

## TIMES UNDERTAKINGS

### OVERVIEW OF CHANGES TO UNDERTAKINGS, TNHL AND TNL ARTICLES SINCE APPLICATION OF 10 JANUARY 2019

On 10 January 2019, News Corp UK & Ireland Ltd (**News UK**) submitted an application to the Secretary of State for Digital, Culture, Media and Sport (**DCMS**) (the **Secretary of State**) seeking acceptance of proposed undertakings (the **Undertakings**) in place of the conditions attached by the Secretary of State for Trade and Industry to his consent to the transfer of the of The Times and The Sunday Times newspapers to News UK (then called News International Limited).

To reflect points raised in the Secretary of State's minded to decision dated 10 April 2019 and in subsequent discussions with DCMS and the Competition and Markets Authority (**CMA**), on 5 June 2018 News UK submitted a final revised version of the Undertakings, together with final revised versions of the articles of association of Times Newspapers Holdings Limited (**TNHL**) (the **TNHL Articles**) and of Times Newspapers Limited (**TNL**) (the **TNL Articles**).

Part A of this document summarises the changes to the Undertakings since the 10 January 2019 submission. Part B summarises the changes to the TNHL Articles that relate to the Undertakings. Part C summarises other changes that have been made to the TNHL and TNL Articles, that are necessary as a result of changes in company law since the existing articles were adopted in 1981, but which do not relate to the Undertakings.

#### A. Changes to Undertakings

| Section          | Description of change   |
|------------------|---|
| Section 3(b)(i)  | New requirement for the TNHL Articles to contain a definition of "Independent National Director" ( <b>IND</b> ) as approved by the Secretary of State.  |
| Section 3(b)(ii) | New requirement that the period of office of each IND to be limited to a maximum of nine years.   |
| Section 4(b)(iv) | Revised to require that separate budgets will be set by the directors of TNL for each of the The Times and The Sunday Times. News UK considers that this will further reinforce the separate nature of the two titles, which is already guaranteed by their separate editorship and the associated protections set forth in Section 4 of the Undertakings.                    |
| Section 6        | New requirement for the INDs to report to the Secretary of State, copied to the CMA, on compliance with the Undertakings.<br><br>New requirement for News UK to provide such information as the Secretary of State or the CMA may request to determine if a breach of the Undertakings has occurred (except for material that is subject to legal or journalistic privilege). |

|            |  |
|------------|--|
| Section 7  | New provision on variation, release or suspension of the Undertakings in the event of a material change of circumstances (with Secretary of State approval). |
| Section 9  | Inclusion of governing law provisions.   |
| Section 10 | Inclusion of provisions on effective date of Undertakings.   |

**B. Changes to TNHL Articles that relate to the Undertakings**

| Article           | Description of change  |
|-------------------|--|
| Definition of IND | Definition of IND added, setting out the requirement for independence. The wording is based on the definition of “Independent Directors” contained in the undertakings accepted by the Secretary of State in relation to Twenty-First Century Fox, Inc.’s proposed acquisition of Sky on 9 July 2018.  |
| Article 83(e)     | New provision that if an IND ceases to meet the definition of “Independent National Director”, he or she shall notify the other INDs and resign from office.   |
| Article 85        | New provision regard proceedings of INDs, including a provision that the INDs shall have the right to seek independent legal advice in connection with the discharge of their duties, with reasonable legal costs to be paid for by News UK.   |
| Article 86(a)     | New provision imposing a specific duty on TNHL to ensure that employees at The Times and The Sunday Times who have concerns that the Undertakings have been, may have been, or are at risk of being, breached have access to an effective system for reporting their concerns to the General Counsel of News UK, including on an anonymous basis. A copy of any such report will be provided promptly to the INDs.   |
| Articles 86(b)    | New requirement that the INDs shall meet with the Editors at least twice each year to discuss matters relevant to compliance with the Undertakings. The Editors will be responsible for raising any issues relevant to compliance with the Undertakings, including whether the titles continue to be published as separate newspapers, with the Independent National Directors.  |
| Article 86(c),(d) | New requirement for INDs to report every 12 months to the Secretary of State, copied to CMA, on News UK’s compliance with the Undertakings. The yearly reports will include, <i>inter alia</i> , details of the meetings attended by the INDs in the preceding year for the purpose of monitoring compliance with the Undertakings. The INDs shall not disclose any materials that News UK is entitled to withhold on the basis of legal or journalistic privilege and use their best endeavours to minimise the inclusion on commercially |

|               |   |
|---------------|---|
|               | sensitive information.  |
| Article 86(e) | New procedures pursuant to which the INDs will, in cooperation with News UK, investigate any potential breaches of the Undertakings and report these to the Secretary of State. This provision requires TNHL to provide the INDs, or procure that they are provided with, such co-operation as the INDs reasonably consider necessary for this purpose. |
| Article 87(c) | New requirement that the period of office of each IND to be limited to a maximum of nine years.   |
| Article 148   | Existing provisions updated to provide that TNHL Articles cannot be altered in any way which may affect the requirements of the Undertakings without the consent of the Secretary of State.   |

**C. Other changes to TNHL Articles and TNL Articles as a result of changes in company law<sup>1</sup>**

| <b>Article no.<sup>2</sup></b>                   | <b>Amendment</b>  | <b>Commentary</b>  |
|--|---|--|
| Heading  | Deletion of references to the Companies Acts, 1908 to 1917 and the Companies Acts, 1948 to 1980.  | The existing references are no longer appropriate as they refer to repealed legislation. We have therefore replaced with a reference to the Companies Act 2006, which is the Companies Act that is currently in force.   |
| References to sections in the Companies Act 1948 | The references to sections of the Companies Act have been updated. These are in articles 11(a), 12, 15, 55, 58, 60, 100, 103(a) and 147 of the TNHL Articles and articles 12(a), 13, 16, 54, 57, 59, 95, 98(a) and 140 of the TNL Articles. | The existing articles refer to sections of the Companies Act 1948. These have been updated to refer to the equivalent sections in the Companies Act 2006. Further explanations are provided below where appropriate.   |
| 1  | Inclusion of (i) references to Table “A” 1985 and the Model Articles and (ii) wording to expressly disapply any statutory articles or regulation that may apply to the company.   | The existing articles disapply the Table “A” articles that would have automatically applied to TNHL and TNL at the time the articles were last amended in 1981. For clarity, we have expressly excluded the subsequent Table “A” and model articles that would apply to TNHL or TNL. This is consistent with the intention of the existing terms of article 1. |

<sup>1</sup> As noted in News UK’s submission of 13 May 2019, pursuant to Section 8 of the Undertakings (and condition 9 of the Conditions that are currently in place), these amendments would not require the consent of the Secretary of State, as they will not affect the operation of the requirements of the undertakings.

<sup>2</sup> Where not otherwise specified, references to article numbers are to both the TNHL Articles and the TNL Articles.

|      |   |  |
|------|---|--|
| 2(a) | Amendments to the table of defined terms to (i) reorganise them in alphabetical order, and (ii) update the definitions of 'Companies Act' and 'Statutes'. | <p>The reorganisation into alphabetical order is for ease of use.</p> <p>The updated definitions of 'Companies Act' and 'Statutes' bring the definitions up-to-date so they refer to the current legislation only.</p>   |
| 2(f) | We have replaced the marginal notes in the existing articles with headings.   | This change has been made for ease of use and to bring the articles into line with standard practice for the presentation of articles. In some places the existing articles do not include marginal notes – where appropriate, we have rectified this to include headings. It does not affect the substance of the articles.   |
| 3    | A new article has been inserted to state that there are no restrictions on the objects of the company.  | <p>The provisions regulating the operations of the company are currently set out in each company's memorandum and articles of association. Each company's memorandum contains, among other things, the objects clause which sets out the scope of the activities the Company is authorised to undertake. This is drafted to give a wide scope.</p> <p>The Companies Act 2006 significantly reduces the constitutional significance of a company's memorandum. The Companies Act 2006 provides that a memorandum will record only the names of subscribers and the number of shares each subscriber has agreed to take in the company. Under the Companies Act 2006 the objects clause and all other provisions which are contained in a company's memorandum, for existing companies at 1 October 2009, are deemed to be contained in the company's articles of association but the company can remove these provisions by special resolution.</p> <p>Further the Companies Act 2006 states that unless a company's articles provide otherwise, a company's objects are unrestricted. This abolishes the need for companies to have objects clauses. For this reason the company is proposing to remove its objects clause together with all other provisions of its memorandum which, by virtue of the Companies Act 2006, are treated as forming part of the Company's articles of association as of 1 October 2009.</p> |
| 4    | A new article has been inserted to state that the liability of  | As the effect of amending the articles will be to remove the   |

|   |   |   |
|---|---|---|
|   | the members of the company is limited.  | provisions in its memorandum, the statement currently in each company's memorandum of association regarding limited liability will no longer apply. Accordingly, this provision has been included in the new articles.  |
| 10 (TNHL Articles)<br>11 (TNL Articles)                     | The existing articles permit shares to be subscribed for at less than nominal value. This has been replaced with a requirement for all shares to be issued and not less than the aggregate of its nominal value and any premium to be paid. | Section 580 of the Companies Act 2006 states that "A company's shares must not be allotted at a discount." The existing articles are inconsistent with this section and have therefore been updated to include the standard wording in the Model Articles regarding the amount payable on a share issue.  |
| 11 (TNHL Articles) (deleted)<br>12 (TNL Articles) (deleted) | The article providing for the power to charge interest on capital has been deleted.   | This article is based upon section 65 of the Companies Act 1948 ('Power of company to pay interest out of capital in certain cases') which has been repealed and for which there is no equivalent under the Companies Act 2006. As such, it ceases to apply and has therefore been deleted.   |
| 15 (TNHL Articles)<br>16 (TNL Articles)                     | Wording has been added to permit the company to sign share certificates in accordance with the Companies Act.   | The Companies Act 2006 does not require a company to have a seal. If either company does not or chooses not to have a seal, the proposed amendment will ensure that it can issue share certificates in any manner permitted by the Act.   |
| 49 (TNHL Articles)<br>48 (TNL Articles)                     | A sentence has been added to make clear that there is no maximum authorised share capital of the company.   | The Companies Act 2006 abolishes the requirement for a company to have an authorised share capital and the new articles reflect this. Directors will still be limited as to the number of shares they can at any time allot because allotment authority continues to be required under the Companies Act 2006, save in respect of employee share schemes.         |
| 58 (TNHL Articles)<br>57 (TNL Articles)                     | The references to the relevant sections of the Companies Act have been updated.   | The sections of the Companies Act 1948 that are referred to in the existing articles have equivalents under the Companies Act 2006, although there are differences in terminology (e.g. 'requisition' in the Companies Act 1948 vs 'request' in the Companies Act 2006). This article has therefore been updated to take account of these changes in terminology. |

|   |  |  |
|---|--|--|
|   |  |  |
| 97 (TNHL Articles)<br>92 (TNL Articles)             | A new article headed ‘Provision for employees on cessation of business’ has been inserted.   | The Companies Act 2006 provides that the powers of the directors of a company to make provision for a person employed or formerly employed by the company or any of its subsidiaries in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary, may only be exercised by the directors if they are so authorised by the company’s articles or by the company in general meeting. The new articles provide that the directors may exercise this power. |
| 101(a)(i) (TNHL Articles)<br>96(a) (TNL Articles)   | The words “by law” have been inserted so that a director ceases to be a director if he is prohibited from being a director “by law”.                     | A director may be disqualified by laws other than the Statutes. This change brings the articles in line with the Model Articles to ensure that any legislation that provides for a person to be prohibited from being a director will be caught.   |
| 101(a)(iii) (TNHL Articles)<br>96(c) (TNL Articles) | The circumstances in which a director’s office may be vacated by cause of his/her mental health have been updated.                                       | The existing articles include a provision that is possibly contrary to the Mental Health (Discrimination) Act 2013. The proposed new provision is similar in nature and is taken from the Model Articles.  |
| 103(a) (TNHL Articles)<br>98(a) (TNL Articles)      | The reference to section 199 of the Companies Act 1948 has been replaced by a reference to section 177 or 182 (as applicable) of the Companies Act 2006. | This article relates to the sections of the Companies Acts relating to directors’ interests in contracts or proposed contracts. The 1948 Act covers both existing and proposed contracts under one section (s.199) whereas the 2006 Act covers them under separate sections (ss.177 and 182).  |
| 124 (TNHL Articles)<br>117 (TNL Articles)           | The reference to ‘Dominion registers’ has been replaced with a reference to ‘overseas branch registers’.   | Dominion registers is a term used in the Companies Act 1948. The equivalent term in the Companies Act 2006 is ‘overseas branch registers’. The article has been updated accordingly.   |
| 125 (TNHL Articles)<br>118 (TNL Articles)           | The requirement for the company to have a secretary (“shall”) has been replaced with the option to have a secretary (“may”).                             | The Companies Act 2006 does not require a private company to have a secretary. However, a requirement in a company’s articles to have a secretary will continue to apply. We have therefore removed this requirement. We note that neither company currently has a secretary.  |

|   |   |  |
|---|---|--|
| <p>145 (TNHL Articles)<br/>138 (TNL Articles)</p> | <p>The reference to section 287 of the Companies Act 1948 has been deleted.</p>   | <p>Section 287 of the Companies Act 1948 ('Power of liquidator to accept shares, &amp;c, as consideration for sale of property of company') does not have an equivalent in the Companies Act 2006 and the reference to it has therefore been deleted.</p>  |
| <p>147 (TNHL Articles)<br/>140 (TNL Articles)</p> | <p>The article dealing with an indemnity for directors and auditors has been amended to make it subject to the Companies Act 2006 and other applicable provisions of law.</p> | <p>Chapter 7 of Part 10 and Chapter 6 of Part 16 of the Companies Act 2006 place restrictions on the ability of a company to indemnify its directors and auditors. No equivalent provisions applied under the Companies Act 1948. The article has been updated to ensure compliance with the Companies Act 2006.</p> |

**Allen & Overy LLP**  
**6 June 2019**