the exercise, conversion or exchange of any convertible or exchangeable securities, rights, options or warrants;
  - (c) in connection with an Initial Offering and subsequent public offerings;
  - (d) in connection with the Company's (A) acquisition of another person by amalgamation or merger or (B) purchase of assets or of share capital (or other equity interest) of another person, in each case in a bona fide, arms' length transaction, in each case approved by the Board;
  - (e) in connection with bona fide, arms' length debt financings, corporate partnering transactions or equipment leases, in each case, approved by the Board;
  - (f) as options or warrants in connection with bona fide, arms' length borrowings or lease financings approved by the Board, or as shares issued upon exercise, conversion or exchange of such options or warrants;
  - (g) in connection with the conversion of (A) the Series B Redeemable Preference Shares to Class B Ordinary Shares in accordance with the terms of the Series B Redeemable Preference Shares Certificate of Designation; or (B) any Class B Ordinary Shares converted into Class A Ordinary Shares pursuant to Bye-law 14.5;
  - (h) pursuant to the exercise of the right to purchase set forth in Section 10 of the Series B Redeemable Preference Share Certificate of Designation, which right shall, for the avoidance of doubt, apply prior to the rights of Preemptive Offerees under this Bye-law 5;

- (i) to the Company's or any of its Subsidiaries' employees, consultants, directors, or officers (or a bona fide estate planning vehicle of any of the foregoing) pursuant to the Company's share option plan or other equity incentive plan or arrangement approved by the Board;
- (j) to each of the Company's Directors in connection with such Director agreeing to subscribe for such shares for cash in connection with such Director's election or appointment to the Board in an amount not to exceed \$500,000 per Director; *provided* that such subscription is on terms at least as favourable to the Company as arms'-length terms; and
- (k) as Series B Redeemable Preference Shares to Reficar or Series A Preference Shares to any person, in each case in connection with the United Kingdom restructuring proceedings or Dutch restructuring proceedings being undertaken by the Company and its Subsidiaries on or around the date of these Bye-laws.

5.6. The rights and obligations set forth in this Bye-law 5 shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.

5.7. Notwithstanding anything to the contrary in this Bye-law 5, if a Reficar Member exercises its preemptive rights pursuant to this Bye-law 5 (regardless of the terms of the New Issue Securities issued to other Preemptive Offerees or other persons), the Reficar Member and its Affiliates and Associates (a) will only be entitled to acquire non-voting shares of the Company that only convert to voting shares of the Company on substantially the same terms and conditions as the Class B Ordinary Shares convert to Class A Ordinary Shares and (b) shall not be entitled to receive or acquire shares as a result of the exercise of its preemptive rights which results in all Reficar Members (together with any of their respective Affiliates and Associates) exceeding the Reficar Maximum Control Level (as defined in Bye-law 88.1).

5.8. In connection with any issuances of New Issue Securities to which this Bye-law 5 applies, the Company shall provide each Reficar Member access to the same "cleansing" or similar materials provided to other Preemptive Offerees acquiring New Issue Securities in the relevant transaction and made public in connection with the consummation of such transaction; *provided that* the Company shall be entitled to redact portions of any such materials to the extent that the Company determines that such redaction is reasonably necessary to protect competitively sensitive information or to preserve attorney-client or other legal privilege.

## **6. IPO & REGISTRATION RIGHTS**

6.1. Concurrently with the consummation of the Initial Offering, the Company shall provide the opportunity to enter into a registration rights agreement (the "RRA") with each Member that is, together with its Affiliates, the Holder of at least two percent (2%) of the issued and outstanding Ordinary Shares (which, in the case of the Series B Redeemable Preference Shares, shall be calculated on an as converted basis) as of a record date immediately after the Initial Offering and elects to enter into such RRA (provided that such Holder becomes the record holder of such Ordinary Shares), providing for the registration of the Ordinary Shares held of record by such Members as of such date under the Securities Act on customary terms as reasonably determined by the Board, including the following:

- (a) unlimited demand rights beginning six months after the Initial Offering for each Holder that,

- together with its Affiliates, is the record holder of at least five percent (5%) of the issued and outstanding Ordinary Shares (which, in the case of the Series B Redeemable Preference Shares, shall be calculated on an as converted basis) as of the date immediately after the closing of the Initial Offering and as of the exercise of the demand right, whether or not such shares are freely transferable under Rule 144 of the Securities Act, *provided* that no more than two demand registrations in the aggregate for all Members may be required by the Members per year and no demand registration shall be with respect to Ordinary Shares having an anticipated aggregate offering price of less than US\$40 million;
- (b) unlimited piggyback rights immediately following the Initial Offering on both primary and secondary offerings of shares owned as of the record date with the Company taking priority in any primary offering where piggyback registration rights have been exercised and the Members holding Ordinary Shares requesting registration taking priority in any offering where demand registration rights have been exercised;
  - (c) blackout periods for the Company of one hundred and twenty (120) days in aggregate and not more than three times in any twelve (12)-month period;
  - (d) the right to select underwriters for any underwritten offering undertaken pursuant to the exercise of demand rights, subject to the consent of the Company;
  - (e) *pro rata* cutbacks among the participating Members (based on the number of Ordinary Shares each participating Member seeks to include in such offering), *provided* that participating Members shall only be subject to cutbacks in an offering conducted pursuant to the exercise of demand registration rights if shares to be sold by the Company are excluded first, if the lead manager determines that the inclusion of all of the shares of the Company in an underwritten offering will have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered;
  - (f) minimum transfer threshold for registration rights of at least two percent (2%) of the issued and outstanding Ordinary Shares (which, in the case of the Series B Redeemable Preference Shares, shall be calculated on an as converted basis);
  - (g) customary covenants and indemnification obligations of the Company in connection with registration of Ordinary Shares pursuant to Bye-laws 6.1(a) and 6.1(b); and
  - (h) to the maximum extent permitted by applicable law, the obligation for the Company to bear all out-of-pocket registration costs and expenses (exclusive of underwriting discounts and commissions payable by the selling Members and, with respect to costs and expenses of legal counsel, limited to the reasonable costs and expenses of one outside counsel representing all such Members).

## 7. SHARE CERTIFICATES

- 7.1. Every Member registered in the Register of Members shall be entitled to a certificate under the common seal (or a facsimile thereof) of the Company or bearing the signature (or a facsimile thereof) of a Director or the Secretary or a person expressly authorised to sign specifying the

number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means.

- 7.2. The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so in writing by the person to whom the shares have been allotted.
- 7.3. If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid or destroyed, the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.
- 7.4. Notwithstanding any provisions of these Bye-laws, the Board shall, subject always to the Act and any other applicable laws and regulations and the facilities and requirements of any relevant system concerned (including without limitation DTC), have power to implement any arrangements it may, in its absolute discretion, think fit in relation to the evidencing of title to and transfer of uncertificated shares and, to the extent such arrangements are so implemented, no provision of these Bye-laws shall apply or have effect to the extent that it is in any respect inconsistent with the holding or transfer of shares in uncertificated form.

## **8. FRACTIONAL SHARES**

The Company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of whole shares including (but without limiting the generality of the foregoing or modifying any other limitations in these Bye-laws) the right to vote, to receive dividends and distributions and to participate in a winding-up.

## **REGISTRATION OF SHARES**

### **9. REGISTER OF MEMBERS**

- 9.1. The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.
- 9.2. The Register of Members shall be open to inspection without charge at the registered office of the Company on every Business Day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each Business Day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty (30) days in each year.

### **10. REGISTERED HOLDER ABSOLUTE OWNER**

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person.

### **11. BENEFICIAL OWNERSHIP REGISTER AND DISCLOSURE**

- 11.1. To the extent required by the Act, the Company shall establish and maintain a beneficial ownership register (if so applicable) and shall enter in such beneficial ownership register the minimum particulars required by Section 98H(2) of the Act.
- 11.2. Members shall make such notifications to the Company regarding their beneficial ownership in any securities of the Company as they are required to make under all applicable rules and regulations to which the Company is subject.
- 11.3. The provisions of this Bye-law 11 are in addition to, and separate from, any other rights or obligations arising under the Act, these Bye-laws or otherwise.
- 11.4. The Company shall have the ability but not the obligation to cause all holders of Ordinary Shares and/or warrants to become record holders of Ordinary Shares and/or warrants, as applicable, in the event that it is necessary to ensure compliance with applicable law and/or to ensure the enforceability, implementation and effectiveness of these Bye-laws without unreasonable effort or expense.

**12. TRANSFER OF REGISTERED SHARES**

- 12.1. An instrument of transfer in respect of a registered share shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares

**McDermott International, Ltd** (the “Company”)

FOR VALUE RECEIVED..... [amount], I, [name of transferor] hereby sell, assign and transfer unto [transferee] of [address], [number] of [share(s)] of the Company.

DATED this [date]

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferor

Witness

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferee

Witness

- 12.2. Such instrument of transfer shall be signed by (or in the case of a party that is a corporation, on behalf of) the transferor and transferee, provided that, in the case of a fully paid share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been registered as having been transferred to the transferee in the Register of Members.

- 12.3. The Board shall refuse to register the transfer of any share unless such transfer is made in accordance with these Bye-laws, including without limitation Bye-laws 14, 15, and 16. The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require showing the right of the transferor to make the transfer.
- 12.4. The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.
- 12.5. The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained. If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.
- 12.6. Notwithstanding anything to the contrary in these Bye-laws, shares that are listed or admitted to trading on an appointed stock exchange may be transferred in accordance with the rules and regulations of such exchange.

### **13. TRANSMISSION OF REGISTERED SHARES**

- 13.1. In the case of the death of a Member that is a natural person, the survivor or survivors where such deceased Member was a joint holder, and the legal personal representatives of the deceased Member where such deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to such deceased Member's interest in the registered shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any registered share which had been jointly held by such deceased Member with other persons. Subject to the Act, for the purpose of this Bye-law, "legal personal representative" means the executor or administrator of a deceased Member or such other person as the Board may, in its absolute discretion, decide as being properly authorised to deal with the registered shares of a deceased Member.
- 13.2. Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in writing in the form, or as near thereto as circumstances admit, of the following:

Transfer by a Person Becoming Entitled on Death/Bankruptcy of a Member

**McDermott International, Ltd** (the "Company")

I/We, having become entitled in consequence of the [death/bankruptcy] of  
[name and address of deceased/bankrupt Member] to [number] [share(s)]  
standing in the Register of Members of the Company in the name of the

said [name of deceased/bankrupt Member] instead of being registered myself/ourselves, elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee, his or her executors, administrators and assigns, subject to the conditions on which the same were held at the time of the execution hereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [date]

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferor

Witness

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferee

Witness

- 13.3. On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.
- 13.4. Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to such share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

## **RESTRICTIONS ON TRANSFER OF SHARES**

### **14. RESTRICTED TRANSFERS**

- 14.1. No Member may Transfer any shares or securities of the Company (including any beneficial interest therein), and no Member may acquire any shares or securities of the Company:
- (a) which would result in a person, directly or indirectly, becoming the beneficial owner of (i) ten percent (10%) or more of the issued and outstanding Ordinary Shares or (ii) more than twenty five percent (25%) of the issued and outstanding Ordinary Shares, until (A) such ownership has been disclosed in writing to the Company and (B) suitable "know your client" identification information has been provided to the Company, in each case to enable the Company to fulfil its obligations pursuant to all applicable laws;
  - (b) to a Competitor, without the prior consent of the Board;

- (c) (i) in violation of Bye-law 16 or (ii) if the Drag Along Right is exercised, without complying with Bye-law 15;
  - (d) which would violate applicable law (including Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions, in each case as defined in the Exit Credit Agreement);
  - (e) which would cause the Company to be subject to registration requirements under the Investment Company Act of 1940;
  - (f) which would require the registration of such Ordinary Shares (or the Transfer thereof) pursuant to any applicable securities laws of the jurisdiction; or
  - (g) which would be a non-exempt “prohibited transaction” under the Employment Retirement Income Security Act (“ERISA”) or the U.S. Internal Revenue Code of 1986, as amended (the “Code”) or cause all or any portion of the assets of the Company to constitute “plan assets” under ERISA or Section 4975 of the Code.
- 14.2. In addition to the restrictions contained in Bye-law 14.1, without the prior written consent of the Company, neither Reficar nor any other Reficar Member may Transfer any Class B Ordinary Shares or Series B Redeemable Preference Shares (including any beneficial interest therein) except (a) in a Transfer to EcoPetrol required pursuant to Bye-law 89.1 or (b) in a Transfer to a Permitted Investor. Following the Initial Offering, any Transfer as part of an underwritten public offering or as part of a sale on any market where the Ordinary Shares are then listed or admitted for trading shall be deemed to constitute a Transfer to a Permitted Investor unless the transferor knows or has reason to believe that such Transfer is to a person that would not constitute a Permitted Investor.
- 14.3. Any Transfer or purported Transfer made by a Member in violation of Bye-laws 14.1 or 14.2 shall be null and void and of no effect (ab initio) and the purported transferee of any such Transfer shall not be entitled to exercise any rights attaching to the Ordinary Shares, including without limitation, the right to vote or receive dividends or distributions.
- 14.4. The restrictions on Transfers set forth in this Bye-law 14 (other than Bye-law 14.2) shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.
- 14.5. Subject to Bye-laws 14.1, 14.2, 15 and 16, nothing herein shall prohibit a Member from Transferring any or all of its Ordinary Shares to its Affiliates or Associates.
- 14.6. Subject to Bye-law 14.1 and 14.2 and conditional upon satisfaction of any requirements under the Exchange Control Act (if applicable), upon Reficar Transferring any Class B Ordinary Shares to any person other than Reficar or any of its Affiliates (including any Reficar Member), without any further action on the part of any person, each such Class B Ordinary Share being Transferred shall automatically be converted upon completion of such Transfer into a Class A Ordinary Share (and one undesignated share comprised in the authorized but unissued undesignated shares of the Company shall automatically be designated as such Class A Ordinary Share). Upon the conversion of the Class B Ordinary Share into a Class A Ordinary Share the resulting unissued Class B Ordinary Share shall automatically be designated as an undesignated share in the authorized but unissued share capital of the Company.

## 15. DRAG ALONG RIGHTS

- 15.1. If at any time or from time to time Members holding at least sixty-six and two thirds percent (66 2/3%) of the issued and outstanding Class A Ordinary Shares (on an as-converted basis) (the “Transferring Investors”) wish to cause a Company Sale to any person or persons who are not Affiliates of such Transferring Investors (for the purposes of this Bye-law 15, the “Proposed Transferee”) solely for cash or other marketable securities, the Transferring Investors shall have the right (the “Drag Along Right”), subject to applicable law and compliance with Bye-law 14.1 (other than Bye-law 14.1(b)) with respect to such Transfer, to require all (but not less than all) other Members to sell, pursuant to Bye-law 15.2, to the Proposed Transferee a portion of the Ordinary Shares (including any Class B Ordinary Shares) then owned by such other Members equal to the portion of the Ordinary Shares then owned by the Transferring Investors that are being Transferred by the Transferring Investors in such Company Sale. Each Member agrees to take all steps reasonably necessary to enable such Member to comply with the provisions of this Bye-law 15.1.
- 15.2. To exercise the Drag Along Right, the Transferring Investors shall give each other Member and the Company a written notice at least fifteen (15) Business Days prior to the date of the proposed Transfer (for purposes of this Bye-law 15.2, a “Drag Along Notice”) containing (a) a statement that the Proposed Transferee proposes to acquire all or the applicable portion of the Ordinary Shares then owned by the Transferring Investors and the other Members, (b) the identity and address of the Proposed Transferee and (c) the proposed purchase price, terms of payment and other material terms and conditions of the Proposed Transferee’s offer. The Company and each other Member shall keep confidential the contents of the Drag Along Notice. Each Member shall thereafter be obligated, subject to applicable law, to sell the applicable number of Ordinary Shares owned by such Member as provided in such Drag Along Notice, provided that (i) such Member receives the same form and amount of consideration as the Transferring Investors on a per Ordinary Share basis, (ii) the same terms apply to all holders of Ordinary Shares, (iii) such Member is required to make representations and warranties only as to its capacity and authority to make the sale and title to the Ordinary Shares being sold by such Member, (iv) any liability of such Member in connection with the sale is limited to the actual proceeds received by such Member pursuant to the sale, (v) no Member or any of its Affiliates shall be required to agree to any restrictive covenants in connection with such sale (other than customary confidentiality covenants), (vi) the sale to the Proposed Transferee is consummated within one hundred and eighty (180) days of the date that such Drag Along Notice is deemed to have been given and (vii) suitable “know your client” identification information of a type described in 14.1(a)(B) has been provided to such Member. If the sale is not consummated within such one hundred and eighty (180) day period, then each Member shall no longer be obligated to sell such Member’s Ordinary Shares pursuant to that specific Drag Along Right but shall remain subject to the provisions of this Bye-law 15.2 with respect to any subsequent exercise of the Drag Along Right.
- 15.3. Any liability arising in respect of a transaction with respect to which the Drag Along Right is exercised pursuant to this Bye-law 15:
- (a) with respect to any representations, warranties and covenants solely relating to a Member shall be borne only by such Member;

- (b) otherwise should be several and not joint and also limited to such Member's pro rata percentage ownership interest (and the amount of proceeds received by such Member); and
- (c) except as set forth in Bye-law 15.3(a), shall be limited to amounts held in escrow (other than, in each case, in the case of actual and intentional fraud of such Member).

15.4. The rights and obligations set forth in this Bye-law 15 shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.

**16. TAG ALONG RIGHTS**

16.1. If at any time or from time to time one or more Members (the "Initiating Transferors") wish to Transfer for value, in one transaction or a series of related transactions (other than an IPO), more than fifty-percent (50%) of the issued and outstanding Ordinary Shares (on an as-converted basis) other than to any Affiliate of all of the Initiating Transferors, such Initiating Transferors shall notify each other Member holding Ordinary Shares (the "Other Members") and the Company, in writing, of such Transfer and its terms and conditions, which the Company and the Other Members shall keep confidential. Each of the Other Members shall have the right to participate in such Transfer at the same price and on the same terms and conditions as the Initiating Transferors on a pro-rated basis equal to the number of Ordinary Shares the purchaser actually proposes to purchase multiplied by a fraction, the numerator of which shall be the number of Ordinary Shares owned by such Other Member in the aggregate and the denominator of which shall be the aggregate number of issued and outstanding Ordinary Shares in the aggregate (provided that each Other Member (i) shall only be required to make representations and warranties as to its capacity and authority to make the sale and title to the Ordinary Shares being sold by such Member, and (ii) shall not be required to agree to any restrictive covenants in connection with such sale (other than customary confidentiality covenants)). The Other Members and their respective Affiliates shall not be required to agree to any restrictive covenants in connection with such sale (other than customary non-disclosure covenants). For the avoidance of doubt, the Other Members shall have the right to rescind their election to participate in such Transfer if there is a change in the terms and conditions of the Transfer. If such purchaser fails to purchase Ordinary Shares from any such Other Member that has validly exercised its tag along rights pursuant to this Bye-law 16.1, then the Initiating Transferors shall not be permitted to consummate the sale, and any such attempted sale shall be null and void.

16.2. Any such tag-along Transfer shall be consummated by means of a tender offer to the Other Members in accordance with applicable securities laws (including Regulation 14D and Regulation 14E under the Exchange Act), the Exchange Control Act (if applicable) and these Bye-laws.

16.3. Any liability arising in respect of this Bye-law 16:

- (a) with respect to representations, warranties and covenants solely relating to a Member shall be borne only by such Member; and
- (b) otherwise should be several and not joint and also limited to such Other Member's pro rata percentage ownership interest (and the amount of proceeds received by such Other Member).

- 16.4. The rights and obligations set forth in this Bye-law 16 shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.

### **ALTERATION OF SHARE CAPITAL**

#### **17. POWER TO ALTER CAPITAL**

- 17.1. The Company may if authorised by resolution of the Members increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Act.
- 17.2. Where, on any alteration or reduction of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit.

#### **18. VARIATION OF RIGHTS ATTACHING TO SHARES**

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of not less than seventy-five percent (75%) of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. The rights conferred upon the holders of the shares of any class or series issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class or series, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith or senior thereto.

### **DIVIDENDS AND CAPITALISATION**

#### **19. DIVIDENDS**

- 19.1. The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members holding Ordinary Shares, in proportion to the number of shares of such class held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.
- 19.2. Subject to applicable law, the Board may fix any date as the record date for determining the Members entitled to receive any dividend.
- 19.3. The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- 19.4. The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. No unpaid distribution shall bear interest as against the Company.

#### **20. POWER TO SET ASIDE PROFITS**

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such amount as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

## **21. METHOD OF PAYMENT**

- 21.1. Any dividend, interest, or other moneys payable in cash in respect of the shares may be paid by cheque or bank draft sent through the post directed to each applicable Member at such Member's address in the Register of Members, or to such person and to such address as such Member may direct in writing, or by transfer to such account as such Member may direct in writing or as otherwise provided by the clearing system through which the Company's shares clear, including DTC.
- 21.2. In the case of joint holders of shares, any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or bank draft sent through the post directed to the address of the holder first named in the Register of Members, or to such person and to such address as the joint holders may direct in writing, or by transfer to such account as the joint holders may direct in writing. If two or more persons are registered as joint holders of any shares any one can give an effectual receipt for any dividend paid in respect of such shares.
- 21.3. The Board may deduct from the dividends or distributions payable to any Member all moneys due from such Member to the Company on account of calls or otherwise.

## **22. CAPITALISATION**

- 22.1. The Board may capitalise any amount for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such amount in paying up unissued shares to be allotted as fully paid bonus shares pro rata to the Members.
- 22.2. The Board may capitalise any amount for the time being standing to the credit of a reserve account or amounts otherwise available for dividend or distribution by applying such amounts in paying up in full, partly or nil paid shares of those Members who would have been entitled to such amounts if they were distributed by way of dividend or distribution.

## **MEETINGS OF MEMBERS**

### **23. ANNUAL GENERAL MEETINGS**

An annual general meeting for Members having the right to vote shall be held in each year (other than the year of incorporation) at such time and place as the CEO or the chairman of the Company (if any) or any two Directors or any Director and the Secretary or the Board shall appoint.

### **24. SPECIAL GENERAL MEETINGS**

- 24.1. The CEO or the chairman of the Company (if any) or any two Directors or any Director and the Secretary or the Board may convene a special general meeting for Members having the right to vote whenever in their judgment such a meeting is necessary.

- 24.2. The Advisory Committee may cause the Board to convene a special general meeting for Members having the right to vote whenever in their judgment such a meeting is necessary.

## **25. REQUISITIONED GENERAL MEETINGS**

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth (10%) of such of the paid-up share capital of the Company as at the date of the deposit carries the right to vote at general meetings, forthwith proceed to convene a special general meeting and the provisions of the Act shall apply.

## **26. NOTICE**

- 26.1. At least thirty (30) days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat in accordance with Bye-law 27, stating the date, place and time at which the meeting is to be held, that the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.
- 26.2. At least fifteen (15) days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat in accordance with Bye-law 27, stating the date, time, place and the general nature of the business to be considered at the meeting.
- 26.3. The Board may fix a date as the record date that is no more than sixty (60) days and no less than ten (10) days prior to the meeting date for determining the Members entitled to receive notice of and to vote at any general meeting.
- 26.4. A general meeting shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) in the case of an annual general meeting, all the Members entitled to attend and vote thereat or (ii) in the case of a special general meeting, the Members holding, in the aggregate, not less than 95% in nominal value of the shares giving a right to attend and vote thereat.
- 26.5. The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **27. GIVING NOTICE AND ACCESS**

- 27.1. A notice may be given by the Company to a Member:
- (a) by delivering it to such Member in person, in which case the notice shall be deemed to have been served upon such delivery;
  - (b) by sending it by post to such Member's address in the Register of Members, in which case the notice shall be deemed to have been served ten (10) days after the date on which it is deposited, with postage prepaid, in the mail;
  - (c) by sending it overnight by courier to such Member's address in the Register of Members, in which case the notice shall be deemed to have been served two (2) days after the date on which it is deposited, with courier fees paid, with the courier service;

- (d) by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by such Member to the Company for such purpose, in which case the notice shall be deemed to have been served at the time that it would in the ordinary course be transmitted;
- (e) by delivering it in accordance with the provisions of the Act pertaining to delivery of electronic records by publication on a website, in which case the notice shall be deemed to have been served at the time when the requirements of the Act in that regard have been met; or
- (f) by delivering it in accordance with any other method which is reasonably consistent with the giving of notice to beneficial owners by other companies whose securities are cleared through DTC.

Notwithstanding the foregoing, any notice to Members shall be also delivered to each Holder in accordance with clause (f) above.

- 27.2. Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.
- 27.3. In proving service under Bye-laws 27.1(b), (c) and (d), it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted or sent by courier, and the time when it was posted, deposited with the courier, or transmitted by electronic means.

## **28. POSTPONEMENT OF GENERAL MEETING**

The Secretary may postpone any general meeting called in accordance with these Bye-laws (other than a meeting requisitioned under these Bye-laws under Bye-law 24.2 or 25) provided that notice of postponement is given to the Members before the time for such meeting. Fresh notice of the date, time and place for the postponed meeting shall be given to each Member in accordance with Bye-law 27.

## **29. ELECTRONIC PARTICIPATION IN MEETINGS**

Members entitled to vote may participate in any general meeting by such telephonic, electronic or other communication facilities or 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.

## **30. QUORUM AT GENERAL MEETINGS**

- 30.1. At any general meeting two or more persons present in person and representing in person or by proxy in excess of fifty percent (50%) of the total issued voting shares in the Company throughout the meeting shall form a quorum for the transaction of business, provided that if the Company shall at any time have only one Member, one Member present in person or by proxy shall form a quorum for the transaction of business at any general meeting held during such time.
- 30.2. If within half an hour from the time appointed for the meeting a quorum is not present, then, in the

case of a meeting convened on a requisition, the meeting shall be deemed cancelled and, in any other case, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Secretary may determine. Unless the meeting is adjourned to a specific date, time and place announced at the meeting being adjourned, fresh notice of the resumption of the meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

**31. DIRECTOR TO PRESIDE AT GENERAL MEETINGS**

In advance of any general meeting, the Board shall appoint a Director to act as chairman of the meeting. In his or her absence, a chairman of the meeting shall be appointed or elected by those present at the meeting and entitled to vote.

**32. VOTING ON RESOLUTIONS**

- 32.1. Subject to the Act and these Bye-laws (including Bye-law 80.2), any question proposed for the consideration of the Members (including a Discretionary Consent Matter pursuant to Bye-law 65) at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with these Bye-laws and in the case of an equality of votes the resolution shall fail.
- 32.2. At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to these Bye-laws, every Member having the right to vote and present in person and every person holding a valid proxy for a voting share at such meeting shall be entitled to one vote and shall cast such vote by raising his hand.
- 32.3. In the event that a Member having the right to vote participates in a general meeting by telephone, electronic or other communication facilities or means, the chairman of the meeting shall direct the manner in which such Member may cast his vote on a show of hands.
- 32.4. At any general meeting if an amendment is proposed to any resolution under consideration and the chairman of the meeting rules on whether or not the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.
- 32.5. At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to these Bye-laws, be conclusive evidence of that fact.

**33. POWER TO DEMAND A VOTE ON A POLL**

- 33.1. Notwithstanding the foregoing, a poll may be demanded by any of the following persons:
  - (a) the chairman of such meeting; or
  - (b) at least three Members having the right to vote present in person or represented by proxy; or
  - (c) any Member or Members present in person or represented by proxy and holding between

them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or

- (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total amount paid up on all such shares conferring such right.

33.2. Members having the right to vote may nominate one or more persons for election as directors via a poll in accordance with Bye-law 40.2.

33.3. Where a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares, every person having the right to vote and present at such meeting shall have one vote for each share of which such person is the holder or for which such person holds a proxy and such vote shall be counted by ballot as described herein, or in the case of a general meeting at which one or more Members entitled to vote are present by telephone, electronic or other communication facilities or means, in such manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

33.4. A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment, subject to the requirements of Section 33.2, shall be taken forthwith. A poll demanded on any other question shall, subject to the requirements of Section 33.2, be taken at such time and in such manner during such meeting as the chairman (or acting chairman) of the meeting may direct. Any business other than that upon which a poll has been demanded may be conducted pending the taking of the poll.

33.5. Where a vote is taken by poll, each person physically present and entitled to vote shall be furnished with a ballot paper on which such person shall record his vote in such manner as shall be determined at the meeting having regard to the nature of the question on which the vote is taken, and each ballot paper shall be signed or initialled or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. Each person having the right to vote and present by telephone, electronic or other communication facilities or means shall cast his vote in such manner as the chairman of the meeting shall direct. At the conclusion of the poll, the ballot papers and votes cast in accordance with such directions shall be examined and counted by a committee of not less than two Members having the right to vote or proxy holders appointed by the chairman of the meeting for the purpose and the result of the poll shall be declared by the chairman of the meeting.

#### **34. VOTING BY JOINT HOLDERS OF SHARES**

In the case of joint holders, 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 of Members.

**35. INSTRUMENT OF PROXY**

- 35.1. An instrument appointing a proxy shall be in writing in substantially the following form or such other form as the chairman of the meeting shall accept:

Proxy

**McDermott International, Ltd** (the “Company”)

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on [date] and at any adjournment thereof. [Any restrictions on voting to be inserted here.]

Signed this [date]

\_\_\_\_\_  
Member(s)

- 35.2. The instrument appointing a proxy must be received by the Company at the registered office of the Company or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the instrument appointing a proxy proposes to vote, and an instrument appointing a proxy which is not received in the manner so prescribed shall be invalid.
- 35.3. A Member having the right to vote who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf in respect of different shares.
- 35.4. The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

**36. REPRESENTATION OF CORPORATE MEMBER**

- 36.1. A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting and any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.
- 36.2. Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

**37. ADJOURNMENT OF GENERAL MEETING**

The chairman of a general meeting may, with the consent of the Members at any general meeting at which a quorum is present, and shall if so directed by the Members entitled to vote, adjourn the

meeting. Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

### **38. WRITTEN RESOLUTIONS**

- 38.1. Subject to these Bye-laws, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may be done without a meeting by written resolution in accordance with this Bye-law.
- 38.2. Notice of a written resolution shall be given, and a copy of the resolution shall be circulated to all Members who would be entitled to attend a meeting and vote thereon. The accidental omission to give notice to, or the non-receipt of a notice by, any Member does not invalidate the passing of a resolution.
- 38.3. A written resolution is passed when it is signed by (or in the case of a Member that is a corporation, on behalf of) the Members who at the date that the notice is given represent such majority of votes as would be required if the resolution was voted on at a meeting of Members at which all Members entitled to attend and vote thereat were present and voting.
- 38.4. A resolution in writing may be signed in any number of counterparts.
- 38.5. A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be, and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly.
- 38.6. A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of the Act.
- 38.7. This Bye-law shall not apply to:
  - (a) a resolution passed to remove an Auditor from office before the expiration of his term of office; or
  - (b) a resolution passed for the purpose of removing a Director before the expiration of his term of office.
- 38.8. For the purposes of this Bye-law, the effective date of the resolution is the date when the resolution is signed by (or in the case of a Member that is a corporation, on behalf of) the last Member whose signature results in the necessary voting majority being achieved and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.

### **39. DIRECTORS ATTENDANCE AT GENERAL MEETINGS**

The Directors shall be entitled to receive notice of, attend and be heard at any general meeting.

## **DIRECTORS AND OFFICERS**

#### **40. APPOINTMENT AND ELECTION OF DIRECTORS**

40.1. The Directors shall be elected by the Members having the right to vote, except in the case of a vacancy described in Bye-law 44.1, at an annual general meeting or at any special general meeting called for that purpose.

- (a) the Board shall nominate and propose any eligible persons to be elected or re-elected as Directors to the Board at least twenty (20) days prior to the date of any annual general meeting and ten (10) days prior to the date of any special general meeting;
- (b) the Advisory Committee may also nominate and propose any eligible persons to be elected or re-elected as Directors of the Board at least twenty (20) days prior to the date of any annual general meeting and ten (10) days prior to the date of any special general meeting; provided that if the Advisory Committee desires its nominees to be included in the Company's solicitation materials, it must do so at least sixty (60) days prior to the date of any annual general meeting and at least twenty (20) days of receiving notice from the Company of any special general meeting called by the Company or the Board and at which an election of Directors will occur (and otherwise the Company shall not be required to reimburse the Advisory Committee's expenses in connection with such nomination); and
- (c) the Directors shall be elected at an annual general meeting of Members by the affirmative votes of a plurality of the votes cast by those Members entitled to vote and voting on the election of Directors at the meeting. Where the number of persons validly proposed for election or re-election as a Director is greater than the number of Directors to be elected, the persons receiving the most votes cast in the election (up to the number of Directors to be elected) shall be elected as Directors. An absolute majority of the votes cast at a meeting shall not be a prerequisite to the election of any such Director.

40.2. Members having the right to vote may nominate one or more persons for election as directors at any general meeting or propose business to be brought before the general meeting, or both, only if (a) such business is a proper matter for Member action, (b) the Member has given at least sixty (60) days' prior written notice to the Company of such director nomination(s) or such proposed business, and (c) the Member is a Holder at the time of giving such notice and is entitled to vote at the general meeting.

40.3. At any general meeting the Members having the right to vote may authorise the Board to fill any vacancy in their number left unfilled at a general meeting.

#### **41. NUMBER OF DIRECTORS**

The Board shall consist of not less than three (3) Directors or such number in excess thereof as the Board or Members having the right to vote may determine from time to time; *provided* that the Board may not reduce the number of Directors on the Board below the number of Directors set by the Members having the right to vote from time to time.

#### **42. TERM OF OFFICE OF DIRECTORS**

Directors shall hold office until the next annual general meeting or until their successors are

elected or appointed or their office is otherwise vacated.

#### **43. REMOVAL OF DIRECTORS**

- 43.1. Subject to any provision to the contrary in these Bye-laws, the Members entitled to vote for the election of Directors may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than fourteen (14) days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal.
- 43.2. If a Director is removed from the Board under this Bye-law, the Members having the right to vote may fill the vacancy at the meeting at which such Director is removed. In the absence of such election or appointment, the Board may fill the vacancy.

#### **44. VACANCY IN THE OFFICE OF DIRECTOR**

- 44.1. The office of Director shall be vacated if the Director:
- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;
  - (b) is or becomes bankrupt, or makes any arrangement or composition with his creditors generally;
  - (c) is or becomes of unsound mind or dies; or
  - (d) resigns his office by notice to the Company.
- 44.2. The Board shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, disqualification or resignation of any Director, but not in case of removal pursuant to Bye-law 44.1(a).

#### **45. REMUNERATION OF DIRECTORS**

The Directors shall receive such remuneration (if any) as the Board may determine, subject to Bye-law 65.1. The Directors may also be paid all reasonable documented and properly incurred out-of-pocket costs and expenses incurred by them (or in the case of a director that is a corporation, by its representative or representatives) in attending and returning from Board meetings, meetings of any committee appointed by the Board or general meetings, or in connection with the business of the Company or their duties as Directors generally.

#### **46. DEFECT IN APPOINTMENT**

All acts done in good faith by the Board, any Director, a member of a committee appointed by the Board, any person to whom the Board may have delegated any of its powers, or any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that he was, or any of them were, disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or act in the relevant capacity.

#### **47. DIRECTORS TO MANAGE BUSINESS**

The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by the Act or by these Bye-laws, required to be exercised by the Company in general meeting.

#### **48. POWERS OF THE BOARD OF DIRECTORS**

48.1. The Board may, subject to Bye-law 65:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
- (b) exercise all the powers of the Company to borrow money and to mortgage or charge or otherwise grant a security interest in its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party;
- (c) appoint one Director to the office of managing director or appoint one Director or person to the office of chief executive officer of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
- (d) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
- (e) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney;
- (f) procure that the Company pays all expenses incurred in promoting and incorporating the Company;
- (g) delegate any of its powers (including the power to sub-delegate) to a committee of one or more Directors, provided that every such committee shall conform to such directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by the provisions of these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;
- (h) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;

- (i) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (j) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law;
- (k) consummate an Initial Offering of any securities of the Company or list any securities of the Company on any national securities exchange or substantially equivalent market (including any active private Rule 144A market); and
- (l) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any deed, agreement, document or instrument on behalf of the Company.

#### **49. REGISTER OF DIRECTORS AND OFFICERS**

The Board shall cause to be kept in one or more books at the registered office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

#### **50. APPOINTMENT OF OFFICERS & OBSERVERS**

- 50.1. The Company may have a chairman of the Board who shall be appointed by the Board. The Board may appoint such other Officers (who may or may not be Directors) as the Board may determine for such terms as the Board deems fit.
- 50.2. The Advisory Committee is entitled, in accordance with Bye-law 64.6(d), to appoint and remove up to three (3) individuals (each, an “Observer” and together, the “Observers”), each of whom is authorised to attend and speak at but not vote at, any meetings of the Board or any committee of the Board. An Observer appointed in accordance with this Bye-law 50 shall be deemed appointed quarterly by the then members of the Advisory Committee and may be appointed for successive quarters. Each Observer appointed in accordance with this Bye-law 50 shall be entitled to receive all written materials and other information given to Directors in connection with any meetings of the Board or any committee of the Board at the same time and in the same manner that those materials or information are given to the Directors or the members of any committee of the Board, except for participation in meetings or receipt of materials or information that, upon the advice of the Company’s outside legal counsel, would constitute a material conflict of interest or a waiver of the attorney-client privilege.
- 50.3. Observers shall, upon request of any member of the Advisory Committee, share written Board materials and information received pursuant to Bye-law 50.2 with members of the Advisory Committee, except for materials or information that, upon the advice of the Company’s outside legal counsel, would constitute a waiver of the attorney-client privilege.
- 50.4. Observers shall be required to sign a Qualifying Confidentiality Agreement prior to attending any meetings of the Board or receiving any materials or information in connection therewith.

#### **51. APPOINTMENT OF SECRETARY**

The Secretary shall be appointed by the Board from time to time for such term as the Board

deems fit.

## **52. DUTIES OF OFFICERS**

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

## **53. REMUNERATION OF OFFICERS**

The executive officers of the Company shall receive such remuneration as the Board may determine. The Board shall have the authority to delegate the power to fix the compensation of other Officers of the Company.

## **54. CONFLICTS OF INTEREST & RELATED PARTY TRANSACTIONS**

54.1. Any Director, or any Director's firm, partner or any company with whom any Director is associated, may act in any capacity for, be employed by or render services to the Company on such terms, including with respect to remuneration, as may be agreed between the parties. Nothing herein contained shall authorise a Director or a Director's firm, partner or company to act as Auditor to the Company.

54.2. A Director who is directly or indirectly interested in a contract or proposed contract with the Company (including any Related Party Transaction by virtue of such Related Party Transaction being with such Director, or an Affiliate or Associate of such Director, but excluding an interest solely by virtue of interest in shares or other securities of the Company) (an "Interested Director") shall declare the nature of such interest as required by the Act.

54.3. An Interested Director may not:

- (a) vote in respect of such contract or proposed contract or Related Party Transaction; and/or
- (b) be counted in the quorum for the meeting at which the contract or proposed contract or Related Party Transaction is to be voted on,

and any such contract or proposed contract or Related Party Transaction shall be void or voidable by reason only that the Interested Director was required in order to achieve quorum of the relevant meeting or his or her vote was required for approval.

## **55. INDEMNIFICATION AND EXCULPATION OF DIRECTORS AND OFFICERS**

55.1. The directors, Resident Representative, Secretary, and other officers (such term to include any person appointed to any committee by the Board) acting in relation to any of the affairs of the Company or any Subsidiary thereof, Advisory Committee members (and their respective Affiliates) and Observers (in each case relating to their capacity as Advisory Committee members and Observers), and the liquidator or trustees (if any) acting in relation to any of the affairs of the Company or any Subsidiary thereof and every one of them (whether for the time being or formerly), and their heirs, executors and administrators (each of which an "indemnified party"), shall to the extent permitted by Bermuda law be indemnified and secured harmless out of the assets of the Company from and against all liabilities, actions, costs, charges, losses, damages and expenses (including attorneys' fees, judgments, fines, excise taxes or amounts paid in

settlement) which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and no indemnified party shall be answerable for the acts, receipts, neglects, defaults or omissions of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, *provided* that this indemnity shall not extend with respect to directors, Resident Representative, Secretary, or other officers to any matter in respect of which such persons could not be indemnified by a corporation under the Delaware General Corporation Law in their capacity as a director or officer of such corporation. A director of the Company shall not be personally liable to the Company or its Members for monetary damages for any breach of fiduciary duty of the duty of care as a director to the fullest extent permitted by the Delaware General Corporate Law (to the extent permitted by Bermuda law).

- 55.2. The Company may purchase and maintain insurance for the benefit of any director or officer or other indemnified party against any liability incurred by him under the Act in his capacity as a director or officer or other indemnified party or indemnifying such director or officer or other indemnified party in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the director or officer or other indemnified party may be guilty in relation to the Company or any Subsidiary thereof.
- 55.3. The Company may advance moneys to a director or officer or other indemnified party for the costs, charges and expenses incurred by the director or officer or other indemnified party in defending any civil or criminal proceedings against him, on condition that the director or officer or other indemnified party shall repay the advance if it is ultimately determined that such director or officer is not entitled to indemnification hereunder.

## **MEETINGS OF THE BOARD OF DIRECTORS**

### **56. BOARD MEETINGS**

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit but shall meet at least quarterly. Subject to Bye-law 54, a resolution put to the vote at a Board meeting at which there is a quorum shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail.

### **57. NOTICE OF BOARD MEETINGS**

A Director may, and the Secretary on the requisition of a Director shall, at any time summon a Board meeting on at least seventy-two (72) hours' notice. Directors may prospectively or at the time of any meeting at which a quorum is present waive notice of such meeting. Directors may also retrospectively waive the requirement for notice of any meeting by consenting in writing to the business conducted at such meeting at which a quorum was present. Notice of a Board

meeting shall be deemed to be duly given to a Director if it is given to such Director verbally (including in person or by telephone) or otherwise communicated or sent to such Director by post, electronic means or other mode of representing words in a visible form at such Director's last known address or in accordance with any other instructions given by such Director to the Company for this purpose.

**58. ELECTRONIC PARTICIPATION IN MEETINGS**

Directors may participate in any meeting by such telephonic, electronic or other communication facilities or 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.

**59. QUORUM AT BOARD MEETINGS**

Subject to Bye-law 54, the quorum necessary for the transaction of business at a Board meeting shall be a majority of the Directors at such time being in office, provided that if there is only one Director for the time being in office the quorum shall be one.

**60. BOARD TO CONTINUE IN THE EVENT OF VACANCY**

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at Board meetings, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting; or (ii) preserving the assets of the Company.

**61. CHAIRMAN TO PRESIDE**

Unless otherwise agreed by a majority of the Directors attending, the chairman of the Board, if there be one, shall act as chairman of the meeting at all Board meetings at which such person is present. In his or her absence, a chairman of the meeting shall be appointed or elected by the Directors present at the meeting.

**62. WRITTEN RESOLUTIONS**

A resolution signed by all the Directors, which may be in electronic form and in counterparts, shall be as valid as if it had been passed at a Board meeting duly called and constituted, such resolution to be effective on the date on which the resolution is signed by the last Director.

**63. VALIDITY OF PRIOR ACTS OF THE BOARD**

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

**ADVISORY COMMITTEE**

**64. ADVISORY COMMITTEE**

64.1. The advisory committee (the "Advisory Committee"), which is established by the Members, shall

be comprised of five (5) members, being a representative from each of the Members, other than any Reficar Member, that, together with their respective Affiliates (“Advisory Committee Eligible Members”), are the five (5) largest Holders of Class A Ordinary Shares as of the end of the most recently completed fiscal quarter) that wish to participate on the Advisory Committee (who may not also be Directors). In order to be eligible to participate on the Advisory Committee, a Member must submit an affidavit of ownership to the Company as of the applicable time in a form and substance reasonably acceptable to the Company along with customary proof of ownership (e.g., customary brokers’ letters) of any securities beneficially owned by such Member as of such time. For the avoidance of doubt, if any of the Advisory Committee Eligible Members are the five (5) largest Holders of Class A Ordinary Shares as of the end of the most recently completed fiscal quarter) decline to participate on the Advisory Committee, the Advisory Committee Eligible Member that is the successive largest Holder of Class A Ordinary Shares as of the end of the most recently completed fiscal quarter shall be eligible to participate on the Advisory Committee if they so desire until there are five (5) members of the Advisory Committee. The Company shall determine the Members entitled to participate on the Advisory Committee based upon the affidavits of ownership and proof of ownership received (provided that any Member that, together with its Affiliates, no longer holds Class A Ordinary Shares shall promptly notify the Company thereof and be automatically removed from the Advisory Committee, and the Advisory Committee shall serve with only the remaining Members until the following fiscal quarter). Class A Ordinary Shares held by a Member and its Affiliates shall be aggregated for the purposes of calculating the Advisory Committee Eligible Members. The members of the Advisory Committee shall remain on the Advisory Committee until the Company determines the new composition of the Advisory Committee, which, subject to the following sentence, shall be determined based on the affidavits and proof of ownership received by the Company as of the date that is ten (10) Business Days following the end of the most recently completed fiscal quarter. The Company’s determination of the Advisory Committee shall be conclusive until the Company modifies the composition of the Advisory Committee in accordance with the terms hereof or a Member’s right to be added or substituted onto the Advisory Committee is determined pursuant to a court order. Advisory Committee members may resign from the Advisory Committee at any time for any reason. Each quarter, the Advisory Committee shall be entitled to appoint three (3) Observers in accordance with Bye-law 50 and shall notify the Board of the details of such Observer(s).

- 64.2. The role of the Advisory Committee is solely advisory in nature. It shall have no decision making or management powers with respect to the Company and no such powers will be delegated to the Advisory Committee (except as expressly set forth herein). The management, control and direction of the Company shall at all times be exercised by the Board (or by such person or persons to whom the Board has validly delegated such power pursuant to Bye-law 48.1(h) and/or Bye-law 52).
- 64.3. Neither the Advisory Committee nor any member thereof (acting in such capacity) shall:
- (a) have the power to bind the Company;
  - (b) have any authority to act for the Company or on its behalf; nor
  - (c) to the extent permitted by applicable law, owe any duties (fiduciary or otherwise) to the Company in respect of the activities of the Advisory Committee.

- 64.4. The Advisory Committee shall act by a majority of the Class A Ordinary Shares represented by the Members represented on the Advisory Committee as of the most recent date for which beneficial ownership of shares can be reasonably established based on the affidavits and proof of ownership received by the Company, which, in the case of Bye-law 65.1, shall be the date on which the Board provides written notice of the applicable action.
- 64.5. Participation on the Advisory Committee will be subject to Advisory Committee members (i) agreeing to provide customary “know your client” identification information of the type described in Bye-law 14.1(a)(B); and (ii) executing a Qualifying Confidentiality Agreement with the Company.
- 64.6. The Advisory Committee may, in its discretion:
- (a) make non-binding recommendations to the Board and Members;
  - (b) cause the Board to convene a special general meeting pursuant to Bye-law 24.2 or Bye-law 65.3;
  - (c) nominate prospective directors for election to the Board pursuant to Bye-law 40.1(c);
  - (d) appoint Observers to the Board pursuant to Bye-law 50.2;
  - (e) determine whether to require Member consent for the matters set out in Bye-law 65.1; and
  - (f) request that the Company provide material information in the Data Room pursuant to Bye-law 68.5.
- 64.7. The Company shall (i) provide reasonable assistance to the Advisory Committee to facilitate the Advisory Committee’s communication with Members; and (ii) to the maximum extent permitted by applicable law, reimburse the reasonable and documented out-of-pocket costs and expenses of the Advisory Committee.
- 64.8. The rights and obligations set forth in this Bye-law 64 shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.

## **65. DISCRETIONARY CONSENT RIGHTS**

- 65.1. The Board shall give prior written notice to the Advisory Committee of any of the following matters (or entering into any commitments to engage in any of the following):
- (a) making fundamental changes to the nature of the business of the Company and its Subsidiaries;
  - (b) issuing any equity or equity-linked securities in the Company to a third party in any transaction (or series of related transactions), in an aggregate amount in excess of twenty percent (20%) of the issued and outstanding Ordinary Shares or voting power immediately prior to such issuance (on an as-converted basis calculated on same basis as for purposes of NYSE Listed Company Manual Rule 312.03(c)); *provided*, that the approval of the Members shall be required in accordance with Bye-law 32.1 for any issuance (or series of related issuances) of any equity or equity-linked securities in the Company for cash that would contemplate the issuance of twenty percent (20%) or more of the issued and

outstanding Ordinary Shares or voting power of the Company as of immediately prior to such issuance (on an as-converted basis calculated on same basis as for purposes of NYSE Listed Company Manual Rule 312.03(c)) if the Company has received more than one *bona fide* competing proposal in connection with such equity issuance(s) that, in the discretion of the Board, is executable on the necessary timeframe;

- (c) issuing any equity or equity-linked securities in the Company to a third party in any transaction or series of related transactions, which securities rank senior to the Ordinary Shares;
- (d) issuance or incurrence of indebtedness by the Company or its Subsidiaries of the type described in Section 8.1(r) of the Exit Credit Agreement;
- (e) entering into or conducting any merger, amalgamation, acquisition, combination or consolidation of the Company with, or a sale of all or substantially all of the consolidated assets of the Company to, any person;
- (f) purchasing, licensing or otherwise acquiring from a third party any equity interests, businesses or assets, in a single transaction or a series of related transactions, for an amount (including assumed indebtedness) in excess of US\$30 million;
- (g) selling, transferring, licensing or otherwise disposing to a third party any equity interests, business or assets, in a single transaction or a series of related transactions, for an amount (including assumed indebtedness) in excess of US\$30 million; and
- (h) changes to Director remuneration after March 25, 2024 (together, the “Discretionary Consent Matters”).

65.2. Subject to the Board having approved such Discretionary Consent Matter, the Advisory Committee shall determine, in its sole discretion, whether any of Discretionary Consent Matters shall also require the approval of the Members having the right to vote and shall notify the Board of such determination within fifteen (15) Business Days of having received notice of such from the Board.

65.3. If the Advisory Committee determines to require such approval of the Members, the Board shall

- (i) promptly convene a special general meeting of the Members having the right to vote or
- (ii) circulate a written resolution to all of the Members having the right to vote, in order to seek their approval for any Discretionary Consent Matters.

65.4. For the avoidance of doubt, a determination of the Advisory Committee not to submit a Discretionary Consent Matter for approval by the Members shall not be applicable to any Discretionary Consent Matters which require the approval of Members pursuant to applicable laws or any approval of Members otherwise required to rescind, alter or amend these Bye-laws.

65.5. The rights and obligations set forth in this Bye-law 65 shall automatically terminate upon, and shall cease to have any force or effect following, the Initial Offering.

- 65.6. The rights and obligations set forth in this Bye-law 65 shall only be applicable during any period when an Advisory Committee has been duly established and is in existence.

## **CORPORATE RECORDS**

### **66. MINUTES**

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each Board meeting and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, Board meetings, meetings of managers and meetings of committees appointed by the Board.

### **67. PLACE WHERE CORPORATE RECORDS KEPT**

Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the registered office of the Company.

### **68. INFORMATION RIGHTS**

- 68.1. The Company shall promptly (and in any event no later than such information and documents are provided to the Members holding Class A Ordinary Shares pursuant to Bye-law 68.2 or to holders of the Series A Preference Shares) make available the audited consolidated annual financial statements of the Company to each Reficar Member, so long as it holds any Series B Redeemable Preference Shares or Class B Ordinary Shares.
- 68.2. The Company shall promptly (and in any event no later than such information and documents are provided to the lenders under the Company's senior credit facility (which as of the date hereof is the Exit Credit Agreement)) make available the following information of the Company to each Member holding Class A Ordinary Shares and, as of March 25, 2024, each registered holder of warrants over Ordinary Shares in the capital of the Company, by way of access to the Data Room, subject to such Member holding Class A Ordinary Shares and/or such registered holder of warrants, as applicable, having entered into a Qualifying Confidentiality Agreement:
- (a) annual budget;
  - (b) audited consolidated annual financial statements;
  - (c) unaudited consolidated quarterly financial statements;
  - (d) unaudited monthly financial statements, solely to the extent provided to the Company's lenders;
  - (e) the information described in Bye-laws 68.8 through 68.11; and
  - (f) the aggregate issued and outstanding share capitalisation of the Company from time to time.

- 68.3. Subject to such Member holding Class A Ordinary Shares and such registered holder of warrants having entered into a Qualifying Confidentiality Agreement, the Company shall provide such Member holding Class A Ordinary Shares and such registered holder of warrants, as applicable, access to a quarterly management call (with management discussion and analysis).
- 68.4. Upon the request of a Member holding Class A Ordinary Shares or, as of March 25, 2024, registered holder of warrants, the Company shall provide Data Room access to prospective transferees of Class A Ordinary Shares or prospective assignees of preemptive rights pursuant to Bye-law 5.4 (in each case to whom a transfer would not be deemed to be restricted pursuant to Bye-law 14), subject to such prospective transferees having (i) entered into a Qualifying Confidentiality Agreement and (ii) satisfied any additional process reasonably required by the Company to confirm that such prospective transferee is an eligible transferee pursuant to Bye-law 14. For the avoidance of doubt, the Company shall not be required to, and no Member or warrant holder shall, share any information with, or provide Data Room access to, a Competitor.
- 68.5. Upon the request of a Member holding Class A Ordinary Shares, the Company shall provide information reasonably requested in connection with any enquiries, investigations, actions and/or proceedings related to that Member and its Affiliates or otherwise in order for such Member or its Affiliates to comply with any applicable tax law or regulation, provided that:
- (a) the requesting Member shall enter into a Qualifying Confidentiality Agreement;
  - (b) the copies of the books and records of the Company provided to the requesting Member in accordance with this Bye-law 68.5 may be provided to other Members holding Class A Ordinary Shares if such information is determined by the Board, acting reasonably, to be of general application of all Members;
  - (c) the requesting Member shall, upon request by the Company, reimburse the Company for the costs incurred by it in making any copies of the books and records pursuant to this Bye-law 68.5; and the Company shall not be required to provide any such information under this Bye-law 68.5 that would, based on the advice of the Company's outside counsel, waive any attorney-client privilege.
- 68.6. Upon the request of the Advisory Committee, the Company will also periodically provide other material non-public information of the Company and its Subsidiaries to Members having rights to information under Bye-law 68.2 in a segregated, clearly labelled portion of the Data Room; *provided* that the Company shall not be required to provide any such information that would, based on the advice of the Company's outside counsel, waive any attorney-client privilege.
- 68.7. The constitutional documents of the Company, including these Bye-laws shall be made publicly available on the Company's website.
- 68.8. The Company shall (i) as soon as practicable, but in any event within seventy-five (75) days after the end of each fiscal year of the Company, examine its "controlled foreign corporation" ("CFC") status as defined in Section 957 of the Code and the Treasury Regulations thereunder, and shall immediately notify each Member if it becomes aware that the Company is a CFC for any taxable year and any subsequent change in the CFC status of the Company for any taxable year, and (ii) as a Member may reasonably request in writing, as soon as practicable, but in any event within

seventy-five (75) days after receipt of the request, provide assistance and the information necessary to determine whether the Company is a CFC.

- 68.9. In respect of each taxable year for any portion of which the Company or any of its Subsidiaries (other than Subsidiaries of the Company that are owned by a U.S. corporate Subsidiary of the Company) is or may be deemed a CFC in the reasonable opinion of the Company, as soon as practicable, but in any event, within seventy-five (75) days after the end of the fiscal year of the Company, the Company will deliver to any Member all information reasonably requested by the Member to enable the Member to determine (i) the Member's and its U.S. Affiliate's pro rata share of the "Subpart F income" of the Company and any of its Subsidiaries (as determined under Section 951 of the Code), (ii) items of the Company and any of its Subsidiaries (e.g., "tested income," "tested loss," "qualified business asset investment," "tested interest expense," and "tested interest income") required to be taken into account in determining the "global intangible low-taxed income" of the Member and its U.S. Affiliates (as determined under Section 951A of the Code), and (iii) items of the Company and any of its Subsidiaries (e.g., investment in "United States property" and "applicable earnings") required to be taken into account in determining the "section 956 amount" of each of the Company and its Subsidiaries with respect to the Member and its U.S. Affiliates as United States shareholders (as determined under Section 956 of the Code). Any updates or subsequent adjustment to this information, including as a result of an adjustment made by the relevant taxing authority, shall be provided as soon as reasonably practicable.
- 68.10. The Company shall (i) use its reasonable best efforts, and shall cause each of its Subsidiaries to use their respective reasonable best efforts, to avoid having the Company become a "passive foreign investment company" ("PFIC") within the meaning of Section 1297 of the Code, (ii) as soon as practicable, but in any event within seventy-five (75) days after the end of each fiscal year of the Company, the Company shall examine its PFIC status and immediately notify each Member if it becomes aware that the Company was a PFIC for any taxable year and any subsequent change in the PFIC status of the Company for any taxable year, (iii) as each such Member may reasonably request in writing, as soon as practicable, but in any event within seventy-five (75) days after receipt of the request, provide any assistance and information necessary to determine whether the Company is a PFIC and (iv) in respect of each taxable year for any portion of which the Company is or reasonably may be deemed a PFIC in the opinion of the Company or any Member, as soon as practicable, but in any event, within seventy-five (75) days after the end of each fiscal year of the Company, provide the statements and information (including, without limitation, a valid PFIC Annual Information Statement containing the statements set forth in U.S. Treasury regulations Sections 1.1295-1(g)(1)(i), (ii)(C), (iii) and (iv)(A) with respect to the Company and any of its Subsidiaries that is determined by the Company to be a PFIC) necessary to enable a Member (or any of its direct or indirect owners) to comply with all provisions of the Code with respect to PFICs, including but not limited to, making and complying with the requirements of a "Qualified Electing Fund" ("QEF") election pursuant to Section 1295 of the Code or filing a "protective statement" pursuant to Section 1.1295-3 of the Treasury Regulations with respect to the Company or any of its Subsidiaries, as applicable, and to comply with all other requirements of the QEF election.
- 68.11. The Company shall as soon as practicable, but in any event within seventy-five (75) days (i) after

the end of each fiscal year of the Company or (ii) after such request is made, deliver information reasonably requested by any Member in order to assist such Member or any person who is a direct or indirect beneficial owner of such Member with the preparation of its United States federal income tax returns, complying with reporting obligations under the Code (including, without limitation, pursuant to Sections 6038, 6038B, 6038D, or 6046 of the Code and the rules and Treasury Regulations promulgated thereunder) and other obligations under the Code, or obtaining any benefit pursuant to the Code.

**69. FORM AND USE OF SEAL**

- 69.1. The Company may adopt a seal in such form as the Board may determine. The Board may adopt one or more duplicate seals for use in or outside Bermuda.
- 69.2. A seal may, but need not, be affixed to any deed, instrument or document, and if the seal is to be affixed thereto, it shall be attested by the signature of (i) any Director, or (ii) any Officer, or (iii) the Secretary, or (iv) any person authorised by the Board for that purpose.
- 69.3. A Resident Representative may, but need not, affix the seal of the Company to certify the authenticity of any copies of documents.

**ACCOUNTS**

**70. RECORDS OF ACCOUNT**

- (a) The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to: all amounts of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.
- 70.2. Such records of account shall be kept at the registered office of the Company or, subject to the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.
- 70.3. Such records of account shall be retained for a minimum period of five (5) years from the date on which they are prepared.

**71. FINANCIAL YEAR END**

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 31st December in each year.

**AUDITS**

**72. ANNUAL AUDIT**

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act,

the accounts of the Company shall be audited at least once in every year.

**73. APPOINTMENT OF AUDITOR**

- 73.1. Subject to the Act, the Members having the right to vote shall appoint an auditor to the Company to hold office for such term as the Members having the right to vote deem fit or until a successor is appointed.
- 73.2. The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

**74. REMUNERATION OF AUDITOR**

- 74.1. The remuneration of an Auditor appointed by the Members having the right to vote shall be fixed by the Company in the annual general meeting or in such manner as the Members having the right to vote may determine.
- 74.2. The remuneration of an Auditor appointed by the Board to fill a casual vacancy in accordance with these Bye-laws shall be fixed by the Board.

**75. DUTIES OF AUDITOR**

- 75.1. The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.
- 75.2. The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

**76. ACCESS TO RECORDS**

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers for any information in their possession relating to the books or affairs of the Company.

**77. FINANCIAL STATEMENTS AND THE AUDITOR'S REPORT**

- 77.1. Subject to the following Bye-law, the annual financial statements and/or the auditor's report as required by the Act shall:
- (a) be laid before the Members at the annual general meeting; or
  - (b) be received, accepted, adopted, approved or otherwise acknowledged by the Members having the right to vote by written resolution passed in accordance with these Bye-laws; or
  - (c) in circumstances where the Company has elected to dispense with the holding of an annual general meeting, be made available to the Members entitled to receive notice of general meetings in accordance with the Act and in such manner as the Board shall

determine (it being understood that holders of Class B Ordinary Shares shall not be entitled to receive such notice).

- 77.2. If all Members having the right to vote and Directors shall agree, either in writing or at a meeting, that in respect of a particular interval no financial statements and/or auditor's report thereon need be made available to the Members, and/or that no auditor shall be appointed then there shall be no obligation on the Company to do so.

**78. VACANCY IN THE OFFICE OF AUDITOR**

The Board may fill any casual vacancy in the office of the auditor.

**VOLUNTARY WINDING-UP AND DISSOLUTION**

**79. WINDING-UP**

If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

**CHANGES TO CONSTITUTION**

**80. CHANGES TO BYE-LAWS**

- 80.1. Subject to Bye-laws 80.2 and 80.3, no Bye-law may be rescinded, altered or amended and no new Bye-law may be made save in accordance with the Act and until the same has been approved by a resolution of the Board and a resolution of the Members holding a majority of the issued and outstanding Class A Ordinary Shares; *provided* that any alteration or amendment to the Bye-laws which would materially, adversely and disproportionately alter or modify any of the terms of the Class B Ordinary Shares as compared to the effect of such alteration or amendment on the Class A Ordinary Shares shall require the consent of holders of a majority of the Class B Ordinary Shares (for the avoidance of doubt, any alteration or amendment that would subdivide (by any share split, recapitalization or otherwise) or combine (by combination, reverse share split or otherwise) the Class A Ordinary Shares without making a proportionate adjustment to the Class B Ordinary Shares shall be subject to this proviso).
- 80.2. Bye-laws 5, 6.1, 14, and 68 may not be rescinded, altered or amended and no new Bye-law may be made which would have the effect of rescinding, altering or amending the provisions of such Bye-laws, until the same has been approved by a resolution of the Board and the Members including the affirmative vote of shares carrying not less than sixty six and two-thirds percent (66 2/3%) of the issued and outstanding Class A Ordinary Shares.

80.3. Notwithstanding the foregoing, no Bye-law may be rescinded, altered or amended and no new Bye-law may be made which by its terms treats a Member or holder of warrants in a manner which is disproportionate or adverse relative to its treatment of the other similarly situated Members or holders of warrants, as applicable, without the written consent of such adversely affected Member or holder of warrants; *provided* that to the fullest extent permitted by applicable law no such amendment that would purport to impose capital commitments or other obligations on a Member or holder of warrants shall be effective against such Member or holder of warrants without the written consent of such Member or holder of warrants, as applicable.

#### **81. CHANGES TO THE MEMORANDUM OF ASSOCIATION**

No alteration or amendment to the Memorandum of Association may be made save in accordance with the Act and until same has been approved by a resolution of the Board and by a resolution of the Members holding a majority of the issued and outstanding Class A Ordinary Shares; *provided* that any alteration or amendment to the Memorandum of Association which would materially, adversely and disproportionately alter or modify any of the terms of the Class B Ordinary Shares as compared to the effect of such alteration or amendment on the Class A Ordinary Shares shall require the consent of holders of a majority of the Class B Ordinary Shares (for the avoidance of doubt, any alteration or amendment that would subdivide (by any share split, recapitalization or otherwise) or combine (by combination, reverse share split or otherwise) the Class A Ordinary Shares without making a proportionate adjustment to the Class B Ordinary Shares shall be subject to this proviso).

#### **82. DISCONTINUANCE**

In connection with the Initial Offering, the Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

#### **83. MERGERS AND AMALGAMATIONS**

The Company may merge or amalgamate in accordance with the Act and subject to the prior approval by a resolution of the Board and by a resolution of the Members (whether in general meeting or by written resolution in accordance with the Act and these Bye-laws) holding a majority of the issued and outstanding Class A Ordinary Shares.

### **CORPORATE OPPORTUNITIES**

#### **84. CORPORATE OPPORTUNITIES**

84.1. To the fullest extent permitted by applicable law, the Company, on behalf of itself and on behalf of its Subsidiaries, renounces any interest or expectancy of the Company and/or its Subsidiaries in, or in being offered an opportunity to participate in, any corporate opportunities that are from time to time presented to any Member or warrant holder (or any of their respective Affiliates) or any of the Advisory Committee members, Observers, partners or any of the Company's Affiliates (other than the Company and its Subsidiaries) (each, a "Specified Party"), even if the opportunity is one that the Company or its Subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. Each such Specified Party shall generally not be liable to the Company or any of its Subsidiaries for breach of any fiduciary or

other duty, as a director or otherwise, by reason of the fact that such Specified Party pursues or acquires such corporate opportunity, directs such corporate opportunity to another person or fails to present such corporate opportunity, or information regarding such corporate opportunity, to the Company or its Subsidiaries. In the case of any such Specified Party who is a director or officer of the Company and who is offered such corporate opportunity in his or her capacity as a director or officer of the Company (a "Directed Opportunity"), such director or officer of the Company shall be obligated to communicate such Directed Opportunity to the Company, *provided*, that all of the protections of this Bye-law 84 shall otherwise apply to the Specified Parties with respect to such Directed Opportunity, including the ability of the Specified Parties to pursue or acquire such Directed Opportunity, directly or indirectly, or to direct such Directed Opportunity to another person.

- 84.2. Neither the amendment nor repeal of this Bye-law 84, nor the adoption of any provision of these Bye-laws, nor, to the fullest extent permitted by applicable law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).
- 84.3. If any provision or provisions of this Bye-law 84 shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Bye-law 84 (including each portion of any paragraph of this Bye-law 84 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.
- 84.4. This Bye-law 84 shall not limit any protections or defences available to, or indemnification rights of, any director or officer of the Company under any agreement, these Bye-laws, vote of the Board, applicable law or otherwise.
- 84.5. Any person purchasing or otherwise acquiring any interest in any securities of the Company shall be deemed to have notice of and to have consented to the provisions of this Bye-law 84.

## **REDEMPTION**

### **85. REDEMPTION**

- 85.1. Subject to Bye-laws 14.1, 14.2 and 89.1, in the event that a Member determines in its sole discretion that (a) its holding of any Ordinary Shares would be unlawful or a breach of any applicable laws, whether U.S. or other jurisdictions or (b) there has been, is, or could be, an act, matter, event or circumstance related to the Company that results in or could result in damage to the reputation of the Member or any of its Affiliates, upon prior written notice to the Company, the Member shall have the right (i) to Transfer all or any of its Class A Ordinary Shares to a person, firm or entity on such terms (including as to price) as determined by the Member, or (ii) to the extent permitted by applicable law, to require the Company to repurchase all (but not less than all) of its and its Affiliates' Ordinary Shares for the lesser of US\$1.00 in the aggregate and the aggregate market value of such Ordinary Shares. In connection with any issuance of New Issue

Securities, the Company shall cause the terms of those New Issue Securities to include provisions which give effect to the Member's rights provided in this Bye-law 85.1.

## MISCELLANEOUS BYE-LAWS

### 86. U.K. LISTING RULES

86.1. The maximum amount payable to any Member holding Class A Ordinary Shares that elects to have this Bye-law 86.1 apply to such Member (a "Listing Rules Member") pursuant to a repurchase or other sale of such Listing Rules Member's Ordinary Shares and over which the applicable Listing Rules Member does not have sole discretion as to whether to enter into and consummate the applicable sale (including a transaction as result of another Member's exercise of its Drag Along Right under Bye-law 15) (a "Listing Rules Subject Sale") shall be either (i) the minimum amount that would result in such Listing Rules Subject Sale constituting a Class 2 transaction under the U.K. Financial Authority's Listing Rules minus one pound Sterling (£1.00) or (ii) such other amount as such Listing Rules Member notifies to the Company in writing from time to time; provided, that Barclays Bank PLC is hereby deemed to be a Listing Rules Member for purposes of this Bye-law 86.1 and is not required to provide notification to the Company of its election as such.

### 87. BANK HOLDING COMPANY ACT

87.1. If at any time Barclays Bank PLC, together with its Affiliates, owns or controls Class A Ordinary Shares (the "Barclays Shares") that exceed the Maximum Voting Control Level (as defined herein), then, for so long as Barclays Bank PLC, together with its Affiliates, owns or controls Class A Ordinary Shares that exceed the Maximum Voting Control Level, the voting rights attached to the Barclays Shares shall be equal to that of the Maximum Voting Control Level (with the voting power of each Barclays Share reduced proportionately). Such Bye-Law shall not apply to transferees that are not Barclays Bank PLC or its Affiliates. For purposes of this Bye-Law 87.1, the "Maximum Voting Control Level" means ownership or control, or deemed ownership or control for applicable bank regulatory purposes, by Barclays Bank PLC (together with its Affiliates), of more than 4.99% of the total number of issued and outstanding Class A Ordinary Shares.

### 88. REFCAR MAXIMUM CONTROL LEVEL

88.1. Notwithstanding anything to the contrary herein, at no time shall the Reficar Members or any of their respective Affiliates have the right to exercise any right to convert Series B Redeemable Preference Shares or to control, own, acquire or have the right to exercise any right to acquire, convert, exchange or exercise any other securities if, as a result thereof, the Reficar Members (together with any of their respective Affiliates) would exceed the Reficar Maximum Control Level (as defined herein). If, at any time the Reficar Members (together with any of their respective Affiliates) exceed the Reficar Maximum Control Level, the Reficar Members (together with any of their respective Affiliates) shall be automatically and immediately deemed to have served a Transfer Notice on the Company to purchase for an aggregate amount of US\$1.00 that number of Class A Ordinary Shares or Class B Ordinary Shares that results, after giving effect to such purchase, in the Reficar Members (together with any of their respective Affiliates) not violating the restriction set forth in the first sentence of this Bye-law 88.1, which Ordinary Shares shall, upon such purchase by the Company, be immediately cancelled. For the avoidance of doubt, Series B

Redeemable Preference Shares shall not be subject to cancellation pursuant to the immediately preceding sentence. For purposes of these Bye-Laws, the “Reficar Maximum Control Level” means, as of any time of determination, ownership or control, or deemed ownership or control, including through the right to exercise any right to acquire, convert, exchange or exercise Series B Redeemable Preference Shares or other securities, by the Reficar Members (together with any of their respective Affiliates) of more than 19.9% of the total number of issued and outstanding Ordinary Shares as of such time.

**89. CHANGE IN OWNERSHIP OF REFICAR**

- 89.1. Notwithstanding anything to the contrary herein, if, at any time, EcoPetrol directly or indirectly Transfers equity interests or beneficial ownership of equity interests in a Reficar Member (a “Transferred Reficar Member”) to any person other than a wholly-owned subsidiary of EcoPetrol, the Transferred Reficar Member shall, not later than one day following the consummation of such Transfer, unless prior written approval has been received from the Company and the Issuers under the Exit Credit Agreements, Transfer all Series B Redeemable Preference Shares and all Class B Ordinary Shares owned by the Transferred Reficar Member to EcoPetrol or such other Reficar Member. If the Transferred Reficar Member does not so transfer all Series B Redeemable Preference Shares and all Class B Ordinary Shares owned by the Transferred Reficar Member to EcoPetrol or such other Reficar Member within one day following consummation of such Transfer, then the Transferred Reficar Member will be deemed to have served a Transfer Notice on the Company to purchase for an aggregate amount of US\$1.00 all such Series B Redeemable Preference Shares and Class B Ordinary Shares the Transferred Reficar Member, which upon purchase by the Company shall be immediately cancelled.