

Memorandum of Understanding

Chairman of City Tattersall's Club on behalf of City Tattersall's Club
ABN 44 004 054 353

**Combined Services RSL Club Co-operative Limited (subject to Deed
of Company Arrangement)**
ABN 13 485 506 734 trading as Barracks on Barrack

Date 20th May 2021

Parties

CTC	Chairman of City Tattersall's Club on behalf of City Tattersall's Club ABN 44 004 054 353
Address	198-204 Pitt Street, Sydney NSW 2000
Attention	Marcelo Veloz
Email	mveloz@citytatts.com.au
BoB	Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack.
Address	5-7 Barrack Street, Sydney NSW 2000
Attention	Carl Dumbrell
Email	carl@cdtl.com.au

Background

- A Each of CTC and BoB are a registered club holding a Licence subject to the RCA.
- B CTC is an unincorporated association and is subject to the *CTC Club Act 1912 (NSW)* and *CTC Club Amendment Act 1936 (NSW)*.
- C BoB is a co-operative subject to the Co-operatives National Law (NSW) (as adopted by *Co-operatives (Adopting of National Law) Act 2012 (NSW)*).
- D BoB requested ClubsNSW to issue a circular to its members, inviting expressions of interest for amalgamation from other registered clubs on 24 November 2020 in Circular 20-208.
- E CTC submitted an expression of interest which has been accepted by the Board of BoB and CTC is nominated as the preferred amalgamation partner of BoB.
- F On 5 January 2021, the parties agreed to work exclusively on assessing an amalgamation opportunity until the 28 February 2021
- G CTC has, in contemplation of the proposed Amalgamation, provided and will continue to provide BoB financial assistance through a facility arrangement to the maximum value of \$250,000 (inc. GST) to be provided in cash and in kind. The facility is to be secured against BoB's gaming machine entitlements. The funds have been, and will be, used to improve the physical appearance of the venue and meet creditor obligations.

- H On 17 February 2021, the Independent Liquor and Gaming Authority approved the appointment of the Administrators as the joint and several administrators of BoB pursuant to section 41 of the RCA
- I At a meeting of creditors of BoB held on 25 March 2021, it was resolved that BoB enter into a Deed of Company Arrangement (**DOCA**) substantially in accordance with a proposal presented to the creditors and that the Administrators be appointed as the DOCA administrators. The DOCA was signed on 30 March 2021.
- J Under the terms of the DOCA, control of BoB (including its assets and business) reverted to the Board of BoB.
- K The parties propose to amalgamate subject to the terms of this MOU and the Deed of Amalgamation.
- L This MOU is entered into in accordance with clause 7 of the RCR.

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

Administrator means David Hurst and David Sampson of BPS Recovery at Level 18/ 201 Kent Street, Sydney NSW 2000.

Amalgamation means an amalgamation of CTC and BoB pursuant to the RCA and the Liquor Act.

Amalgamated Club means CTC as the continuing club after Amalgamation Completion.

Amalgamation Completion has the meaning specified in the Deed of Amalgamation.

Asset includes chattels, contract rights, motor vehicles, stock in trade, plant, fixtures and fittings, real property (including BoB Premises Lease), BoB's Licence including gaming machines and gaming machine entitlements, debtors, business names, intellectual property rights, goodwill and all other property, tangible or intangible and cash on hand and cash at bank belonging to BoB at the time of Amalgamation Completion.

Authority means the Independent Liquor and Gaming Authority.

Board means the Board of directors of CTC, BoB or the Amalgamated Club, as applicable.

BoB means Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack.

BoB Members means those Members of BoB who:

- (a) are identified as Members of BoB for the purposes of section 17AC of the RCA and who join the Amalgamated Club designated as "BoB Members" under the CTC Rules in accordance with clause 4.1(a) of the Deed of Amalgamation; or
- (b) join the Amalgamated Club after Amalgamation Completion and fall within the definition of "members of the dissolved club" under section 17AJ of the RCA and includes Members of sub-clubs of BoB.

BoB Premises means the premises occupied by BoB for its registered club business located at 5-7 Barrack Street, Sydney NSW 2000 with Folio Identifier 1/71977.

BoB Premises Lease means the lease over BoB Premises dated 1 June 2017, registered number A1151605 between BoB and the Landlord, which has expired but continues on a month to month basis only.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney.

CEO means Chief Executive Officer.

Committee Member Declaration means a declaration in the form approved by CTC, under which the declarant declares, amongst other things, that they have never been convicted of any offence involving management of corporations, breaches of Corporations Law, dishonesty or significant prison terms, they are not an undischarged bankrupt and they have never been disqualified from managing a corporation.

CTC means the unincorporated association of members of the registered club known as City Tattersall's Club ABN 44 004 054 353 and where applicable and unless the context otherwise requires, includes the Chairman from time to time of City Tattersall's Club.

CTC Premises means the premises owned and occupied by CTC for its registered club business located at 198 Pitt Street, Sydney NSW 2000 and 199 Castlereagh Street, Sydney NSW 2000.

CTC Rules means the rules of CTC as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time.

Deed of Amalgamation means the deed of amalgamation between the parties dated on or about the date of this MOU.

EBITDARD means Earnings Before Interest, Taxes, Depreciation, Amortisation, Rent and Donations.

Employee Entitlements means all entitlements to salary or wages, annual leave, long service leave and other entitlements (including paid person/carer's leave) under any industrial instrument or agreement between BoB and any of its employees.

Financial Year means a financial year of the Amalgamated Club.

Government Agency means a government or any governmental, semi-governmental or judicial entity or authority, including but not limited to a self-regulating organisation established under statute and includes the Authority.

Landlord means the trustees of The Returned and Services League of Australia, the Combined Services R.S.L sub Branch NSW or in the case of a sale of BoB Premises after Amalgamation Completion, any future registered proprietors of the BoB Premises.

Licence means a club licence held under section 10 of the Liquor Act.

Liquor Act means the *Liquor Act 2007* (NSW).

Member means a member of either BoB, CTC or the Amalgamated Club as the case may be, as shown on the relevant club's register of members at the relevant time.

MOU means this memorandum of understanding for amalgamation.

RCA means the *Registered Clubs Act 1976* (NSW).

RCR means the *Registered Clubs Regulation 2015* (NSW).

Year means a period of twelve (12) months commencing on the anniversary of the date of Amalgamation Completion and concluding on the day immediately before the next anniversary date of Amalgamation Completion.

1.2 Interpretation

In this MOU, unless the context otherwise requires:

- (a) capitalised words which are not defined in this MOU have the same meaning as defined in the Deed of Amalgamation; and
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and conversely;
- (d) a gender includes any gender;
- (e) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (f) a reference to **person** includes:
 - (i) a body corporate, an unincorporated or other entity and conversely; and
 - (ii) a reference to that person's executors, administrators, successors, permitted assigns and substitutes including but not limited to a person to whom this memorandum of understanding is novated;
- (g) a reference to **clause** or **schedule** is to a clause or schedule to this MOU;
- (h) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
- (i) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (j) a reference to law or legislation includes but is not limited to a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;

- (k) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing; and
- (l) a provision of this MOU must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

2 Amalgamation

2.1 Amalgamation

Each of CTC and BoB agree to Amalgamate:

- (a) in accordance with the RCA and the Liquor Act; and
- (b) on the terms of this MOU and the Deed of Amalgamation.

2.2 Condition Precedent for MOU

This MOU is collateral to, and conditional upon execution of, the Deed of Amalgamation. This MOU does not become legally binding until and unless the parties enter into the Deed of Amalgamation. If there is inconsistency between this MOU and the Deed of Amalgamation, the terms of this MOU will prevail to the extent of the inconsistency.

2.3 Condition Precedent for Amalgamation Completion

Unless otherwise agreed by each of CTC and BoB in writing, Amalgamation Completion is conditional upon:

- (a) CTC having a written legal right to occupy BoB Premises as and from Amalgamation Completion for a period of at least 5 years with at least a 5 year option and general terms no less favourable than the existing terms granted to BoB by the Landlord as well as an option from the Landlord to purchase the BoB Premises;
- (b) BoB ceasing to be the lessee of BoB Premises;
- (c) the BoB Premises Lease not being 'core property' of BoB as defined in section 41E of the RCA.

3 Management of BoB Premises

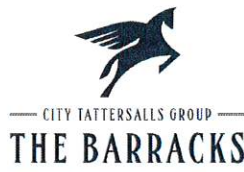
Regulation 7(2)(a) of the RCR

3.1 BoB Premises

On the date of Amalgamation Completion:

- (a) the BoB Premises will become additional trading premises of the Amalgamated Club;
- (b) the Amalgamated Club will operate and trade from the following premises:

- (i) the BoB Premises; and
 - (ii) the premises located at 199 Castlereagh Street, Sydney NSW 2000;
 - (iii) the premises located at 194-204 Pitt Street, Sydney NSW 2000 (subject to any closure of those premises during its proposed redevelopment and reconstruction), (**Amalgamation Premises**);
- (c) the Amalgamated Premises will be available for the use of all Members of the Amalgamated Club (subject to the CTC Rules, by-laws and any closure of any of the premises located at 194-204 Pitt Street, Sydney NSW 2000 during its proposed redevelopment and reconstruction); and
- (d) BoB Premises will be renamed to trade as "City Tattersalls Group The Barracks" subject to obtaining any required authorisation or consent from any Government Agency or as otherwise determined by the Board of the Amalgamated Club.



Example:

3.2 Future Management

The Amalgamated Club will have the same:

- (a) management structure;
- (b) Board; and
- (c) Chief Executive Officer for the purposes of the RCA and Liquor Act,

as CTC at the date of Amalgamation Completion, amended (if necessary) according to the operational requirements of the Amalgamated Club as determined by the CTC Board from time to time.

3.3 Improvements and renovations

In addition to the works CTC has completed to date, CTC may within 3 months after the date of Amalgamation Completion, carry out the following:

- (a) install up to 41 additional new gaming machines at BoB Premises, subject to any approvals required from the landlord and/or Government Agencies, including the Independent Liquor and Gaming Authority; and
- (b) further refurbish the interior of BoB Premises which may include replacing furniture and furnishings, painting such parts of BoB Premises as determined reasonably necessary by the Board of the Amalgamated Club and installing new carpets, subject to any approvals required from the landlord and/or any Government Agencies.

3.4 **Bank Guarantee**

If the Landlord requires a bank guarantee from CTC to occupy BoB Premises with effect from Amalgamation Completion, unless the parties otherwise agree, the following will apply:

- (a) BoB's existing bank guarantee will be returned to BoB, and subsequently returned to BoB's bank;
- (b) CTC will provide a new bank guarantee to the Landlord on or before Amalgamation Completion;
- (c) the funds securing the existing bank guarantee and the new bank guarantee will be an asset of CTC.

3.5 **Advisory Committee**

- (a) The Board of the Amalgamated Club will create an Advisory Committee comprised of:
 - (i) 3 CTC nominees who must have completed a Committee Member Declaration (unless the CTC nominee has already completed a similar declaration in his or her capacity as a director of CTC); and
 - (ii) no more than 2 nominees from BoB, and each BoB nominee must have been a director of the BoB Board as at Amalgamation Completion and must have completed a Committee Member Declaration.
- (b) The initial BoB nominees to be appointed to the Advisory Committee must be nominated by the BoB Board within five Business Days after Amalgamation Completion, and be approved by the CTC Board.
- (c) The Advisory Committee will:
 - (i) be subject to CTC Rules and any other CTC policies relating to committees;
 - (ii) meet as frequently as the Advisory Committee or the Board of the Amalgamated Club determines;
 - (iii) make recommendations relating to community projects, membership matters, community funding and support of BoB.
- (d) The Advisory Committee will be in force and effect for no less than 2 years after Amalgamation Completion, unless CTC and the 2 nominees from BoB agree otherwise.
- (e) A person will cease being on the Advisory Committee if he or she:
 - (i) ceases to be a Member of the Amalgamated Club; or
 - (ii) is removed from the Advisory Committee by resolution of the Board of the Amalgamated Club;

- (iii) loses mental capacity or is otherwise substantially incapacitated from performing their duties; or
- (iv) is considered by the Board of the Amalgamated Club (acting reasonably) not to be a fit and proper person taking into account his or her fame, character and integrity.

4 Continuing traditions, amenities, and community support

Regulation 7(2)(b) of the RCR

4.1 Traditions and Amenities

The Amalgamated Club will maintain each of the following traditions and amenities of BoB:

- (a) the 'Ode to the Fallen' will continue to be recited in the ground floor of the Club at 6pm every day.
- (b) significant memorabilia, historical items and information;
- (c) ANZAC Day celebrations;
- (d) Remembrance Day celebrations; and
- (e) Honour boards whether in their present format or in digital format.

4.2 Life members

Any person who, at Amalgamation Completion, is a life member of BoB and who becomes a Member of the Amalgamated Club:

- (a) will become a Life Member of CTC pursuant to an election by resolution of the Board of the Amalgamated Club; and
- (b) will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the RCA or if the Amalgamated Club is directed by the Authority to charge an annual subscription, in which case such person will only be required to pay the Amalgamated Club the minimum annual subscription required by the RCA.

4.3 Community support

Where financially possible, the Amalgamated Club will continue to support the communities and organisations that were supported by BoB at the date of this MOU.

4.4 Member rewards

BoB Members who become members of the Amalgamated Club will have the opportunity to participate in the Amalgamated Club's Member loyalty program, subject to the terms of the loyalty program.

5 Future Direction

Regulation 7(2)(c) of the RCR

5.1 General

The future direction of the Amalgamated Club is dependent on the overarching strategic plans for the Amalgamated Club and its ongoing financial viability.

5.2 Specific

The Amalgamated Club will:

- (a) maintain and promote BoB Premises and the CTC Premises (subject to any closure of any of the premises located at 194-204 Pitt Street, Sydney NSW 2000 during its proposed redevelopment and reconstruction);
- (b) develop a dedicated business and marketing plan for improving the Amalgamated Club's performance and community engagement and membership growth at BoB Premises and the CTC Premises;
- (c) provide high quality facilities and services to Members of the Amalgamated Club; and
- (d) seek to maintain and improve the trading of BoB Premises and the CTC Premises so that each premises is financially viable without subsidy or financial support from the other premises of the Amalgamated Club (subject to any closure of any of the premises located at 194-204 Pitt Street, Sydney NSW 2000 during its proposed redevelopment and reconstruction).

6 Employees

Regulation 7(2)(d) of the RCR

6.1 BoB Employees

- (a) As part of the Amalgamation, BoB will be wound up and liquidated. As part of this process, the employment of all BoB employees will come to an end.
- (b) However, following provisional approval of the Amalgamation, CTC will provide to BoB a list of employees that it intends to employ.
- (c) CTC will give each current employee of BoB which it seeks to employ, a written offer of employment:
 - (i) on terms no less favourable than those provided by an applicable industrial instrument; and
 - (ii) otherwise on those terms generally applicable to an employee in a similar role at CTC,

at least 10 Business Days before the anticipated date of Amalgamation Completion.

- (d) BoB will terminate the employment of all its employees in writing, or accept their written resignation, on Amalgamation Completion.
- (e) Employees who accept an offer from CTC made under clause 6.1(b) will be employed by the Amalgamated Club with effect from Amalgamation Completion on the terms of that offer, and that person's Employee Entitlements accrued with BoB up to and including Amalgamation Completion will be recognised by the Amalgamated Club.
- (f) For employees who do not accept an offer of employment from CTC in accordance with clause 6.1(b) or are not offered employment by CTC, BoB must:
 - (i) pay that employee all accrued Employee Entitlements as at Amalgamation Completion, which will be the end date of that employee's employment by BoB;
 - (ii) make all superannuation contributions it is obliged to make for that employee up to the date of Amalgamation Completion; and
 - (iii) use reasonable endeavours to obtain written acknowledgment of receipt of such payments from that employee as at Amalgamation Completion.

6.2 CTC employees

Each employee of CTC will continue to be employed by the Amalgamated Club after Amalgamation Completion, subject to the terms and conditions of employment between each such employee and CTC.

7 Intentions for BoB Assets

Regulation 7(2)(e) of the RCR

7.1 Core Property

- (a) As at the date of this MOU, BoB Premises Lease is 'core property' of BoB as defined in section 41E of the RCA. However, as noted in clause 2.3(c), Amalgamation Completion is conditional on the BoB Premises Lease not being 'core property' of BoB.
- (b) Despite this, at Amalgamation Completion, CTC does not intend to dispose of BoB Premises or BoB Premises Lease for a period of 5 years from Amalgamation Completion.

7.2 Gaming Machine Entitlements

- (a) BoB has 29 gaming machine entitlements at the date of this MOU and must continue to take all steps to hold those gaming machine entitlements until Amalgamation Completion.
- (b) The gaming machine entitlements held by BoB upon Amalgamation Completion will become an asset of, and transferred to, the Amalgamated Club.

- (c) CTC intends to retain the 29 gaming machine entitlements at BoB unless and until the Amalgamated Club ceases trading from BoB Premises.

7.3 Cash, investments and other Assets

The cash, term deposits, investments, (if any) and all other Assets of BoB will be transferred to the Amalgamated Club on the date of Amalgamation Completion.

8 BoB's core property preservation risks

Regulation 7(2)(e1) of the RCR

8.1 Core property

- (a) BoB's only core property or major asset for the purposes of the RCA is the BoB Premises Lease. However, as noted in clause 2.3(c), Amalgamation Completion is conditional on the BoB Premises Lease not being 'core property' of BoB.
- (b) The risk of the Amalgamated Club not meeting the intentions to preserve the BoB Premises Lease of BoB is mitigated by the following:
 - (i) CTC together with BoB is negotiating a new lease with the Landlord for the BoB Premises for a period of at least 5 years, with an option to renew for at least a further 5 years, and with an additional option to purchase the BoB Premises; and .
 - (ii) as set out in clause 7.1(b), CTC has no intention to dispose of BoB Premises or BoB Premises Lease for a period of 5 years from Amalgamation Completion.

9 Disposal of Major Assets

Regulation 7(2)(e2) of the RCR

The Amalgamated Club will not dispose of the Major Assets of BoB except in accordance with clauses 10 and 11.

10 Ceasing Trade or Changing Objects

Regulation 7(2)(f) of the RCR

10.1 Changing Objects

The objects of BoB will cease to have effect, and the CTC objects will become BoB's objects, on and from the date of Amalgamation Completion.

10.2 Ceasing Trade

- (a) CTC does not intend that the Amalgamated Club will cease trading from BoB Premises.

- (b) The Amalgamated Club may cease trading from BoB Premises in the following circumstances:
 - (i) following expiry of the period set out in clause 11:
 - (A) in accordance with the RCA and any other applicable law;
 - (B) if the Board of the Amalgamated Club determines that continued trade from BoB Premises is not in the best interests of the Amalgamated Club;
 - (ii) if the Board of the Amalgamated Club determines BoB Premises is not financially viable within the meaning of clause 10.2(c);
 - (iii) upon the order of any Governmental Agency, Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs which orders the permanent closure of BoB Premises;
 - (iv) if BoB Premises are destroyed or partially destroyed, and it is not commercially viable to reconstruct or repair BoB Premises in the opinion of the Board of the Amalgamated Club.
- (c) BoB Premises is deemed not to be financially viable if BoB Premises fail to attain an EBITARD of 15% for three (3) consecutive quarters after the Establishment Period. For the purposes of this clause 10.2(c) “**Establishment Period**” means 12 months after Amalgamation Completion.

11 Minimum Period

Regulation 7(2)(g) of the RCR

CTC intends to operate BoB Premises in the manner referred to in clause 5 for not less than 5 years after Amalgamation Completion and will only cease trading from BoB Premises in the circumstances referred to in clause 10.

12 General

12.1 Cost and expenses

Subject to any other express provision of this document, each party must pay its own legal and other costs and expenses relating to:

- (a) negotiation, preparation and execution of this MOU and the Deed of Amalgamation; and
- (b) effecting Amalgamation Completion.

12.2 No merger

The rights and obligations of the parties under this MOU do not merge on completion of any transaction contemplated by this MOU.

12.3 **Assignment**

Neither party may assign or transfer its rights or obligations under this MOU without the prior written consent of the other party.

12.4 **Entire agreement**

This MOU and the Deed of Amalgamation record the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this MOU and the Deed of Amalgamation.

12.5 **Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this MOU.

12.6 **Counterparts**

This MOU and any variation of this MOU may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

12.7 **Survival**

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this MOU will remain valid and binding following expiry or termination of this MOU. Any other provision by its nature intended to survive expiry or termination of this MOU survives expiry or termination of this MOU.

12.8 **No waiver**

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this MOU does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

12.9 **Cumulative rights**

The rights, powers, authorities, discretions and remedies of a party under this MOU do not exclude any other right, power, authority, discretion or remedy.

12.10 **Severability**

If any provision of this MOU is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;

- (b) where the offending provision cannot be read down then that provision must be severed from this MOU in which event, the remaining provisions of this MOU operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this MOU.

12.11 Variation

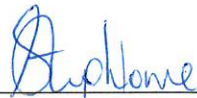
This MOU can only be amended, supplemented or replaced by another MOU signed by the parties.

12.12 Governing law and jurisdiction

This MOU is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this MOU.

Executed as a deed

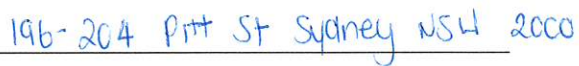
Signed sealed and delivered by the Chairman of City Tattersall's Club on behalf of City Tattersall's Club in the presence of:



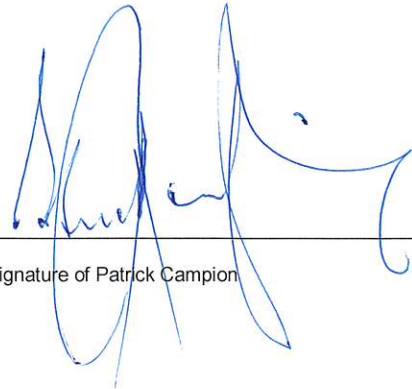
Signature of Witness



Name of Witness



Address of Witness



Signature of Patrick Campion

Executed as a deed by Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 in accordance with section 49 of the *Co-operatives National Law 2012* by its authorised officers:



Signature of director



Name



Signature of director ~~secretary~~



Name