


ST. LUCIA  
COMPANIES ACT CAP. 13.01



# LUCELEC

ST. LUCIA ELECTRICITY SERVICES LIMITED

COMPANY NO. 25 OF 1964  
AMENDED AND RESTATED  
**BY-LAW NO.1**

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A General By-Law Made by Resolution of the Board of Directors dated the 28th day of February 2003 and amended effective the 13th day of May 2016 for the regulation of the affairs of St. Lucia Electricity Services Limited. By further Resolution made at the 187th Meeting held on the 10th day of August 2018 the Board of Directors has resolved to restate the By-Law No. 1 as amended, incorporating all amendments made up to and including the 13th day of May 2016.

Be it enacted that:-

#### **Fourth Schedule Excluded**

1. The regulations in By-law No. 1 of the Fourth Schedule to the Companies Act Cap 13.01 (as hereinafter defined) shall not apply to the Company, except so far as they are repeated or contained in this By-law.

#### **Interpretation**

2. In this By-Law, unless the context otherwise requires:-

- a. "the Act" means the Companies Act Cap 13.01 as from time to time amended and every statute substituted therefor and, in the case of such substitution, any references in the By-law of the Company to provisions of the Act shall be read as references to the substituted provisions therefor in the new statute or statutes;

"Articles" means unless qualified,

- i. the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of re-organisation, articles of dissolution, and articles of revival; and
- ii. any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a company under this Act;

"the Auditors" means the duly appointed independent auditors for the time being of the Company (or in the case of joint auditors any one of them);

"The Board" means the Board of Directors for the time being of the Company;

"By-law" means this general By-law as altered from time to time;

"clear days" means in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"Committee" means a Committee of the Board;

"the Company" means St. Lucia Electricity Services Limited;

"corporation" means a body corporate wherever incorporated;

"the Council" means the Castries City Council;

"the Directors" means the directors for the time being of the Company;

"\$" and "dollars" mean Eastern Caribbean dollars;

"Employees' Share Scheme" means any scheme for encouraging or facilitating the holding of shares in the Company by or for the benefit of (a) the bona fide employees or former employees of the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company or (b) the wives, husbands, widows, widowers, children or step-children under the age of 18 of such employees or former employees;

"Ex-Officio Director" means the person appointed as such pursuant to the provisions of [Section 71](#);

"the Government" means the Government of Saint Lucia;

"in writing" means written, or produced by any substitute for writing or partly one and partly another;

"month" means calendar month;

"National Insurance Corporation" means the Corporation established by [Section 4](#) of The National Insurance Corporation Act Cap. 16.01.

"Non-Executive Director" means the person appointed as such pursuant to the provisions of [Section 54](#);

"Non-Voting Shares" means shares in the capital of the Company which do not carry the right to attend and vote at Shareholders' Meetings of the Company nor have the pre-emption rights contained in [Sub-section 25\(a\)](#) but, in all other respects, are identical to and rank paripassu with the Ordinary Shares;

"the Office" means the registered office for the time being of the Company;

"Ordinary Resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

"Ordinary Shares" means ordinary voting shares in the capital of the Company;

"paid" means paid or credited as paid;

"the Register" means the register of shareholders of the Company;

"Resale Facility" means (i) any recognised stock exchange on which the Ordinary Shares are listed or through which such shares are traded, and (ii) arrangements (other than via such a stock exchange) approved by the Directors from time to time relating to the transfer of the Ordinary Shares;

"the Seal" means the common seal of the Company;

"the Secretary" means the Secretary of the Company and shall include any person appointed by the Directors to perform any of the duties of Secretary including a joint, assistant or deputy Secretary;

"Shareholders Meeting" means any meeting of shareholders duly convened under this By-Law or under the Act;

"Special Resolution" means a resolution of which at least 21 days' notice is given which is (a) passed by not less than 75 per cent of the votes cast by the shareholders who voted in respect of the resolution; or (b) signed by all the shareholders entitled to vote on the resolution;

"the Statutes" means the Act, the Securities Act Cap. 12.18 and any other legislation for the time being in force concerning companies and affecting the company;

- b. Words denoting the singular shall include the plural and vice versa. Words denoting the masculine shall include the feminine. Words denoting persons shall include corporations and governments and unincorporated associations.
- c. References to any statute or statutory provision shall be construed as relating to any statutory modification or re-enactment thereof for the time being in force.
- d. Subject as aforesaid, any words or expressions defined in the Act shall (if not otherwise defined in this By-law or if not inconsistent with the subject or context) bear the same respective meanings in this By-law.
- e. A Special Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of this By-law.
- f. Headings to this By-law are inserted for convenience only and shall not affect the construction thereof.

### **Authorised Share Capital**

- 3. The authorised share capital of the Company at the date of adoption of this By-law is:-
  - a. 100,000,000 Ordinary Shares
  - b. 800,000 Non-voting Shares
  - c. 1,214,128 Preference Shares

### **Issue of Shares**

- 4. At the date of adoption of this By-Law:-
  - a. 520,000 Non-voting Ordinary Shares are in issue and held by the Government of St. Lucia
  - b. 22,400,000 Ordinary Shares are in issue and are held as follows:

Emera (St. Lucia)Limited	4,480,000
Castries City Council	3,472,000
First Citizens Bank Limited	4,480,000
National Insurance Corporation	4,480,000
Government of Saint Lucia	2,251,200
Others	3,236,800



Subject to the restrictions contained elsewhere in the Articles and this By-law and subject to the provisions of the Statutes relating to authority, pre-emption rights and otherwise and of any Special Resolution of the Company in Shareholders Meeting passed pursuant thereto, all unissued shares in the Company as maybe authorised from time to time shall be at the disposal of the Directors and they may allot (with or without conferring a right of renunciation), grant options over, issue a stock split in such ratio as they may from time to time determine, or otherwise dispose of them to such persons, at such times and on such terms as they think proper.

### **Special Rights Attaching to Shares**

5.
  - a. Subject to the special rights conferred elsewhere in this By-law on the holders of any class of shares in the capital of the Company and subject as otherwise provided in this By-law, any share in the Company may be issued with such preferred, deferred or other special rights or subject to such restrictions whether in regard to dividend, voting, return of capital, transfer or otherwise as the Company may from time to time by Special Resolution determine, Subject as aforesaid and to the provisions of the Act, any preference share may, with the sanction of a Special Resolution, be issued on the terms that it is, or at the option of the Company is liable, to be redeemed.
  - b. Subject to the Articles, and the special rights conferred on the holders of any class of shares in the Company under the Act, the Directors shall have the power to change the number of unissued shares of any class or series into a different number of shares of the same class or series.

### **Commission on Shares**

6. The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the capital of the Company, such commission not to exceed 10% of the price at which the shares are issued or an amount equivalent thereto. Any such commission may be paid in cash or satisfied by the allotment of fully paid shares in one way and partly in the other.

### **Class Meetings**

7. Whenever the share capital of the Company is divided into different classes of shares, all or any of the rights attached to any class (unless otherwise provided in the Articles or by this By-law or by the terms of the issue of the shares of that class) may be varied or abrogated either with the consent in writing of the holders of three-quarters in number of the issued shares of that class or with the sanction of a Special Resolution passed at a separate Shareholders Meeting of the holders of the shares of that class (but not otherwise) and may be so varied or abrogated either while the Company is a going concern or during or in contemplation of a winding-up. (For the avoidance of doubt, the foregoing shall not obviate the need to alter the company's By-law (by a Special Resolution of the Company) should any such variation or abrogation require such an alteration and PROVIDED THAT any alteration to the restrictions attaching to the Non-Voting Shares shall require the sanction of a Special Resolution of the Company. To every such separate Shareholders Meeting of the holders of the shares of such class all the provisions of this By-law relating to Shareholders Meetings and to the proceedings thereat shall mutatis mutandis apply, but so that the necessary quorum shall be a number of shareholders holding or representing by proxy at least one-quarter of the total issued shares of such class and that any holder of shares of the class present in person or by proxy may demand a poll and that every such holder shall on a poll have one vote for every share of the class held by him.

### **Variation of Special Rights**

8. Save as otherwise provided in this the Articles, the special rights conferred upon the holders of any shares shall not, unless otherwise expressly provided by the conditions of issue of such shares, be varied or be deemed to be varied by the creation or issue of further shares ranking paripassu therewith but in no respect in priority thereto.

### **Receipts of Joint Shareholders**

9. If two or more persons are registered as joint holders of any share, or are entitled jointly to a share in consequence of the death or bankruptcy of the holder, any one of such persons may give effectual receipts for any dividends or other monies payable or property distributable in or in respect of the share.

### **No Trust Recognised**

10. Except as required by law, no notice of any trust, expressed, implied or constructive, shall be entered on the Company's Register or be receivable by its registrar. The Company shall not be bound by or required to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder. This Section shall not preclude the Company from requiring the shareholders or the transferee of shares to furnish the Company with information as to the beneficial ownership of any share when such information is reasonably required by the Company for the purposes of ensuring compliance with [section 16](#) hereof.

### **Registered Shareholder entitled to Share Certificate**

- 11.
- a. Subject to the Statutes, and in particular the Securities Act, every person except any person in respect of whom the Company is not by law required to complete and have ready for delivery a certificate, whose name is entered as a shareholder in the Register shall be entitled without payment to receive within two months after allotment or lodgement of a duly executed and stamped (if necessary) transfer (or within such other period as the conditions of issue shall provide) a certificate for all his shares in any particular class or several certificates each for one or more of the shares of the class in question.
  - b. In the event of a member transferring part of the shares represented by a certificate in his name, a new certificate in respect of the balance thereof shall be issued in his name.
  - c. In the case of joint holders, the Company shall not be bound to issue more than one certificate for all the shares in any particular class registered in their joint names, and delivery of a certificate for a share to any one of several joint holders thereof shall be sufficient delivery to all.
  - d. For the avoidance of doubt no person or persons shall be entitled to more than one certificate representing the same share or shares.

### **Renewal of Certificates**

- 12.
- a. If any share certificate shall be damaged, defaced, worn out, or alleged to have been stolen, destroyed or lost, it may be renewed on such evidence being produced and such indemnity (if any) being given as the Directors shall require and, in case of defacement or wearing out, on delivering up of the old certificate and in any case on payment of such sum (if any) per certificate not exceeding \$25.00 as the Directors may from time to time reasonably require.

- b. Any two or more certificates representing shares of any one class held by any shareholder may at his request be cancelled and a single new certificate for such shares issued in lieu without charge.
- c. If any shareholder surrenders for cancellation a share certificate representing shares of any one class held by him and requests the Company to issue in lieu two or more share certificates representing such shares in such proportions as he may specify, the Directors may, if they think fit, comply with such request.
- d. In the case of shares held jointly by several persons, any such request shall be made by all the joint holders.

#### **Transfers of Shares in Writing**

13. Subject to the provisions contained in this By-law and the Securities Act, all transfers of shares shall be effected by transfer in writing in any usual or common form or in any other form acceptable to the Directors and may be under hand only. The instrument of transfer shall be signed by or on behalf of the transferor and by or on behalf of the transferee. The transferor shall remain the holder of the shares concerned until the name of the transferee is entered in the Register in respect thereof

#### **Suspension of Registration of Transfers**

14. The registration of transfers may be suspended at such time and for such periods as the Directors may, from time to time, determine and either generally or in respect of any class of shares. The Register shall not be closed for more than thirty days in any year.

#### **Restriction on Transfer of Shares**

15.
  - a. Subject to the other provisions of the Articles and this By-Law, the Ordinary Shares and the Non-Voting Shares shall be transferable without restrictions.
  - b. Where a person becomes the holder of 5 percent or more of the issued Ordinary Shares, he shall, within 14 days thereafter, notify the Company in writing at the Office of the same, giving details (where appropriate) of the numbers of Ordinary Shares held by any associate; the foregoing provisions shall apply mutatis mutandis in respect of each further holding of 5 per cent or more of the issued Ordinary Shares of which such person becomes the holder. Failure to give such notice shall result (if the Directors so resolve) in the holder or holders of the said Ordinary Shares not being entitled to receive notices of, or to attend or vote at, meetings of the Company in respect of such Ordinary Shares unless and until such notice shall be received.

PROVIDED THAT none of the foregoing provisions of this Sub-section 15 (b) shall apply in respect of the holdings of Ordinary Shares as set out in Section 4.

- c. For the purposes of Sub-section 15 (b), "person" shall include any associate which for greater certainty shall mean any corporate body in which either the person or the associate owns a 10% or greater voting interest or any person acting in concert with any such person. For the avoidance of doubt the foregoing shall not affect the exemptions contained in the proviso to Sub-section 15 (b).

#### **Restriction on Shareholding**

16.
  - a. No person shall hold or be beneficially interested in more than 20% of the issued Ordinary Shares of the Company.

- b. The Directors shall not issue or register a transfer of any share to any person if the total number of shares held by or on behalf of that person exceeds or would on the issuance or registration exceed 20% of the total issued shares of the Company.
- c. Any transfer or disposition of shares which results in a person being in breach of this Section shall be void.

### **Refusal to Register Transfers**

17.

- a. Subject to the Securities Act, the Directors shall decline to recognise any instrument of transfer unless the instrument of transfer is duly stamped (if stamping is required) and is in respect of only one class of share and is lodged with the Company (or as the Company may otherwise direct) and in due course such fee as is referred to in Section 19 and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf; the authority of that person so to do).
- b. The Directors shall refuse to register a transfer in the case of a transfer to joint holders if the number exceeds four.
- c. If the Directors decline or refuse to register a transfer, they shall, within two months after the date on which the transfer was lodged with the Company, send to the transferee notice of the refusal.

### **Instruments of Transfer Retained by Company and Subsequently Destroyed**

18. All instruments of transfer which are registered may be retained by the Company. The Company shall be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of seven years from the date of registration thereof and all dividend mandates and notifications of change of address at any time after the expiration of two years from the date of recording thereof and all share certificates which have been cancelled at any time after the expiration of one year from the date of the cancellation thereof. It shall conclusively be presumed in favour of the Company that every entry in the Register purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made and that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every share certificate so destroyed was a valid and effective certificate duly and properly cancelled and that every other document herein before mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company. Provided that:

- a. The provisions aforesaid shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;
- b. Nothing herein contained shall be construed as imposing upon the Company any liability in respect of the destruction of any such document earlier than as aforesaid or in any other circumstances which would not attach to the Company in the absence of this By-law;
- c. References herein to the destruction of any document include references to the disposal thereof or in any manner.

### **Transfer Fee**

19. Such fee, not exceeding \$25 for each transfer, as the Directors may from time to time determine, may be charged for registration of a transfer and on registration of every probate, letters of administration, certificate of death or marriage, stop notice, power of attorney, or other document relating to or affecting the title to any shares. The Directors may from time to time determine that no such fee shall be charged.

### **Sale of Shares of Untraced Shareholder**

20.

- a. The Company may sell (but shall not be obliged to do so) any share of a shareholder, or any share to which a person is entitled by transmission, by giving to the Secretary an instruction to sell it through a Resale Facility at the best price reasonably obtainable if:
- i. during the relevant period, at least three cash dividends have become payable in respect of the share to be sold;
  - ii. no cash dividend payable during the relevant period in respect of the share has been claimed;
  - iii. during the relevant period, no warrant or cheque in respect of the share sent to the address and in the manner provided by this By-law for sending such payments has been cashed;
  - iv. during the relevant period, no communication has been received by the Company from the shareholder or the person entitled by transmission to the share;
  - v. the Company has published at least two successive advertisements in a leading national newspaper in which the address referred to in sub-paragraph (iii) is located, in each case giving notice of its intention to sell the share; and
  - vi. during the period of three months following the publication of those advertisements and after that period until the exercise of the power to sell the share, the Company has not received any communication from the shareholder or the person entitled by transmission to the share.
- For the purposes of this paragraph, the “relevant period” means the period of twelve years immediately preceding the date of the publication of the first of any advertisement pursuant to sub-paragraph (v) above.
- b. The Company’s power of sale shall extend to any further share issued in respect of rights relating to a share to which sub-section (a) applies (or in respect of rights relating to any share to which this paragraph applies) if the conditions set out in sub-section (a) (ii) to (v) have been satisfied in relation to the further share and as if the relevant period in relation to it began on the date of allotment of the further share.
- c. To give effect to any sale, the Board may authorise some person to transfer the share to, or in accordance with the directions of, the purchaser, and the new holder of the share shall not be bound to see to the application of the purchase money; nor shall his title to the share be affected by any irregularity in, or invalidity of, the proceedings connected with the sale.



### **Application of Proceeds of Sale of Share of Untraced Shareholder**

21.

- a. The Company shall account to the person entitled to the share at the date of sale for a sum equal to the net proceeds of sale and shall be deemed to be his debtor, and not a trustee for him, in respect of them.
- b. Pending payment of the net proceeds of sale to such person, the proceeds may either be employed in the business of the Company or invested in such investments (other than shares of the Company or its holding company, or subsidiary, if any) as the Board may from time to time decide.
- c. No interest shall be payable in respect of the net proceeds, and the Company shall not be required to account for any monies earned on the net proceeds.

### **Transmission of Shares**

22. In the case of the death of a shareholder, the survivors or survivor, where the deceased was a joint holder, and the executors or administrators of the deceased, where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to his shares.

### **Registration of Transmission**

23. Any person becoming entitled to a share in consequence of the death or bankruptcy of any shareholder may, upon producing such evidence of title as the Directors shall require, be registered himself as holder of the share in accordance with this By-Law, or, subject to the provisions as to transfers contained in this By-law, transfer the same to some other person.

### **Persons Entitled May Receive Dividends but may not vote unless Registered**

24.

- a. Subject to Section 90 and subject as provided below in this Section, a person entitled to a share by transmission shall be entitled to receive, upon producing such evidence of title as the Directors shall require, and may give a discharge for, any dividends or other monies payable in respect of the share, but he shall not be entitled in respect of it to receive notices of, or to attend or vote at meetings of the Company, or, save as aforesaid, to exercise any of the rights or privileges of a shareholder, unless and until he shall become a shareholder in respect of the share.
- b. The Board may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and, if after ninety days from the date of service of such notice, the notice has not been complied with, the Board may withhold payment of all dividends or other monies payable in respect of the share until the requirements of the notice have been complied with.

### **Alteration of Capital**

25. Subject to the provisions in this By-law and the Articles relating to variation or abrogation of class rights, the Company may by Ordinary Resolution:-

- a. issue new shares which shall be subject to the provisions of the Statutes and of this By-law with reference to allotment and issue, transfer, transmission, and otherwise; Provided that save for any public offering of shares on any recognized stock exchange, the Company shall not allot and issue any further shares of whatever description unless it has made an offer to each person who holds Ordinary Shares to allot and issue to that person a proportion of such further shares which is nearly as practicable equal to the portion in number of the Ordinary Shares held by him.

- b. cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person and diminish the amount of its capital by the amount of the shares so cancelled.

PROVIDED THAT nothing in this section shall be construed as authorizing a breach of [section 16](#) of this [By-Law](#).

### **Reduction of Capital**

26. [The Company](#) may by [Special Resolution](#) reduce its share capital or any capital redemption reserve, or other undistributable reserve in any manner and with and subject to any incident authorised and consent required by law.

### **Annual Shareholders Meetings**

27. [The Company](#) shall in each calendar year hold a [Shareholders Meeting](#) as its Annual [Shareholders Meeting](#) in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it, and not more than fifteen [months](#) shall elapse between the date of one Annual [Shareholders Meeting](#) of [the Company](#) and that of the next.

### **Name of Meeting**

28. All [Shareholders Meetings](#) other than Annual [Shareholders Meeting](#) shall be called Special [Shareholders Meetings](#).

### **Special Shareholders Meetings**

29.
  - a. [The Directors](#) may convene a Special [Shareholders Meeting](#) whenever they think fit, and Special [Shareholders Meetings](#) shall also be convened by [the Directors](#) on the requisition of shareholders holding not less than 5 per cent of such of the issued shares of [the Company](#) as at the date of deposit of the requisition carries the right of voting at [Shareholders Meetings](#).
  - b. The requisition must state the objects of the meeting and must be signed by or on behalf of the requisitionists and deposited at [the Office](#) and may consist of several documents in like form each signed by or on behalf of one or more requisitionists, provided that, if signed on behalf of a requisitionist, that signatory shall be a shareholder holding a share carrying the right of voting at [Shareholders Meetings](#).
  - c. If [the Directors](#) do not within twenty-one days from the date of deposit of the requisition proceed duly to convene a meeting (such meeting to be held not later than two [months](#) from the date of deposit of the requisition), the requisitionists or any of them may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three [months](#) from the said date.
  - d. A meeting convened by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by [the Directors](#).
  - e. Any reasonable expenses incurred by the requisitionists by reason of the failure of [the Directors](#) duly to convene a meeting shall be repaid to the requisitionists by [the Company](#) and any sum so repaid shall be retained by [the Company](#) out of any sums due or to become due from [the Company](#) by way of fees or other remuneration in respect of their services to such of [the Directors](#) as were in default.

### **Notice of Shareholders Meetings**

30. An annual shareholders meeting and any special shareholders meeting at which it is proposed to pass a Special Resolution shall be called by twenty-one clear days' notice in writing at the least. The period of notice shall in each case be exclusive of the day on which the notice is served or deemed to be served and of the day on which the meeting is to be held and shall be given in manner hereinafter mentioned to all shareholders other than such as are not under the provisions of this By-law entitled to receive such notices from the Company; provided that a Shareholders Meeting, notwithstanding that it has been called by a shorter notice than that specified above, shall be deemed to have been duly called if it is so agreed:
- a. in the case of an Annual Shareholders Meeting, by a majority of the shareholders entitled to attend and vote thereat; or
  - b. in the case of a Special Shareholders Meeting, by a majority in number of the shareholders having the right to attend and vote thereat, being a majority together holding not less than 95 per cent in number of the shares giving that right.

Provided further that the accidental omission to give notice to, or the non-receipt of notice by, any person entitled thereto shall not invalidate the proceedings at any Special Shareholders Meeting or the Annual Shareholders Meeting.

### **Information to be given in Notice**

- 31.
- a. Every notice calling a Special Shareholders Meeting or Annual Shareholders Meeting shall specify the place and the day and hour of the meeting, and there shall appear with reasonable prominence in every such notice a statement that a shareholder entitled to attend and vote is entitled to appoint a proxy or to attend and, on a poll, vote instead of him and that a proxy need not be a shareholder of the Company.
  - b. In the case of an Annual Shareholders Meeting, the notice shall also specify the meeting as such.
  - c. In the case of any Shareholders Meeting at which business other than ordinary business is to be transacted, the notice shall specify the general nature of such business; and if any resolution is to be proposed as a Special Resolution, the notice shall contain a statement to that effect.

### **Ordinary Business**

32. Ordinary business shall mean and include only business transacted at an Annual Shareholders Meeting of the following types, that is to say:
- a. the considering of financial statements;
  - b. the directors report, if any;
  - c. the auditor's report, if any;
  - d. the sanction of dividends;
  - e. the election of directors; and
  - f. the re-appointment of the incumbent auditor.



### **Matters requiring the sanction of a Special Resolution**

33. In addition to those matters which require the sanction of a Special Resolution by virtue of the Statutes or by virtue of the other provisions of this By-law, the following matters shall require the sanction of a Special Resolution prior to implementation:
- a. The amalgamation, merger or consolidation of the business or assets of the Company with the business or assets of any other person or body corporate or any reorganisation of the assets of the Company which has a substantially similar effect.
  - b. Any action being taken for or with a view to liquidating the Company (save in the case where the Company is insolvent).
  - c. Any alterations to the Company's Articles or By-law;
  - d. Any material change in the business of the Company.

### **Chairman of Shareholders Meetings**

34. The chairman of the Directors shall preside as chairman at the Annual Shareholders Meeting and at a Special Shareholders Meeting. If there be no such chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present shall choose one of their number (or, if no Director be present or if all directors present decline to take the chair) the shareholders (having the right to attend and vote thereat) present shall choose one of their number to be chairman of the meeting.

### **Quorum at Shareholders Meetings**

- 35.
- a. No business shall be transacted at any Shareholders Meeting unless a quorum is present at the commencement of the meeting. Save as herein otherwise provided, the quorum at any Special Shareholders Meeting and the Annual Shareholders Meeting shall be twenty-five shareholders present in person holding or representing by proxy at least a majority of the shares entitled to vote thereat.
  - b. If within 30 minutes from the time appointed for a Special Shareholders Meeting or the Annual Shareholders Meeting a quorum is not present, the meeting, if convened on the requisition of shareholders, shall be dissolved. In any other case, it shall stand adjourned to the same day of the next following week at the same time and at the same place as that fixed for the original meeting. At the adjourned meeting, any two shareholders (having the right to attend and vote thereat) present in person or by proxy shall be a quorum.

### **Adjournment of Shareholders Meetings**

36. The chairman of a meeting may, with the consent of any meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for twenty-one days or more, notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no shareholder shall be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. No business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

### **Poll at Shareholders Meetings**

37. At all Shareholders Meetings, a resolution put to the vote of the meeting shall be decided on a show of hands unless, before or upon the declaration of the result of the show of hands, a poll be demanded by the chairman or by at least two shareholders present in person or by proxy for the time being entitled to attend and vote at the meeting, or by a shareholder or shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the shareholders having the right to attend and vote at the meeting, or by a shareholder or shareholders present in person or by proxy holding shares conferring a right to vote at the meeting, being shares in number equal to not less than one-tenth of the total number of shares conferring that right. Unless a poll be so demanded, a declaration by the chairman of the meeting that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, shall be conclusive, and an entry to that effect in the minute book of the Company shall be conclusive evidence thereof, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may only be withdrawn with the approval of the meeting.

### **Chairman to Decide how Poll Taken at Shareholders Meetings**

38. A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such subsequent time within fourteen days and at such place, and in such manner as the chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately. No poll shall be demanded on the choice of a chairman.

### **Casting Vote at Shareholders Meeting**

39. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a further or casting vote in addition to any other vote or votes to which he may be entitled.

### **Business may be continued at Shareholders Meeting after Demand for Poll**

40. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.

### **Votes of Shareholders**

41. On a show of hands, every shareholder who is present in person shall have one vote, and, on a poll, every shareholder who is present in person or by proxy shall have one vote for each share of which he is the holder; Provided that the Non-Voting Shares shall not confer upon the holders thereof any right to attend and vote at any Shareholders Meeting of the Company.

### **Votes of Shareholders of Unsound Mind**

42. If any shareholder be of unsound mind, a lunatic, idiot or non compos mentis, he may vote by his committee, receiver, curator bonis or other legal curator, and such last mentioned persons may give their votes either personally or by proxy.

### **Joint Holdings**

43. In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders of the share, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the share.

### **Objection to Votes**

44. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

### **Votes on a Poll**

45. On a poll, votes may be given either personally or by proxy, and 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.

### **Proxy**

46. A proxy need not be a shareholder of the Company.

### **Instrument of Proxy**

47. An instrument appointing a proxy shall be in writing in any usual or common form or in any other form which the directors may approve and:
- a. in the case of an individual shall be signed by the appointor or his attorney; and
  - b. in the case of a corporation or the Government or the Council shall be either given under its common seal or signed on its behalf by an attorney or a duly authorised officer.

The signature on such instrument need not be witnessed. Where an instrument appointing a proxy is signed on behalf of the appointor by an attorney, the letter or power of attorney or a duly certified copy thereof must (failing previous registration with the Company) be lodged with the instrument of proxy pursuant to the next following Section, failing which the instrument may be treated as invalid.

### **Time for Submitting Instrument of Proxy**

48. An instrument appointing a proxy must be left at such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no place is so specified, at the office) not less than forty-eight hours before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used, and in default, shall not be treated as valid. The instrument shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates provided that an instrument of proxy relating to more than one meeting (including any adjournment thereof) having once been so delivered for the purposes of any meeting shall not require again to be delivered for the purposes of any subsequent meeting to which it relates.

### **Rights of Proxy**

49. An instrument appointing a proxy shall be deemed to include the right to demand or join in demanding a poll and shall have the same rights as the shareholder who appointed him to speak at the meeting in respect of any matter. Such instrument may contain a direction to the proxy to vote for or against a particular resolution or resolutions but, unless such direction be given, the proxy may vote by ballot or show of hands as he thinks fit.

### **Invalidity of Proxy**

50. A vote cast by proxy shall not be invalidated by the previous death or insanity of the appointor or by the revocation of the appointment of the proxy or of the authority under which the appointment was made or (until entered in the Register) the transfer of the share in respect of which the vote is given, provided that no notice in writing of such death, insanity, revocation or transfer shall have been received by the Company at the Office at least twenty-four hours before the commencement of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

### **Corporations Acting by Representatives**

51. The Government while it is a shareholder of the Company may, by direction in writing of a Government Minister or other principal officer, and the Council while it is a shareholder of the Company may, by direction in writing of a principal officer, and any corporation which is a shareholder of the Company may, by authority of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or the holder of any class of shares of the Company which it is entitled to attend and at which it is entitled to vote. The person so authorised shall be entitled to exercise the same powers on behalf of the Government or the Council or such corporation (as the case may be) as the Government or the Council or such corporation (as the case may be) could exercise if it were an individual shareholder of the Company, and the Government or the Council or such corporation (as the case may be) shall for the purposes of this By-law be deemed to be present in person at any such meeting if a person so authorised is present thereat. The Board or any Director or the Secretary may (but shall not be bound to) require evidence of the authority of any such representative.

### **Number of Directors**

52. Unless the Company shall otherwise determine by Special Resolution, the number of Directors shall not be less than three nor more than ten Non-Executive Directors and one Ex-Officio Director all as appointed in accordance with Sections 54 and 71.

### **No Share Qualifications for Directors**

53. 53. A Director shall not be required to hold a share qualification but shall nevertheless be entitled to receive notice of and to attend and speak at any Special Shareholders Meeting or the Annual Shareholders Meeting of the Company or at any separate meeting of the holders of any class of shares in the Company.

### **Appointment of Non-Executive Directors**

- 54.
- a. Subject to the provisions of the Articles and this By-law, including without limitation those of Sub section 54(b) and 71(b), the Company may by Ordinary Resolution appoint any person who is willing to act to be a Non-Executive Director, either to fill a vacancy or as an additional Non-Executive Director, but so that the total number of Non-Executive Directors shall not exceed any maximum number fixed by or in accordance with the Articles. No person (other than a Non-Executive Director retiring by rotation or otherwise) shall be appointed or re-appointed a Non-Executive Director at any Special Shareholders Meeting or the Annual Shareholders Meeting unless:
    - i. he is recommended by the Board; or
    - ii. not less than seven nor more than forty-two clear days before the date appointed for the meeting, there has been lodged at the Office notice in writing signed by 25 shareholders

(not including the person to be proposed) entitled to vote at the meeting, stating their intention to propose a resolution for the appointment of that person, and a notice signed by that person of his willingness to be appointed.

Not less than seven nor more than thirty clear days before the date appointed for holding a Special Shareholders Meeting or the Annual Shareholders Meeting, the Company shall give to all who are entitled to receive notice of the meeting, notice of any resolution to be proposed at the meeting to appoint as a Director any person other than a Director retiring at the meeting. The notice shall give the particulars of that person.

- b. A holder of Ordinary Shares shall appoint one Non-Executive Director to the Board in respect of each holding of such Ordinary Shares equal to 10 per cent of the issued Ordinary Shares. The provisions of this Sub-section 54 (b) shall not be capable of variation without the approval of the Company in Special Shareholders Meeting or the Annual Shareholders Meeting such approval to be given by way of Special Resolution.
- c. To the extent that any holder of Ordinary Shares has exercised his rights pursuant to Sub-section 54 (b), such holder shall thereafter only be entitled to vote on an Ordinary Resolution to appoint one Non-Executive Director in accordance with Sub-section 54(a) in respect of the number of Ordinary Shares (if any) which he holds in excess of the Ordinary Shares used to appoint one or more Directors in accordance with Sub-section 54(b).

### **Age of Directors**

55. Any provision of the Statutes which, subject to the provisions of this By-law, would have the effect of rendering any person ineligible for appointment as a Director or liable to vacate office as a Director on account of his having reached any specified age or of requiring any special formality in connection with the appointment of any Director over a specified age, shall not apply to the Company.

### **Directors Duties**

56. The Directors have the following duties including but not limited to:

#### *Duty of Loyalty and Good Faith*

- a. A director must act in good faith in which he considers to be the best interests of the Company;

#### *Duty of Obedience*

- b. A director must act in accordance with the Articles, By-Laws and the Statutes and must exercise his powers only for the purposes allowed by law;

#### *Duty not to make secret profits*

- c. A director must not use the Company's property, information or opportunities for his own or anyone else's benefit unless he is allowed to by the Articles, By-Laws or Statutes or the use has been disclosed to the Company at general meeting and the Company has consented to it.

#### *Duty of Independence*

- d. A director must not agree to restrict his power to exercise an independent judgment, even if he is appointed by a particular shareholder or particular class of shareholders. If he considers in good faith that it is in the best interests of the Company for a transaction to be entered into and carried into effect, he may restrict his power to exercise an independent judgment by agreeing to act in a particular way to achieve this.



*Conflict of Interest*

- e. If there is a conflict between the duty of a director and the interest of the company on the one hand, and his own interest on the other, the director must account to the company for any benefit he receives from the transaction. This applies whether or not the Company sets aside the transaction. But he does not have to account for the benefit if he is allowed to have the interest or duty by the Company's Articles or By-Laws or the interest or duty has been disclosed to and approved by the Company at general meeting.

*Duty to exercise Care, Skill and Diligence*

- f. A director owes the Company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both:-
- i. the knowledge and experience that may reasonably be expected of a person in the same position as the director, and
  - ii. the knowledge and experience which the director has.

*Duty to act in the interests of employees and shareholders*

- g. A director must have regard to the interests of the Company's employees in general and its shareholders.

*Duty of Fairness*

- h. A director must act fairly as between different shareholders even if he is appointed by a particular shareholder or class of shareholders.

*Effect of this summary statement*

- i. The law stating the duties of directors whether elsewhere in this By-law, the Articles, the Statutes or in the law generally is not affected by this section and the summary statement of duties herein.

**Vacation of Office of Director**

57. The office of a Director shall be vacated in any of the following events, namely:

- a. If he shall become prohibited by law or is disqualified from acting as a Director;
- b. If he shall resign by writing under his hand left at the Office or if he shall in writing offer to resign and the Directors shall resolve to accept such offer;
- c. If he shall have a receiving order made against him or shall compound with his creditors generally;
- d. If in Saint Lucia or elsewhere an order shall be made by any court claiming jurisdiction in that behalf on the ground (however formulated) of mental disorder for his detention, or for the appointment of a guardian or for the appointment of a receiver or other person (by whatever name called) to exercise powers with respect to his property or affairs;
- e. If he is removed from office under this By-law;
- f. On attaining the age of 72;
- g. If the appointment is revoked by the shareholder who has appointed him pursuant to section 54 (b) hereof, provided notice in writing is delivered to the Company by the shareholder who so

appointed him, and a commensurate notice in writing has been delivered to him by the Secretary that he has ceased to be duly qualified pursuant to [section 54 \(b\)](#);

- h. On expiration of his 12th consecutive year as director;
- i. In the case of any Non-Executive Director, if he shall be appointed to executive office in accordance with [Section 71](#).
- j. In the case of any Ex-Officio Director, if he ceases to be employed by the Company as Executive Chairman, Chief Executive or Managing Director.

PROVIDED THAT, if the Director so vacating office was appointed, under [Sub-section 54\(b\)](#), the foregoing provisions of this Section shall not affect the provisions of [Section 54\(b\)](#) and accordingly the appointor shall be entitled to appoint another person in that Director's place in accordance with [Sub-section 54\(b\)](#).

#### **Retirement by Rotation of Directors**

58.

- a. At every Annual Shareholders Meeting one third of the Non-Executive Directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third, shall retire from office by rotation.
- b. The Non-Executive Directors to retire by rotation in every year shall be those who have been longest in office since their last election, but as between persons who became Non-Executive Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- c. The Company at the meeting at which a Non-Executive Director retires in the manner aforesaid may fill the vacated office by electing a person thereto and, in default, the retiring Non-Executive Director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such Non-Executive Director shall have been put to the meeting and lost.
- d. No person other than a Non-Executive Director retiring by rotation at the meeting shall be eligible for election to the office of Director at any Annual Shareholders Meeting unless recommended by the Directors or otherwise proposed in accordance with the provisions of [Section 54](#).
- e. Subject as aforesaid, a Director who retires at an Annual Shareholders Meeting may, if willing to act, be re-appointed. If he is not re-appointed, he shall retain office until the meeting appoints someone in his place or, if it does not do so, until the end of the meeting.

#### **Resolution for Appointment of Two or more Persons as Directors**

59. A resolution for the appointment of two or more persons as Directors by a single resolution shall not be moved at any Annual Shareholders Meeting unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote being given against it; and any resolution moved in contravention of this provision shall be void.

### **Removal of Directors**

60. The Company may, in accordance with and subject to the provisions of the Statutes, by Ordinary Resolution of which special notice has been given, remove any Director from office (notwithstanding any agreement between the Company and such Director, but without prejudice to any claim he may have for damages for breach of any such agreement) and appoint another person in place of a Director so removed from office. Provided that, if the Director so removed was appointed under Sub-section 54(b), the foregoing provisions of this Section shall not affect the provisions of Sub-section 54 (b) and accordingly the appointor shall be entitled to appoint another person in that Director's place in accordance with Sub-section 54(b). In default of such appointment by Ordinary Resolution or under Sub-section 54(b) (as the case maybe), the vacancy arising upon the removal of a Director from office may be filled as a casual vacancy under this By-law.

### **Casual Vacancies Amongst Directors and Additional Directors**

61. Without prejudice to the provisions of Sections 54 and 71, the Directors shall have power at any time to appoint any person who is willing to act to be a Non-Executive Director, either to fill a casual vacancy or as an additional Non-Executive Director, provided that all the Directors unanimously concur therein. The total number of Non-Executive Directors must not as a result of such appointment, exceed the maximum number (if any) fixed by or in accordance with the Articles. Any person so appointed by the Directors shall hold office only until the next Annual Shareholders Meeting and shall then be eligible for re-election.

### **Directors' Remuneration**

62. The ordinary remuneration of the Directors shall from time to time be determined by the Company in Special Shareholders Meeting or at the Annual Shareholders Meeting. The Directors shall also be entitled, in their absolute discretion and without the sanction of a Special Shareholders Meeting or the Annual Shareholders Meeting to repay to any Director any travelling and hotel expenses and other expenses reasonably incurred by him in or about the performance of his duties as Director, including any such expenses incurred in connection with his attendance at Board Meetings and Special Shareholders Meetings or the Annual Shareholders Meeting. If by arrangement with the other Directors any Director shall perform or render any special duties or services outside his ordinary duties as a Director, the Directors may pay him special remuneration, in addition to his ordinary remuneration, and such special remuneration may be by way of salary, commission, participation in profits or otherwise as may be arranged.

### **Alternate Directors**

- 63.
- a. Any Director nominated under Sub-section 54(b) of this By-law may at any time by writing under his hand and deposited at the Office, or delivered at a meeting of the Board, appoint any person (including another Director) to be his alternate Director and may in like manner at any time terminate such appointment.
  - b. The Directors may, by ordinary resolution appoint any person, (including another Director) to be the alternate of a Director nominated under Sub-section 54 (a) of this By-law and may in like manner at any time terminate such appointment.
  - c. The appointment of any alternate Director shall terminate on the happening of any event which, if he were a Director, would cause him to vacate such office or if the Director for whom he is the alternate ceases to be a Director.
  - d. An alternate Director shall be entitled to receive notices of all meetings of the Board and of all



meetings of Committees of the Board of which the Director for whom he is the alternate is a member, to attend and vote and be counted in the quorum at any such meeting at which the Director for whom he is the alternate is not personally present and generally to perform all the functions of the Director for whom he is the alternate in his absence and the provisions of this By-law shall apply as if he were a Director. If he shall be himself a Director or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative.

- e. If the Director for whom he is the alternate is for the time being absent or temporarily unable to act through ill health or disability, the alternate's signature to any resolution in writing of the Board shall be as effective as the signature of the Director for whom he is the alternate. To such extent as the Board may from time to time determine in relation to any Committee, the provisions of this By-law shall also apply mutatis mutandis to any meeting of any such committee for which the Director for whom he is the alternate is a member. Save as specified in this Section, an alternate Director shall not have the power to act as a Director, nor shall he be deemed to be a Director for the purposes of this By-law.
- f. An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to the Director for whom he is the alternate as such Director may by notice in writing to the Company from time to time direct.

#### **Directors' Contracts**

64.

- a. Subject to the Statutes, no Director or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or position in the management, administration or conduct of the business of the Company or as vendor, purchaser or otherwise, nor (subject to the interest of the Director being duly declared) shall any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established.
- b. No Director shall vote as a Director in respect of any contract or arrangement, in which he shall be interested, and if he does so his vote shall not be counted; he may be required by the majority of the other Directors to withdraw during the discussion of such contracts or arrangements. A Director shall be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting. Provided that and notwithstanding the foregoing, these prohibitions shall not apply to:
  - i. The giving of any security or indemnity to him in respect of money lent or obligations incurred by him at the request of or for the benefit of the Company or any of its subsidiaries;
  - ii. (ii) The giving of any security or indemnity to a third party in respect of a debt or obligation, of the Company or any of its subsidiaries for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;
  - iii. Any proposal concerning an offer of shares or debentures or other securities of or by the Company or any of its subsidiaries for subscription or purchase in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof;

- iv. Any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme or Employees' Share Scheme under which he may benefit;
- v. Any contract or dealing in which the Director is interested by reason only of his being a director or other officer, employee or nominee of the Government or the Council or The National Insurance Corporation (as the case may be) which, being a shareholder of the Company or holding shares in a corporation which is a shareholder of the Company, is interested in such contract or dealing, whether directly or indirectly, and this exception shall not cease to have effect merely by reason of the fact that the Director is also a shareholder or creditor of any of the Government or the Council or The National Insurance Corporation or any corporation in which it is interested (as the case may be).
- c. Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Company or any company in which the Company is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not debarred otherwise from voting under this By-law) shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.
- d. If any question arises at any meeting as to the interest of a Director (other than the chairman of the meeting) or any of his associates or any entity connected with him or as to the entitlement of any Director (other than the chairman of the meeting) to vote and the question is not resolved by his voluntarily agreeing to abstain from voting, the question shall be referred to the chairman of the meeting and his ruling in relation to the Director concerned shall be final and conclusive except in a case where the nature or extent of the interest of the Director or any of his associates or any entity connected with him concerned, so far as known to him, has not been fairly disclosed. If any question shall arise in respect of the chairman of the meeting or any of his associates or any entity connected with him and is not resolved by his voluntarily agreeing to abstain from voting, the question shall be decided by a resolution of the Directors (for which purpose the chairman shall be counted in the quorum but shall not vote on the matter) and the resolution shall be final and conclusive except in a case where the nature or extent of the interest of the chairman or any of his associates or any entity connected with him, so far as known to him, has not been fairly disclosed.
- e. The Company may by Ordinary Resolution suspend or relax the provisions of this Section to any extent or ratify any transaction not duly authorised by reason of a contravention of this Section.
- f. A Director may hold office as a director or manager of or be otherwise interested in any other company which is a subsidiary or holding company of the Company or in any other corporation in which the Company is in any way interested, and shall not (unless it is otherwise agreed) be liable to account to the Company by way of payment in respect of any remuneration or other benefits receivable by him from such other company or corporation.
- g. A Director may hold any other office or place of profit under the Company (except that of Auditor) in conjunction with his office of Director, and on such terms as to remuneration and otherwise as the Directors shall arrange.
- h. For the purpose of this Section, a general notice given to the Directors by a Director at any meeting of the Directors to the effect that he is a member of a specified corporation or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with

that corporation or firm shall be deemed to be a sufficient declaration of his interest in relation to any contract so made.

- i. For the purposes of this section, references to an entity associated with a Director shall be construed in accordance with the Act. References in this section to a contract include references to any proposed contract and to any transaction or arrangement whether or not constituting a contract.

### **Business Managed by Directors**

65.

- a. The business and affairs of the Company shall be managed by the Directors, who may pay all such expenses of and preliminary and incidental to the promotion, formation, establishment and registration of the Company as they think fit, and may exercise all such powers of the Company, and do on behalf of the Company all such acts as may be exercised and done by the Company, and as are not by the Act, the Articles or by this By-law required to be exercised or done by the Company in Shareholders Meeting. In so acting the Directors shall in all cases conform to the provisions of the Act, the Articles, this By-law, and such regulations as may from time to time be prescribed by the Company in Special Shareholders Meeting or the Annual Shareholders Meeting, but no regulation made by the Company in Shareholders Meeting shall operate retrospectively to invalidate any previous act of the Directors. The Directors may from time to time provide for the management of the affairs of the Company in Saint Lucia or elsewhere in such manner as they shall think fit.
- b. Without limiting the generality of this section, the Directors shall have specific power to make, vary and to enforce such rules in connection with the management, operation and conduct of business of the Company and its subsidiaries as they deem desirable, provided that no such rule shall be inconsistent with or shall affect or repeal anything contained in this By Law and that any such rule shall comply with all legal and regulatory requirements imposed on or applicable to the Company.

### **Other or Subsidiary Companies**

66. Subject to section 33 hereof, the Company may acquire and hold controlling and other interests, including 100% shareholding, in the share capital of any other company. To that end, the Company may provide financial, managerial and administrative advice, services and assistance for any company in which the Company is interested and the Company may pay all such expenses of and preliminary and incidental to the promotion, formation, establishment and registration of any company aforesaid as the Directors shall think fit.

### **Local Boards, Committees, Agencies, Powers of Attorney**

67.

- a. Local Boards and Agencies:
  - i. The Directors may, from time to time and at any time, establish any local boards or agencies for managing any of the affairs of the Company in any locality within Saint Lucia or elsewhere and may appoint any persons to be members of such local boards or to be managers or agents and may fix their remuneration.
  - ii. The Directors may delegate to any local boards, manager or agent any of the powers, authorities and discretion vested in the Directors, with power to sub-delegate, and may authorise the members of any local boards, or any of them, to fill any vacancies therein,

- and to act notwithstanding vacancies, and any such appointment or delegation may be made upon such terms and subject to such conditions as the Directors may think fit, and the Directors may remove any person so appointed, and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
- b. Power of Attorney: The Directors may, from time to time and at any time, by power of attorney or otherwise appoint any Company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under this By-law) and for such period and subject to such conditions as they 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 Directors may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretion vested in him.
- c. Committees:
- i. The Board may delegate any of its powers, authorities and discretion (with power to sub-delegate) to any Committee consisting of such person or persons (whether Directors or not) as it thinks fit, provided that the majority of the members of the Committee shall be Directors and that no meeting of the Committee shall be quorate for the purpose of exercising any of its powers, authorities or discretion unless a majority of those present are Directors.
  - ii. The Board may make any such delegation on such terms and conditions as it thinks fit and may revoke or vary any such delegation and discharge any Committee wholly or in part, but no person dealing in good faith shall be affected by any revocation or variation.
  - iii. Any Committee so formed shall, in the exercise of the powers, authorities and discretion so delegated, conform to any regulations that may be imposed on it by the Board.
  - iv. The proceedings of a Committee with two or more members shall be governed by any regulations imposed on it by the Board and (subject to such regulations) by the provisions of this By-law regulating the proceedings of the Board so far as they are capable of applying. Each Committee shall prepare minutes of all meetings, and shall keep a copy of any resolution passed at meetings with the minutes of every meeting.
  - v. The members of all Committees shall retire at every annual general meeting of the Company and immediately upon the close of the annual general meeting each Committee shall be reconstituted.

### **Borrowing Powers of Directors**

68. The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge all or any part of its undertaking, assets and property (both present and future) and uncalled capital, and to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

### **Non-shareholder rights**

69. The Company may, upon the issue of any bonds, debentures, debenture stock or other securities, confer on the holders thereof or on any trustees or other persons acting on their behalf the right to participate in the management of the Company by empowering them to appoint one or more

persons to be Directors of the Company (provided that the total number of Directors does not as a result of such appointment, exceed the maximum number, fixed by or in accordance with the Articles) or by any means that may be agreed between the Company and the holders thereof.

### **Continuing Directors may act**

70. The continuing Directors may act at any time notwithstanding any vacancies in their body; provided always that, in case the Directors shall at any time be reduced in number to less than the minimum number prescribed by or in accordance with this By-law, it shall be lawful for the continuing Directors or Director to act for the purpose of filling vacancies on the Board, or for summoning a Shareholders Meeting of the Company, but not for any other purpose.

### **Executive Office**

71.

- a. The Board may appoint one or more persons by a majority of at least 80% of the Directors (whether Non-Executive Directors or not) to hold any executive office under the Company (including that of Executive Chairman, Chief Executive or Managing Director) for such period (subject to the provisions of the Statutes) and on such terms as it may decide and may revoke or terminate any appointment so made without prejudice to any claim for damages for breach of any contract of service between the Director and the Company. If the person so appointed is a Non-Executive Director whose office is thereby vacated pursuant to Sub-section 57 (j), the original appointer of such Director shall be entitled to appoint another person in that Director's place in accordance with Sub-section 54 (b).
- b. If the Board appoints an Executive chairman, a Chief Executive or a Managing Director of the Company in accordance with Sub-section 71 (a) that person shall automatically become Ex-Officio Director effective immediately on his appointment as Executive Chairman, Chief Executive or Managing Director. Where such appointment is in respect of a person who is a Non-Executive Director, such Director shall not be entitled to vote nor be counted in the quorum in respect of the resolution concerning his own appointment.
- c. The remuneration of a person appointed to any executive office shall be fixed by the Board and may be by way of salary, commission, participation in profits or otherwise and, if such person is also an Ex-Officio Director either in addition to or inclusive of his remuneration as a Director; it may be a term of his appointment that he shall receive a pension, gratuity or other benefit on his retirement.

### **Quorum for Meetings of Directors**

72.

- a. A majority of the Directors shall constitute a quorum for the transaction of the business of the Company. A person who holds the office of director only as an alternate director shall, if the person for whom he is the alternate is not present, be counted in the quorum. A meeting of the Directors at which a quorum is present shall be competent to exercise all powers and discretion for the time being exercisable by the Directors;
- b. All business arising at any meeting of the Directors or of any committee of the Directors shall be determined only by resolution and no such resolution shall be effective unless carried by a majority of the Directors present. In the case of an equality of votes, the chairman of the Directors shall be entitled to a second or casting vote.



### **Meetings of Directors**

73. Subject to the provisions of this By-law, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. At any time any Director may, and the Secretary on the requisition of a Director shall, summon a meeting of the Directors which shall be held in Saint Lucia except in the case of a meeting held in accordance with Section 74. It shall be necessary to give notice of a meeting of Directors to any Director for the time being absent from Saint Lucia. Such meeting shall be convened by at least seven clear days' prior written notice setting out the business to be transacted thereat, or such lesser period of notice as may be agreed upon by all the Directors in writing.

### **Telephone Meetings of Directors**

- 74.
- a. 74. (a) A meeting of the Directors may consist of a conference between Directors some or all of whom are in different places provided that each Director who participated is able:
    - i. to hear each of the other participating Directors addressing the meeting;
    - ii. and if he so wishes, to address all of the other participating Directors simultaneously, whether directly, by conference telephone or by any other form of communications equipment (whether in use when this By-law is adopted or developed subsequently) or by a combination of those methods.
  - b. A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Directors required to form a quorum as provided in Section 72 (but subject to the provisions of Section 70).
  - c. A meeting held in this way is deemed to take place at the place where the largest group of participating Directors is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates.

### **Appointment of Chairman of Directors**

75. The Directors may elect from their number a chairman who will serve as chairman for a period to coincide with his term of office as a Director; provided that if no chairman has been elected as aforesaid or if at any meeting of the Directors no chairman shall be present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose any one of their number to be chairman of that meeting. Any chairman appointed as aforesaid may be removed by a majority vote of the Board.

### **All Acts by Directors Valid**

76. All acts done in good faith by any meeting of Directors, or of any Committee of the Directors, or of any local board or by any person acting as a Director or as a member of any such Committee or local board shall as regards all persons dealing in good faith with the Company, notwithstanding that there was some defect in the appointment of any of the persons acting as aforesaid, or that any such persons were disqualified or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of the Committee or local board and had been entitled to vote.

### **Minutes of Meetings**

77. The Directors shall cause proper minutes of all Shareholders Meetings of the Company to be made and also of all appointments of officers, and of proceedings of all meetings of Directors and Committees (including, for the avoidance of doubt and without limitation, meetings held in accordance with Section 74 and noting all resolutions passed pursuant to Section 78), and of the attendances thereat, and all business transacted at such meetings; and any such minute of any meeting, if signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be conclusive evidence without any further proof of the facts therein stated.

### **Resolution in Writing**

78. A resolution in writing signed or approved by letter, facsimile or telex by all the Directors shall be as valid and effective for all purposes as a resolution duly passed at a meeting of the Directors duly convened, held and constituted, and may consist of several documents in the like form each signed or approved by one or more Directors. For the purposes of this Section, the signature or approval of an alternate Director (if any) shall suffice in place of the signature of the Director appointing him.

### **Execution of Instruments and Affixing the Seal**

79.

- a. Contracts, documents or instruments in writing requiring the signature of the Company may be signed by:
  - i. A Chairman, a Deputy Chairman or a Managing Director together with the Secretary; or
  - ii. Any two Directors

and all contracts, documents and instruments in writing so signed shall be binding upon the Company without any further authorisation or formality. The Directors shall have power from time to time by resolution to appoint any officers or persons on behalf of the Company to sign any contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing either alone or jointly to another person.

- b. Subject to section 136 of the Act:
  - i. (i) A Chairman, a Deputy Chairman, or a Managing Director together with the Secretary; or
  - ii. (ii) Any two Directors

Shall have authority to sign and execute (under the seal of the Company or otherwise) all instruments that may be necessary for the purposes of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights, warrants or other securities.

- c. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors or of a committee of the Directors authorised by the Board in that behalf (but that authority may consist of an instruction or approval given by letter, facsimile or telex) and in the presence of at least any two Directors, or one Director and of the Secretary or such other person as the Directors may appoint for the purpose, and such Directors or Director and the Secretary or other person as aforesaid shall sign every instrument to which the Seal shall be affixed in their presence. In favour of any purchaser or person dealing with the Company in good faith, such signature shall be conclusive evidence of the fact that the Seal has been properly affixed.

### **Cheques, Drafts and Notes**

80. All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of sale shall be signed by such officers or persons of the Company and in such manner as the Directors may from time to time designate by resolution.

### **Authentication of Documents**

81. Any Director or the Secretary or any person appointed by the Directors for that purpose shall have power to authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the Directors or any Committee and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting, of the Company or of the Directors or any Committee which is certified as aforesaid shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted meeting.

### **Secretary**

82. The Secretary shall be appointed by the Directors for such time, at such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may at any time be removed by them, but without prejudice to any claim for damages for breach of any contract of service between him and the Company. The Directors may from time to time by resolution appoint a joint, assistant or deputy Secretary to exercise the functions of the Secretary.

### **Pensions and Allowances**

83. The Directors may grant retirement pensions or annuities or allowances, including allowances on death, to any person or to the widower, widow or dependant of any person in respect of services rendered by him to the Company in any executive office or employment under the Company or indirectly as an executive officer or employee of any subsidiary company of the Company or of its holding company (if any), notwithstanding that he may be or may have been a Director of the Company and may make payments towards insurance or trusts for such purposes in respect of such persons and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person.

### **Reserves**

84. The Directors may, from time to time, set aside out of the retained profits of the Company and carry to reserve such sums as they think proper which, at the discretion of the Directors, shall be applicable for any purpose to which the profits of the Company may properly be applied and pending such application may either be employed in the business of the Company or be invested. The Directors may divide the reserve into such special funds as they think fit and may consolidate into one fund any special funds or any parts of any special fluids into which the reserve may have been divided. The Directors may also, without placing the same to reserve, carry forward any profits. In carrying sums to reserve and in applying the same, the Directors shall comply with the provisions of the Statutes.

### **Rights of Shares to Dividends**

85. For the purposes of the provisions of this By-law relating to dividends, references to "shares" shall be construed as references to the Ordinary Shares and to the Non-Voting Shares whose entitlement to dividends shall rank paripassu.



### **Declaration of Dividends**

86. The Board may from time to time declare dividends payable to shareholders according to their respective rights.

### **Profits for Distribution**

87. No dividend shall be paid otherwise than out of profits available for distribution under the provisions of the Statutes.

### **Treatment of Acquired Assets for Dividend Purposes**

88. Subject to the provisions of the Statutes, where any assets, business or property is bought by the Company as from a past date (whether such date be before or after the incorporation of the Company) the profits and losses thereof as from such date may, at the discretion of the Directors, in whole or in part be carried to revenue account and treated for all purposes as profits or losses of the Company. Subject as aforesaid, if any shares or securities of any other company are purchased cum dividend or an interest, such dividend or interest may, at the discretion of the Directors, be treated as revenue, and it shall not be obligatory to capitalise the same or any part thereof.

### **No Interest on Dividends**

89. No dividend or other monies payable on or in respect of a share shall bear interest as against the Company.

### **Retention of Dividends**

90.

- a. The Directors may retain any dividend or other monies payable on or in respect of a share and may apply the same in or towards satisfaction of any debts, liabilities or engagements in respect of which the shareholder is indebted to the Company.
- b. The Directors may retain the dividends payable upon shares in respect of which any person is (under the provisions of this By-law as to the transmission of shares) entitled to become a shareholder, or which any person is under those provisions entitled to transfer, until such person shall become a shareholder in respect of such shares or shall transfer the same.

### **Waiver of Dividends**

91. The waiver in whole or in part of any dividend on any share by any document (whether or not under seal) shall be effective only if such document is signed by the shareholder (or the person entitled to the share in consequence of the death or bankruptcy of the holder) and delivered to the Company and if or to the extent that the same is accepted as such or acted upon by the Company.

### **Unclaimed Dividends**

92. The payment by the Directors of any unclaimed dividend or other monies payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect thereof, and any dividend unclaimed after a period of twelve years from the date of declaration of such dividend shall be forfeited and shall revert to the Company.

### **Payment of Dividends**

93.

- a. Any dividend or other monies payable in cash on or in respect of a share may be paid by cheque or warrant sent through the post to the registered address of the shareholder or person entitled thereto (or, if two or more persons are registered as joint holders of the share or are entitled thereto in consequence of the death or bankruptcy of the holder, to any one of such persons or to such

persons and such address as such shareholder or person or persons may by writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to such person as the holder or joint holders or person or persons entitled to the share in consequence of the death or bankruptcy of the holder may direct, and payment of the cheque or warrant by the banker upon whom it is drawn shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of the person entitled to the money represented thereby.

- b. In addition, any such dividend or other monies may be -paid by any bank or other funds transfer system as the holder or joint holders of the shares may direct in writing Provided that the foregoing shall only apply where the holding or joint holding represents at least 10 per cent of the issued Ordinary Shares. The Company shall have no responsibility for any sums lost or delayed in the course of any such transfer or when it has acted on any such direction.

#### **Record Date**

94. The directors may upon declaring a dividend specify that the same shall be payable to the persons registered as the holders of such shares at the close of business on a particular date, but that date shall not precede by more than thirty days the date on which the dividend is declared, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights of the transferors and transferees of any such shares as between themselves in respect of such dividend.

#### **Capitalisation of Profits and Reserves**

95. The Directors may, with the sanction of an Ordinary Resolution of the Company, capitalise any sum standing to the credit of any of the Company's reserve accounts (including any capital redemption reserve or other undistributable reserve) or any sum standing to the credit of profit and loss account (not required for payment of any fixed preferential dividend or debenture interest) by appropriating such sum to the respective holders of the Ordinary Shares and the Non-Voting Shares on the Register at the close of business on the date of the resolution (or such other date as maybe specified therein or determined as therein, provided) in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and:
  - a. on behalf of the holders of the Ordinary Shares, applying that part of such sum distributable amongst them in paying up in full unissued Ordinary Shares for allotment and distribution credited as fully paid up to and amongst them; and
  - b. on behalf of the holders of the Non-Voting Shares, applying that part of such sum distributable amongst them in paying up in full unissued Non-Voting Shares for allotment and distribution credited as fully paid up to and amongst them;

in the proportions aforesaid.

The Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provisions as they think fit for any fractional entitlements which would arise on the basis aforesaid (including provisions whereby fractional entitlements are disregarded or the benefit thereof accrues to the Company rather than to the shareholders concerned). The Directors may authorise any person to enter on behalf of all shareholders interested in an agreement with the Company providing for any such capitalisation and matters incidental thereto, and any agreement made under such authority shall be effective and binding on all concerned and shall where necessary be filed with the Registrar in accordance with the Act.

### **Capitalisation of Reserves - Employees' Share Scheme**

96.

- a. This Section (which is without prejudice to the generality of the provisions of the immediately preceding Section) applies:
  - i. where a person is granted pursuant to any Employee's Share Scheme a right to subscribe for shares in the Company in cash at a subscription price less than their value; and
  - ii. where, pursuant to any Employees' Share Scheme, the terms on which any person is entitled to subscribe in cash for shares in the Company are adjusted as a result of a capitalisation issue, rights issue or other variation of capital so that the subscription price is less than their value.
- b. In any such case, the Board:
  - i. shall transfer to a reserve account a sum equal to the deficiency between the subscription price and the value of the shares (the "cash deficiency") from the profits or reserves of the Company as specified in the immediately preceding Section; and
  - ii. (ii) (subject to sub-section (d)) below) shall not apply that reserve account for any purpose other than paying up the cash deficiency upon the allotment of those shares.
- c. Whenever the Company is required to allot shares pursuant to such a right to subscribe, the Board shall (subject to the Statutes) appropriate to capital out of the reserve account an amount equal to the cash deficiency applicable to those shares, apply that amount in paying up the deficiency on the value of those shares and allot those shares credited as fully paid to the person entitled to them.
- d. If any person ceases to be entitled to subscribe for shares as described above, the restrictions on the reserve account shall cease to apply in relation to such part of the account as is equal to the amount of the cash deficiency applicable to those shares.
- e. No right shall be granted under any Employees' Share Scheme under paragraph (a) (i) and no adjustment shall be made as mentioned in paragraph (a) (ii) unless there are sufficient profits or reserves of the Company as specified in the immediately preceding Section to permit the transfer to a reserve account in accordance with this Section an amount sufficient to pay up the cash deficiency applicable to the shares concerned.

### **Accounts to be Kept**

97. The Directors shall cause such accounts to be kept:

- a. of the assets and liabilities of the Company, and
- b. of all sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure took place;

as are necessary to comply with the Statutes and to present fairly the Company's affairs and to explain its transactions. The books of the account shall be kept at the Office, or at such other place as the Directors shall think fit, and shall always be open to the inspection of the Directors.

### **Inspection of Books by Shareholders**

98. The Directors shall, from time to time, determine whether, in any particular case or class of cases, or generally, and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the Company, or any of them, shall be open to the inspection of shareholders, and no shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company, except as conferred by the Statutes or authorised by the Directors or by resolution of the Company in Shareholders Meeting.

### **Accounts to be laid before Company**

99.

- a. Once in every calendar year, the Directors shall lay before the Company in Shareholders Meeting a profit and loss account for the period since the preceding account made up to a date not more than seven months before such meeting. A balance sheet shall also be made out in every year as aforesaid as at the date to which the profit and loss account is made up, and shall be laid before the Company in Shareholders Meeting together with such profit and loss account and the reports of the Directors and the Auditors. The Directors shall in their report state the amount (if any) which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to reserve, and shall comply with the requirements of the Statutes.
- b. The Auditors' report shall comply with all the requirements of the Statutes and shall be read before the Company in Shareholders Meeting. Copies of all such documents and any other documents required by law to be annexed thereto shall, subject to the provisions of the Statutes, not less than twenty-one clear days before the date of the meeting before which they are to be laid, be sent to all shareholders of the Company entitled to attend and vote thereat and to every other person who is entitled to receive notices of meetings from the Company under the provisions of the Statutes; provided that if copies of any such documents are sent less than twenty-one clear days before the date of the meeting they shall, notwithstanding the fact, be deemed to have been duly sent if all the shareholders entitled to receive copies shall so agree; provided further that this By-law shall not require a copy of such documents to be sent to more than one of the joint holders or to any person of whose address the Company is not aware.

### **Appointment of Auditors**

100. The Company shall at each Shareholders Meeting at which accounts are laid before the Company appoint Auditors by Ordinary Resolution to hold office from the conclusion of such meeting until the conclusion of the next such meeting. A person, other than a retiring Auditor, shall not be capable of being appointed Auditor at the Annual Shareholders Meeting, unless notice of intention to nominate that person to the office of Auditor has been given by a Shareholder to the Company not less than 14 days before the Annual Shareholders Meeting, and the Company shall send a copy of any such notice to the retiring Auditor, and shall give notice thereof to the shareholders, not less than ten days before the Annual Shareholders Meeting:

PROVIDED that, if after notice of the intention to nominate an auditor has been so given, an Annual Shareholders Meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the Annual Shareholders Meeting.

### **Retiring Auditors Eligible to be Re-appointed**

101. At any Shareholders Meeting at which accounts are laid before the Company, the retiring Auditors (however appointed) shall be eligible to be re-appointed (if they have consented to such re-appointment) unless they are no longer qualified for appointment as Auditors.

### **Casual Vacancy in Office of Auditors**

102. If any casual vacancy occurs in the office of Auditors, the Directors may appoint Auditors who shall hold office until the conclusion of the next Shareholders Meeting at which accounts are laid before the Company.

### **Audit**

103. At least once in every calendar year the accounts of the Company shall be examined and the fairness, in all material respects, of presentation of the balance sheet and the profit and loss account ascertained by the Auditors, and the provisions of the Statutes shall be observed.

### **Auditors to have access to Books**

104. The Auditors shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company any information and explanations necessary for the performance of their duties.

### **Report to Shareholders by Auditors**

105. The Auditors shall make a report to the shareholders on the accounts examined by them during their tenure of office, and the report shall state:

- a. whether or not they have obtained all the information and explanations they have required; and
- b. whether in their opinion the accounts are properly drawn up so as to present fairly, in all material respects, the state of the Company's affairs according to the best of the information and explanations given to them, and as shown by the books of the Company.

### **Attendance at Meetings by Auditors**

106. The Auditors shall be entitled to attend any Shareholders Meeting and to receive all notices of and other communications relating to any Shareholders Meeting which any shareholder is entitled to receive and to be heard at any Shareholders Meeting on any part of the business of the meeting which concerns them as Auditors.

### **Service of Notice**

107.

- a. A notice or other document may be served by the Company upon any shareholder either personally or by sending it through the post in a prepaid letter addressed to such shareholder at his registered address in Saint Lucia as appearing in the Register. If a shareholder's address as appearing in the Register is outside Saint Lucia, any notice or other document shall be served upon such shareholder by sending it through the post in a prepaid airmail letter to his registered address and with a copy thereof being also sent by facsimile (but only if the Company has details of such shareholder's current facsimile number).
- b. Notice of any shareholders' meeting is effective if convened by notice advertised in two consecutive issues of a national newspaper circulating in Saint Lucia, PROVIDED THAT such notice shall include information sufficient thereon to advise shareholders that the necessary attachments such as financial statements are available for collection at the Company's registered office.



- c. The Directors may, if they see fit, by resolution provide for the issuing and reproducing of attachments to notices and other documents, including Annual Directors' and Auditors' Reports to shareholders as required under section 99 hereof, and all other reports, records and other documents required by the Statutes by CD Rom Drive, USB Flash Drive, electronic transmission attachment in portable document format (if a shareholder has consented to electronic transmission) or other form of portable data storage device or format.
- d. Any such notice or other document, may be served or delivered by the Company by reference to the Register as it stands at any time not more than 20 days before the date of service or delivery. No change in the Register after that time shall invalidate that service or delivery.
- e. Undelivered Notices: If a notice or document is sent to a sole shareholder or debenture holder by prepaid mail in accordance with this paragraph and the notice or document is returned on three (3) consecutive occasions because the sole shareholder or debenture holder cannot be found, it shall not be necessary to send any further notices or documents to the sole shareholder or debenture holder until he informs the Company in writing of his new address.
- f. Without limiting the manner by which notice otherwise may be given effectively to shareholders pursuant to the Statutes or these By-Laws, any notice to be given to shareholders by the Company pursuant to these By-Laws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the Company. Any such consent shall be deemed revoked if:
  - i. the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and
  - ii. such inability becomes known to the Secretary or an Assistant Secretary of the Company or other person responsible for the giving of such notice.

PROVIDED THAT the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action taken in the absence of the shareholder.

- g. Any notice given pursuant to the preceding paragraph shall be deemed given:
  - i. if by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;
  - ii. if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
  - iii. if by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of such posting or the giving of such separate notice; and
  - iv. if by any other form of electronic transmission, when directed to the shareholder.
- h. An affidavit of the Secretary or an Assistant Secretary or other officer of the Company responsible for giving such notice, that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

- i. For the purposes of this section, an “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

#### **Notice to Joint Holders**

108. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register, and any notice so given shall be sufficient notice to all the holders of such share

#### **Notice in Case of Death or Bankruptcy**

109. A notice may be given by the Company to the persons entitled to any share in consequence of the death or bankruptcy of a shareholder by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives or trustees of such deceased or bankrupt shareholder, at the address (if any) supplied for the purpose by such persons as aforesaid, or (until such an address has been supplied) by giving notice in the manner in which the same would have been given if the death or bankruptcy had not occurred.

#### **When Service of Notice Effected**

110.
  - a. Any notice or other document as referred to in Section 107 if sent by post or airmail post shall be deemed to have been served or delivered twelve days after the day when the letter containing the same was put into the post, and in proving such service or delivery it shall be sufficient to prove that the letter containing the notice or document was properly addressed and put into the postal system as a prepaid letter or prepaid airmail letter (as the case maybe).
  - b. Any notice or other document not sent by post but left at a registered address shall be deemed to have been served or delivered on the day it was so left.
  - c. Any notice advertised in accordance with section 107 shall be deemed to have been duly served on all members entitled thereto at noon on the day on which the said advertisement shall appear.
  - d. Any notice or other document given by electronic transmission shall be deemed to have been duly served in accordance with section 107 hereof.
  - e. A shareholder present, either in person or by proxy, at any meeting of the Company or class of shareholders of the Company, shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which the meeting was convened.
  - f. Every person who becomes entitled to a share shall be bound by every notice in respect of that share which, before his name is entered in the Register, was given to the person from whom he derives his title to the share.

#### **Statutory Requirements for Notices**

111. Nothing in any of the preceding Sections shall affect any requirement of the Statutes that any particular offer, notice or other document be served in any particular manner.

#### **Winding Up**

112. The Company shall be subject to the provisions of the Statutes relating to winding up.

### **Assets on Winding Up**

113. If the Company shall be wound up (whether the liquidation is voluntary, under supervision, or by the court) the liquidator may, with the authority of a Special Resolution, divide among the shareholders in specie or in kind the whole or any part of the assets of the Company and whether or not the assets shall consist of property of one kind or shall consist of properties of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the shareholders or different classes of shareholders; any such division may be otherwise than in accordance with the existing rights of the shareholders, but so that if any division is resolved otherwise than in accordance with such rights, the shareholders shall have the same right of dissent and consequential rights as if such resolution were a Special Resolution passed pursuant to Section 435 of the Act. A Special Resolution sanctioning a transfer or sale to another company duly passed pursuant to the said Section 435 may in like manner authorise the distribution of any shares or other consideration receivable by the liquidator amongst the shareholders otherwise than in accordance with their existing rights, and any such determination shall be binding upon all shareholders, subject to the right of dissent and consequential rights conferred by the said Section 435.

### **Indemnity and Insurance**

114.

- a. Subject to section 99 of the Act except in respect of any action by or on behalf of the Company to obtain a judgement in its favour, the Company shall indemnify a Director or officer of the Company, a former Director or officer of the Company or a person who acts or acted at the Company's request as a Director or officer of a body corporate of which the Company is or was a shareholder or creditor, and his personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgement, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a Director or officer of such Company, if -
  - i. he acted honestly and in good faith with a view to the best interests of the Company; and
  - ii. in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.
- b. The Directors shall have power to purchase and maintain for or for the benefit of any persons who are or were at any time Directors or Officers of the Company or subsidiaries of the Company, or who are or were at any time trustees of any pension fund in which employees of the Company are interested, insurance against any liability incurred by such persons in respect of any act or omission when in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the Company or any pension fund of the Company and shall be entitled to vote (and be counted in the quorum) in respect of any resolution concerning the purchase of such insurance.

### **Effective Date**

115. This Amended and Restated By-law is effective as of 10th August 2018, pursuant to a resolution of the Board passed at its 187th Meeting.

### **Repeal**

116. All previous By-laws of the Company, including the By-law dated 17th May 2003 are repealed on the coming into force of this By-law.



**Effect of Repeal**

117. All persons appointed or elected under any By-law repealed on the coming into force of this By-law shall continue to act until ceasing to hold office or until re-appointed or re-elected and all resolutions of the shareholders or the Board having continuing effect and passed under any repealed By-law or otherwise shall continue to be operative until amended or repealed except to the extent that they are inconsistent with this By-law.

The Seal of St. Lucia Electricity Services Limited was affixed to this Amended and Restated By Law No. 1 Pursuant to a resolution of the Board of Directors



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John C. Joseph  
Chairman



.....

Gillian S. French  
Company Secretary



# LUCELEC

**ST. LUCIA ELECTRICITY SERVICES LIMITED**

SANS SOUCI, JOHN COMPTON HIGHWAY, CASTRIES, SAINT LUCIA  
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