

5.2 CFSA – Sample memorandum and articles of association (for comparison)

COMPANIES ACTS, 1963 TO 2009
COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION
OF

1. The name of the Company is
2. The objects for which the Company is established are;
 - (1)
 - (2) To carry on all or any of the following businesses, namely, builders and contractors, decorators, merchants, engineers, surveyors, estate agents, valuers, auctioneers, carriers, shippers, forwarding agents, garagemen, caterers, licensed publicans, fuel suppliers, textile manufacturers and dealers, insurance agents and brokers, entertainment caterers, farmers and generally to import, export, manufacture, make, grow, produce, repair, adapt for sale and prepare for market, goods and materials of every kind or otherwise to carry on any business which may seem to the Company capable of being conveniently carried on in connection with the above or any one of the above or calculated directly or indirectly to enhance the value of or render more profitable any of the Company's property or rights
 - (3) To purchase, take on lease or in exchange, hire or otherwise acquire and hold real, chattel real and personal property of all kinds and in particular lands, tenements and hereditaments of any tenure whether subject or not to any charge or incumbrances.
 - (4) To hold, sell, let, alienate, mortgage, charge or otherwise deal with any of the real and personal property, assets or undertakings of the Company or any part thereof for such consideration as the Company may think fit, and in particular (without prejudice to the generality of the foregoing) for shares, debentures or securities of any other company whether or not having objects altogether or in part similar to those of the Company.
 - (5) To vest any real or personal property, rights or interests acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company, and with or without any declared Trust in favour of the Company.
 - (6) To undertake and execute the office of nominees for the purpose of holding and dealing with any real or personal property or security of any kind for or on behalf of any government, local authority, mortgagee, company, person or body; to act as nominee or agent generally for any purpose and either solely or jointly with another or others for any person, company, corporation, government, state or province, or for any municipal or other authority or local body; to undertake and execute the office of

trustee, executor, administrator, registrar, secretary, committee or attorney to undertake the management of any business or undertaking or transaction, and generally to undertake, perform and fulfil any trust or agency business of any kind and any office of trust or confidence.

- (7) To construct, erect, enlarge, alter and maintain buildings, houses, flats, shops and all other works, erections and things of any description whatsoever either upon the lands acquired by the Company or upon other lands and to hold, retain as investments or to sell, let, alienate, mortgage, charge or deal with all or any of the same and generally to alter, develop and improve the lands and other property of the Company.
- (8) To apply for, purchase, or by other means acquire and protect, prolong and renew, any patents, patent rights, brevets d'invention, licences, trade marks, registered designs, protections and concessions or other rights which may appear likely to be advantageous or useful to the Company.
- (9) To pay all costs, charges and expenses incurred or sustained in or about the promotion, and establishment of the Company or which the company shall consider to be preliminary thereto and to issue shares as fully or in part paid up, and to pay out of the funds of the Company all brokerage and charges incidental thereto.
- (10) To invest and deal with the monies of the Company not immediately required in such manner as from time to time may be determined
- (11) To draw, make, accept, endorse, discount, negotiate and issue bills of exchange, promissory notes, bills of lading and other negotiable or transferable instruments.
- (12) To borrow or raise or secure the payment of money in such manner as the Company shall think fit, and in particular to issue debentures, debenture stock, bonds, obligations and securities of all kinds, either perpetual or terminable and either redeemable or otherwise, and to charge and secure the same by trust, deed or otherwise on the undertaking of the Company or upon any specific property and rights, present and future, of the Company (including if thought fit, its uncalled capital) or otherwise howsoever.
- (13) To hold in trust as trustees or as nominees and to deal with, manage and turn to account any real or personal property of any kind and in particular shares, stocks, debentures, securities, policies, book debts, claims and choses in action, lands, buildings, hereditaments, business concerns and undertakings, mortgages, charges, annuities, patents, licenses and any interest in real or personal property and any claims against such property or against any person or company.
- (14) To acquire, deal with, manage and turn to account policies of life assurance and any other real or personal property of any kind.
- (15) To guarantee, grant indemnities support or secure, whether by direct obligation or covenant or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by issuing any security of the Company by way of mortgage, or by any one or more of all of such methods or by any other method, the performance of any obligations or commitments and the repayment or payment of the principal amounts of, or the premiums interest and dividends on any securities and/or loans or advances of any person, firm or company and in particular, including (without prejudice to the generality of the foregoing) give (with or without consideration) security for any debts,

obligations or liabilities of any company which is for the time being a subsidiary company or holding company of the Company or is a subsidiary of such a holding company or which is otherwise directly or indirectly associated with the company in business.

- (16) To lend and advance money or give credit to such persons or companies and on such terms as may seem expedient.
- (17) To engage in currency exchange and interest rate transactions of whatever nature including but not limited to dealings in foreign currencies, spot and forward rate exchange contracts, futures, options, forward rate agreements, swaps, caps, floors, collars and any other foreign exchange or interest rate hedging arrangements and such other instruments as are similar to, or derived from any of the foregoing whether for the purpose of making a profit or avoiding a loss or managing a currency or interest rate exposure or any other exposure or for any other purpose.
- (18) To establish, promote and otherwise assist any company or companies or associations for the purpose of acquiring all or any of the properties or liabilities of this Company or for furthering the objects of the Company or for the purpose of prosecuting or executing any undertaking, works, projects or enterprises of any description.
- (19) To establish agencies and branches and appoint agents and others to assist in the conduct or extension of the Company's business and to regulate and discontinue the same.
- (20) To form, constitute or promote, or to concur in the formation, constitution or promotion of Irish or foreign companies, syndicates, associations and undertakings of all kinds and to secure by indemnity or otherwise the subscription of all or any part of the capital of any such company, syndicate, association or undertaking and to pay any commission, brokerage or other remuneration in connection therewith and to employ experts to investigate and examine into the conditions, proposals, value, character and circumstances of any business concerns and undertakings and generally of any assets, property or rights.
- (21) To constitute any trusts with a view to the issue of preferred and deferred or other special stocks or securities based on or representing any shares, stock and other assets specifically appropriated for the purposes of any such trust and to settle and regulate and if thought fit to undertake and execute any such trusts and to issue, dispose of or hold any such preferred, deferred or other special stocks or securities.
- (22) To transact or carry on all or any kinds of agency business and in particular in relation to the investment of money, the sale of property and the collection and receipt of money.
- (23) To procure the Company to be registered or recognised in any place outside Ireland.
- (24) To do all or any of the matters hereby authorised in any place outside Ireland, either alone or in conjunction with or as trustees or agent for any other company or person or by or through any factors, trustees or agents.
- (25) To acquire and undertake the whole or any part of the business, goodwill and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the

consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company.

- (26) To enter into and carry into effect any arrangement for joint working in business or for sharing of profits or for amalgamation with any other company or association or any partnership or person carrying on any business or proposing to carry on any business within the objects of the Company.
- (27) To distribute in specie or otherwise as may be resolved any assets of the Company among its members and in particular the shares, debentures or other securities of any other company belonging to the Company or of which the Company may have the power of disposal.
- (28) To enter into any arrangement with any government or local or other authority that may seem conducive to the Company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the Company may think desirable to obtain and to carry out and to exercise and comply with the same.
- (29) To provide for the welfare of persons in the employment of or holding office under or formerly in the employment of or holding office under the Company or Directors or ex Directors of the Company and the wives, widows and families, dependants or connections of such persons by grants of money, pensions or other payments and by forming and contributing to pension, provident or benefit funds or profit sharing or co-partnership schemes for the benefit of such persons and to form, subscribe to or otherwise aid charitable, benevolent, religious, scientific, national or other institutions, exhibitions, or objects which shall have any moral or other claims to support or aid by the Company by reason of the locality of its operations or otherwise.
- (30) To remunerate by cash payment or allotment of shares or securities of the Company credited as fully paid up or otherwise any person or company for services rendered or to be rendered to the Company whether in the conduct or management of its business, or in placing or assisting to place or guaranteeing the placing of any of the shares of the Company's capital, or any debentures or other securities of the Company or in or about the formation or promotion of the Company.
- (31) To make gifts or grant bonuses to the Directors or any other persons who are or have been in the employment of the Company including substitute and alternate Directors.
- (32) To accept stock or shares in or debentures, mortgages or securities of any other company in payment or part payment for any services rendered or for any sale made to or debt owing from any such company whether such shares shall be wholly or only partly paid up.
- (33) To do all such other things as the Company may consider incidental or conducive to the attainment of the above objects or as are usually carried on in connection therewith.
- (34) To transact or carry on any other business which may seem to be capable of being conveniently carried on in connection with any of these objects or calculated directly or indirectly to enhance the value of or facilitate the realisation of or render profitable any of the Company's property or rights.

The word "company" in this clause, except where used in reference to this Company, where the context so admits, shall be deemed to include any partnership or other body of persons

whether incorporated or not incorporated or whether domiciled or registered in Ireland, Great Britain or Northern Ireland or elsewhere and the intention is that in the construction of this Clause the objects set forth in each of the foregoing sub-paragraphs shall, except where otherwise expressed in the same paragraph be in no wise limited or be deemed merely subsidiary or auxiliary by reference to or inference from the terms of any other paragraph in this Clause.

3. The liability of the members is limited.
4. The Share Capital of the Company is € _____ divided into shares of €1.00 each.

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

Names, addresses and description of subscribers	Number of shares taken by each subscriber
Total shares taken	

Dated this _____ day of 20...

Witness to the above signatures:

COMPANIES ACTS, 1963 TO 2009

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

1. The regulations contained in or incorporated in Part 11 of Table A in the First Schedule to the Companies Acts, 1963 to 2009 (hereinafter referred to as "Table A, Part 11") shall apply to the Company, and together with the Regulations hereinafter contained shall constitute the Regulations of the Company save in so far as they are hereby varied or excluded.
2. Regulations 79 and 138 of Part 1 of Table A in the said Schedule as so amended (hereinafter referred to as "Table A, Part 1") shall not apply to the Company.

SHARES

3. The Share Capital of the Company is € divided into shares of €1.00 each.
4. The Directors are generally and unconditionally authorised to exercise all powers of the Company to allot relevant securities (as such expression is defined in Section 20 of the Companies (Amendment) Act 1983) up to a maximum aggregate of the number of unissued shares in the capital of the Company from time to time but this authority shall not extend beyond such date as shall be five years from the date of incorporation of the Company provided always that the Directors shall have power, notwithstanding that the date aforesaid shall have expired, to allot relevant securities in pursuance of an offer or agreement made before the expiry of such date as aforesaid as if the authority conferred hereby had not expired.
5. Section 23 (1) of the Companies (Amendment) Act, 1983 is hereby excluded in its application in relation to all allotments by the Company of equity securities as defined for the purposes of that Section.
6. Subject to the provisions of Part X1 of the Companies Act, 1990, the Company may:
 - (i) Convert any of its shares into redeemable shares;
 - (ii) issue, or redesignate as redeemable shares, shares which are to be redeemed or are liable to be redeemed at the option of the Company or the holder on such terms and in such manner as shall be provided by the Articles of Association of the Company provided always that the nominal value of the issued share capital which is not redeemable shall not, at any time, be less than one-tenth of the nominal value of the total issued share capital of the Company;
 - (iii) redeem its own shares;
 - (iv) purchase its own shares;
 - (v) cancel any of its shares;
 - (vi) re-designate any of its own shares following purchase as treasury shares provided always that the nominal value of treasury shares (as defined in section 209(2) of the said Act) held by the Company may not, at any one time, exceed one-tenth of the nominal value of the issued share capital of the Company;

- (vii) cancel, or re-issue as shares of any class, shares held by the Company as treasury shares.

LIEN

- 7. In Regulation 11 of Table A, Part 1, the words (“not being a fully paid share”) shall be omitted and the lien conferred by that Regulation shall attach to all shares registered in the name of any person indebted or under liability to the Company whether he shall be the sole registered holder thereof or one of two or more joint holders.

GENERAL MEETINGS

- 8. Annual general meetings shall be held in Ireland unless in respect of any particular meeting either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting. Extraordinary general meetings may be held in or outside Ireland. Regulation 47 of Part I of Table A will not apply and Regulation 50 will be construed as if the words “within the state” were deleted therefrom.
- 9. An extraordinary general meeting shall be convened upon the requisition of the auditors under the circumstances described in section 186 of the 1990 Act, as well as upon the requisition described in Regulation 50 of Part I of Table A.

PROCEEDINGS AT GENERAL MEETINGS

- 10. Regulation 53 of Table A, Part 1, shall apply as if the following words were added at the end thereof “and the fixing of the remuneration of the Directors”.
- 11. A poll may be demanded by the Chairman or by any member present in person or by proxy and Regulation 59 of Table A, Part 1, shall be modified accordingly.
- 12. In Regulation 70 of Part 1 of Table A the words “not less than 48 hours before the time for holding” and “not unless than 48 hours before the time appointed for” will be deleted and there will be substituted therefor the words “before the commencement of” on both occasions.

RESOLUTIONS

- 13. Any such resolution in writing as is referred to in Regulation 6 of Table A, Part 11, may consist of several documents, in the like form each signed by one or more of the members (or their duly authorised representatives) in that Regulation referred to.

DIRECTORS

- 14. Every Director shall be entitled to receive notices of and attend and speak at all General Meetings of the holders of any class of shares, in the capital of the Company, and Regulation 136 shall be amended accordingly.

15. A Director appointed to fill a casual vacancy or as an addition to the Board shall not retire from office at the Annual General Meeting next following his appointment and the last sentence of Regulation 98 of Table A, Part 1, shall be deleted.
16. The Directors of the Company shall not be required to retire by rotation and Regulations 92 to 100 (inclusive) of Table A, Part I, shall be amended accordingly.
17. Unless and until the Company in General Meeting shall otherwise determine the number of the Directors shall not be less than two nor more than seven, and Regulation 75 of Table A, Part I, shall be modified accordingly.
18. Any Director may in writing appoint any person who is approved by the majority of the Directors, to be his alternate to act in his place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to notice of meetings of the Directors and to attend and vote thereat as a Director when the person appointing him is not personally present, and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Every such alternate shall be an officer of the Company and shall not be entitled to be an agent of the Director appointing him. The remuneration of such an alternate shall be payable out of the remuneration payable to the Director appointing him, and the proportion thereof shall be agreed between them. An alternate need not hold any share qualification.
19. A resolution in writing signed by all of the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid and effective for all purposes as a resolution of the directors as if it had been passed at a meeting of the directors duly convened and held and may consist of several documents in the like form each signed by one or more of the directors. For the purpose of this Article, the signature of an alternate director shall suffice in lieu of the signature of the director appointing him. Regulation 109 of Part 1 of Table A shall not apply.
20. The quorum necessary for the transaction of the business of the directors shall be two directors present in person or by alternate, but so that, except as hereinafter provided, not less than two individuals shall be present. Provided that any director (or his alternate) may participate in a meeting of the directors by means of telephonic or other similar communication whereby all persons participating in the meeting can hear each other speak; and participation in a meeting in this manner shall be deemed to constitute presence in person (or as the case may be, by alternate) at such meeting.
21. (a) The meetings and proceedings of any committee formed by the directors shall be governed by the provisions of these articles regulating the meetings and proceedings of the directors so far as the same are applicable and are not superseded by any regulations imposed upon such committee by the directors.

(b) When forming a committee of the directors, the directors may authorise, or may authorise such committee to authorise, any person who is not a director to attend all or any meetings of any such committee on such terms as the directors (or as the case may be such committee) shall think fit, but any person so authorised shall not be entitled to vote at such meetings

BORROWING POWERS

22. The Directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

DISQUALIFICATION OF DIRECTORS

23. Regulation 91 of Table A, Part 1, relating to the vacation of office by a Director, shall apply as if paragraph (g) thereof was deleted.

INDEMNITY

24. Every Director, Managing Director, Agent, Secretary or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 391 of the Act in which relief is granted to him by the court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by section 200 of the Act.

Names, addresses and description of subscribers	Number of shares taken by each subscriber
Total shares taken	

Dated this day of 20...

Witness to the above signatures: