

THE COMPANIES ACT

JAMAICA

**ENVIRONMENTAL FOUNDATION OF JAMAICA**

COMPANY LIMITED BY GUARANTEE NOT HAVING

A SHARE CAPITAL

**ARTICLES OF INCORPORATION**

**FIRST SCHEDULE**

1. The objects as (as formally provided for in the Memorandum of Association) for which the Foundation are the promotion and implementation of activities designed to conserve and manage the natural resources and environment of Jamaica in the interest of sustainable development and the improvement of child survival and child development, including, but not limited to the following:-
  - (a) Implementation of the provisions of an Agreement between the Government of the United States of America and the Government of Jamaica concerning an Enterprise for the Americas Foundation, dated the 27th day of September, 1993, and in particular by providing funding for organizations and activities of the type referred to therein.
  - (b) Promotion, encouragement and support for efforts at all levels of society to protect, preserve and improve the environment of Jamaica.
  - (c) Promotion of public awareness of the importance of protection, preservation and sound management of the environment.
  - (d) Promotion of child survival and other child development activities, especially those that link child survival and child development with sustainable management of natural resources;
  - (e) Support for and cooperation with efforts of local and foreign government entities and nongovernmental organizations which share the same similar or related objects as those of the Foundation.
  
2. In furtherance of such objects, but not further or otherwise, the Foundation shall have the following powers:
  - (a) To make any donation, investment or infusion of money or property in the work of any individual, association or body, and to subscribe or guarantee money for purposes or projects calculated to further the objects of the Foundation;
  - (b) To provide support, assistance and cooperation to any individual, association or body which contributes to or furthers the objects of the Foundation;
  - (c) To receive and access grant proposals for projects which would contribute to furthering the objects of the Foundation, and to disburse funds in accordance with these proposals or otherwise, in furtherance of the objects of the Foundation;



- (d) To undertake efforts to improve the level of public education, awareness and information regarding the objects of the Foundation;
- (e) To cooperate and enter into arrangements with any Government or authorities national, local or otherwise, or any corporation, company or person that may seem conducive to the attainment of the Foundation objects;
- (f) To solicit, raise and receive funding and financing from governments, agencies, organizations, firms, individuals or entities for the furtherance of the objects of the Foundation;
- (g) To procure and obtain subscriptions, gifts, donations, devises, grants, bequests and other gratuitous transfers of money and property for the purposes of the Foundation and to receive and deal with such moneys or property (subject to any trust, terms or conditions imposed by the donors thereof) for any of the objects of the Foundation as may seem expedient;
- (h) To purchase, take on lease or in exchange, hire or otherwise acquire and hold any real or personal property, and to maintain and alter any of the same as is necessary or convenient for the purposes of or in connection with the Foundation business.
- (i) To sell, lease, exchange, dispose of, mortgage, develop and turn to account, or otherwise deal with any property or rights for the time being of the Foundation for such consideration in money or otherwise and upon such terms as the Foundation shall deem expedient in the promotion of its objects;
- (j) To draw, make, accept, endorse, negotiate discount and execute promissory notes, bills of exchange and other negotiable instruments and to operate bank accounts;
- (k) To borrow or raise money for the objects of the Foundation on such terms and on such security as the Foundation thinks fit;
- (l) To take and accept any gift of money, property or other assets, whether such to any special trust or not, for any one or more objects of the Foundation;
- (m) To invest and deal with the moneys of the Foundation whether or not immediately required for the purposes of its objects in or upon such investments or securities and in such manner as may from time to time be determined in accordance with sound financial advice and with a view to yielding a commercially positive rate of return. Provided that at all times the moneys of the Foundation shall be invested in a prudent manner.
- (n) To promote, affiliate with and/or support any institutions, society, company or association being a non-governmental, charitable organization with objects broadly similar to those of the Foundation and prohibiting the distribution of its property and income among its members to an extent at least as great as is imposed by Clause 5 thereof;
- (o) To do all or any of the above things in any part of the world, as by or through principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others;
- (p) To erect, construct, lay down, enlarge, alter and maintain any buildings, work plant and machinery necessary or convenient for the Foundation business and subsidize the erection, construction and maintenance of any of the above;
- (q) To employ and pay any persons to supervise, organize carry on the work of and advise the Foundation;
- (r) To pay reasonable sums for or towards the provision of pensions or gratuities for officers, employees and ex-employees of the Foundation or their dependents;
- (s) To pay the expenses of and incidental to the formation and incorporation of the Foundation;
- (t) To do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them.



**THE COMPANIES ACT OF JAMAICA  
ARTICLES OF INCORPORATION**

**ENVIRONMENTAL FOUNDATION OF JAMAICA**

**A Company Limited by Guarantee  
and Not Having a Share Capital**

**SECOND SCHEDULE**

**INTERPRETATION**

1. In these Articles and any by-laws, rules and regulations made hereunder unless there is something in context inconsistent therewith:

*“Academia Director” shall have the meaning set forth in Article 44.*

*“Act” shall mean the Companies Act and every other Law or Act of Jamaica incorporated with and/or substituted for the same, in each case as amended from time to time.*

*“Articles” shall mean these Articles of Incorporation of the Company.*

*“Board” shall mean the board of directors of the Company.*

*“Chairman” shall mean the Chairman of the Board, as designated by the Board pursuant to these Articles.*

*“Company” shall mean the Environmental Foundation of Jamaica.*

*“CSCD Director” shall have the meaning set forth in Article 44.*

*“Debt Swap Agreement” shall mean the Agreement between the Government of the United States of America and the Government of Jamaica regarding a Debt-for-Nature Swap to Prepay and Cancel Certain Debt owed by the Government of Jamaica to the Government of the United States of America dated September 21, 2004.*

*“Directors” shall mean the directors for the time being of the Company.*

*“EAI Agreement” shall mean the Agreement between the Government of the United States of America and the Government of Jamaica concerning an Enterprise for the Americas Foundation, which will enter into force on or about June 29, 2015, and which supersedes the Agreement between the Government of the United States of America and the Government of Jamaica concerning an Enterprise for the Americas Foundation of September 27, 1993 (the “1993 EAI Agreement”).*



*"Extraordinary General Meetings" shall have the meaning set forth in Article 15.*

*"Extraordinary Resolution" shall have the meaning set forth in Section 138(1) of the Act.*

*"FC Director" shall have the meaning set forth in Article 44.*

*"FCA Agreement" shall mean the Forest Conservation Agreement by and among the Government of Jamaica, The Nature Conservancy and the Jamaica Protected Areas Trust Limited dated September 21, 2004, as amended by the Assignment, Assumption and Amendment thereto dated June 29, 2015.*

*"GOJ Director" shall have the meaning set forth in Article 42.*

*"GOJ Member" shall have the meaning set forth in Article 3.*

*"Governmental Authority" shall mean any national, supranational, regional or local government or governmental, administrative, legislative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity, or central bank.*

*"Institutional Director" shall have the meaning set forth in Article 43.*

*"Month" shall mean calendar month.*

*"NGOMembers" shall have the meaning set forth in Article 3.*

*"Objects" shall mean the objects of the company as described in Schedule 1.*

*"Office" shall mean the registered office for the time being of the Company.*

*"Permanent Directors" shall have the meaning set forth in Article 41.*

*"Seal" shall mean the common seal of the Company.*

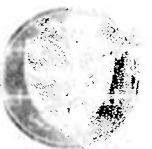
*"Secretary" shall mean any person appointed to perform the duties of the secretary of the Company.*

*"Swap Fee Contractual Agreement" shall mean the Swap Fee Contractual Agreement by and between the Government of the United States of America and The Nature Conservancy dated September 21, 2004.*

*"Term Director" shall have the meaning set forth in Article 41.*

*"TNC Director" shall have the meaning set forth in Article 42.*

*"USG Director" shall have the meaning set forth in Article 42.*



*"USG Member" shall have the meaning set forth in Article 3.*

*"UWI Member" shall have the meaning set forth in Article 3.*

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

For the purpose of these Articles, "person" shall include any body corporate or incorporate, public or private, organization, college or university.

These Articles are to be construed with reference to the provisions of the Act, and unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these Articles become binding on the Company.

### **NUMBER OF MEMBERS AND CONDITIONS OF MEMBERSHIP**

2. The number of members with which the Company proposes to be registered is seven (7), but the Directors may from time to time register an increase of members provided that there shall be no increase of members unless the unanimous consent of the GOJ Member, the USG Member and the TNC Director is received.
3. Representatives of the Government of Jamaica, the Government of the United States and the University of the West Indies shall at all times be members of the Company (hereinafter referred to as the "**GOJ Member**", the "**USG Member**" and the "**UWI Member**" respectively). All other members shall be non-governmental organizations meeting the following criteria for membership (those meeting all such criteria hereinafter referred to collectively as the "**NGO Members**" and each individually as a "**NGO Member**"):
  - 3.1 They accept the terms, conditions, provisions, and obligations if any, contained in these Articles;
  - 3.2 They operate on a not-for-profit basis, and no part of the net income of the organization shall enure to the benefit of any private stockholder or individual;
  - 3.3 No Governmental Authority or representative(s) of a Governmental Authority controls the organization;
  - 3.4 They are environmental and/or developmental nongovernmental organizations, including child survival, child development and forest conservation and management non-governmental organizations, or scientific or academic bodies; and
  - 3.5 They are capable of demonstrating a creditable record of activity in promoting sustainable development, including preserving or protecting the environment and/or in promoting or improving child survival and child development.



The admission of organizations as NGO Members of the Company shall be subject to review, confirmation and acceptance by the Board.

- 4. The subscribers to the Articles shall be members of the Company, and shall include the GOJ Member, the USG Member, and the UWI Member. All other subscribers meeting all criteria of Article 3 shall be deemed NGO Members.
- 5. Save and except as herein provided, all members of the Company shall have the same rights and shall rank equally.
- 6. The criteria for NGO membership shall be continuing requirements. In the event that the Board determines that a NGO Member of the Company has at any time failed or ceased to comply with said criteria, the Board shall give the non-compliant NGO Member notice in writing of the failure and the NGO Members shall have two months from the date on which notice was given to rectify the failure and provide the Board with evidence of the rectification. In the event that the NGO Member fails to provide evidence of rectification satisfactory to the Board, on the recommendation of the Board, said NGO Member may be expelled from membership at the Annual General Meeting.
- 7. In the event that any NGO Member of the Company is found by the Board to have persistently violated the principles contained in the Company's Articles, on the recommendation of the Board, said NGO Member may be expelled from membership at the Annual General Meeting.
- 8. An NGO Member may resign or retire its membership on giving written notice of its intention to resign or retire to the Secretary and thereupon its name shall be removed from the list of members and it shall be deemed to have resigned or retired.
- 9. No transfer of membership and/or any of the rights attaching thereto shall be made by any member.
- 10. No vote shall be given on any resolution which relates to the amendment, supplementation, or modification of these Articles without the participation of each of the TNC Director, GOJ Member and USG Member and any proposed amendment, supplementation, or modification of these Articles shall not be deemed valid under the Act and these Articles unless the unanimous consent of the TNC Director, GOJ Member and the USG Member is received, as well as the consent of at least three quarters of the members.
- 11. Any special rights pertaining to the GOJ Member and/or the USG Member may not be modified, abrogated or varied without the consent of each of the TNC Director and the member to whom those rights attach. Each of the following matters shall be deemed to be a modification, abrogation and variation of the rights pertaining to the GOJ Member and the USG Member:

11.1 the amendment or removal of all or any of these Articles;

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- 11.2 the voluntary winding up of the Company; and
- 11.3 the alteration of any of the rights attached to any of the members.
- 12. The rights pertaining to the NGO Members may not be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, unless the consent in writing of three-fourths of the NGO Members, or the sanction of an Extraordinary Resolution passed at a separate meeting of the NGO Members, is first had and obtained.

To every such separate meeting, all the provisions of these Articles relating to General Meetings of the Company or to the proceedings thereat shall mutatis mutandis, apply.

### **GENERAL MEETINGS**

- 13. The Company shall each year hold a general meeting as its Annual General Meeting in addition to any such other meetings in that year, and shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and that of the next. The Annual General Meeting shall be held at such time as the Directors shall determine.
- 14. All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
- 15. The Board, may, whenever it deems necessary, convene an Extraordinary General Meeting. Extraordinary General Meetings shall also be convened on such requisition, or in default, may be convened by such requisitions as provided by Section 128 of the Act. Any five members (including the GOJ Member and the USG Member) of the Company may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board, and including a justification in the written notice for the Extraordinary General Meeting. For the avoidance of doubt, Section 141 of the Act in relation to participation by electronic means shall apply to the Company.

### **NOTICE OF GENERAL MEETINGS**

- 16. An Annual General Meeting and a meeting called for the passing of a special resolution shall be called upon at least twenty-one (21) days' notice in writing, and a meeting of the Company other than an Annual General Meeting or a meeting for the passing of a special resolution shall be called upon at least fourteen (14) days' notice in writing. The notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of meeting, and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under these Articles, entitled to receive such notices from the Company, PROVIDED THAT a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article be deemed to have been duly called if it is so agreed:



- 16.1 in the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereat;
  - 16.2 in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five (95%) of the total voting rights at that meeting of all the members.
17. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member entitled to receive notice, apart from the GOJ Member and the USG Member, shall not invalidate the proceedings at that meeting.





## PROCEEDINGS AT GENERAL MEETINGS

18. The business to be transacted at an Annual General Meeting shall include the consideration of the accounts, balance sheets, and the reports of the Directors and auditors, the nomination by the NGO Members of NGO Directors to take the place of those retiring, and the appointment of, and the fixing of the remuneration, of the auditors.
19. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Five (5) members present in person or by proxy shall be a quorum, PROVIDED THAT one such member shall be the GOJ Member, one such member shall be the USG Member, and with respect to NGO Members, the number of members present shall be the greater of (i) two, and (ii) one-third of all NGO Members, and if one-third is not a whole number, rounded upward to the nearest whole number.
20. If within half an hour from the time appointed from the meeting a quorum is not present at the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
21. The Chairman, if any, of the Board shall preside as Chairman at every general meeting of the Company or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting.
22. If at any meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after time appointed for holding the meeting, the members present shall choose one of their number to be Chairman of the meeting.
23. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. SAVE AS AFORESAID it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
24. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a ballot is (before or on the declaration of the result of the show of hands) demanded:
  - 24.1 by the Chairman;
  - 24.2 by at least three members present in person or by proxy; or



- 24.3 by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a ballot be so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the Company shall be conclusive evidence of the fact without proof of the number and proportion of the votes recorded in favour of or against such resolution.

25. The demand for a ballot may be withdrawn.
26. Except as provided in Article 28, if a ballot is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was proceeded with pending the taking of the ballot.
27. In the case of an equality of votes, whether on a show of hands or on a ballot, the Chairman of the meeting at which the show of hands takes place or at which the ballot is demanded, shall be entitled to a second or casting vote.
28. A ballot demanded on the election of a Chairman, or on a question of adjournment, shall be taken forthwith. A ballot demanded on any other question shall be taken at such time as the Chairman of the meeting directs, and any business other than that upon which a ballot has been demanded may be proceeded with pending the taking of the ballot.
29. Subject to the provision of the Act, a resolution in writing signed by all the members for the time being entitled to and receive notice of and to attend the vote at general meetings (or being companies by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

#### VOTES OF MEMBERS

30. Every member shall have one vote.
31. A member who has been put into liquidation or receivership may vote, whether on a show of hands or on a ballot, by his committee, receiver or other person in the nature of a committee or receiver, appointed by that court, and any such committee receiver or other person may, on a ballot, vote by proxy.
32. Votes may be given either personally or by proxy.
33. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a company, either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the Company.



- 34. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at the place of the general meeting of the Company at which the proxy is to be exercised or at such other place within the Island as is specified for that purpose in the notice convening the meeting prior to the time set for the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a ballot, not less than one hour before the time appointed for the taking of the ballot, and in default the instrument of proxy shall not be treated as valid.
- 35. An instrument appointing a proxy shall be in a form as near thereto as circumstances admit:
- 37. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a ballot.
- 38. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous revocation of the proxy or of the authority under which the proxy was executed, PROVIDED THAT no intimation in writing of such revocation shall have been received at the Company's office before the commencement of the meeting or adjourned meeting at which the proxy is used.

**CORPORATIONS ACTING BY REPRESENTATIVE AT MEETING**

- 39. Any corporation which is a member of the Company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the Company and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as if that corporation were an individual member of the Company.

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- 40. Subject to the provision of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations of their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

**DIRECTORS**

- 41. The Directors shall be eleven (11) in number and shall at all times be comprised of: three (3) permanent directors as set forth in Article 42 (hereinafter collectively the "**Permanent Directors**" and each individually a "**Permanent Director**"), one (1) institutional director (hereinafter the "**Institutional Director**") and seven (7) term directors (hereinafter the "**Term Directors**").

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42. The Permanent Directors shall at all times be comprised of one (1) director appointed by the Government of Jamaica (hereinafter the "**GOJ Director**"), one (1) director appointed by the Government of the United States (hereinafter "the "**USG Director**") and one (1) director appointed by The Nature Conservancy (hereinafter the "**TNC Director**"), provided, that at no time shall the TNC Director be an agent, employee or officer of any Governmental Authority.
43. The Institutional Director shall be appointed by the Government of Jamaica.
44. The Term Directors will be appointed by the NGO Members pursuant to the appointment process set out in Article 57 and shall at all times be comprised of:

One (1) director who shall be a representative of an NGO in Jamaica which has forest conservation as its principal focus of activities ("**FC Director**");

One (1) director who shall be a representative of an NGO in Jamaica (i) which has as its principal focus of activities the promotion and improvement of child survival and child development, and (ii) is either (x) an environmental non-governmental organization, (y) a local community development non-governmental organization, or (z) a scientific, academic or forestry organization ("**CSCD Director**"),

One (1) director who is a representative of academia associated with the University of West Indies or another tertiary education institution in Jamaica (hereinafter, the "**Academia Director**"); and

Four (4) directors who shall be representatives of (A) any non-governmental environmental, scientific, community development, academic or forestry research organization in Jamaica or (B) any other environmental non-governmental organization of, or active in, Jamaica,

PROVIDED THAT, at least one of the Term Directors shall be an attorney at law and one shall have financial management expertise.

45. None of the Term Directors shall be an agent, employee or officer of any Governmental Authority. Notwithstanding the status of the University of the West Indies as a government supported institution, members of academia associated with the University of the West Indies (or other tertiary educational institutions in Jamaica) shall be eligible for the Academia Director position.
46. A Director need not be a member of the Company.
47. Directors, as such, shall not receive any stated remuneration for their services. The Directors (other than the Director appointed by USG and the Director appointed by TNC) shall be entitled to be paid all reasonable traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any



committee of the Directors or general meetings of the Company or in connection with the business of the Company.

### **BORROWING POWERS**

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

### **POWERS AND DUTIES OF DIRECTORS**

49. Subject to Article 81, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in the formation of the Company and may make such rules and/or regulations and/or by-laws for the purposes of the Company and may exercise all such powers of the Company as are not, by the Act or by these Articles, required to be exercised by the Company in general meeting, subject nevertheless to the provisions of each of the EAI Agreement, the FCA Agreement, the Debt Swap Agreement, the Swap Fee Contractual Agreement, the Act or these Articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in a general meeting; but no regulation made by the Company in a general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.
50. The Directors may, from time to time and at any time, by power of attorney appoint any firm or persons or 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 these Articles) and for such period and subject to such conditions as they may think fit, and any such powers 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 authorize any such attorney to delegate all or any of the powers, authorities and discretion vested in him.
51. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.
52. The Directors shall cause minutes to be made:
- 52.1 of all appointments of officers made by the Directors.
- 52.2 of the names of the Directors present at each meeting of the Directors and of any committee of the Directors, and



- 52.3 of all resolutions and proceedings at all meetings of the Company and of the Directors, and of the committees of Directors.

### **DISQUALIFICATION OF DIRECTORS**

53. The office of a Director shall be vacated if the Director:
- 53.1 ceases to be a Director by virtue of Section 179 of the Act;
  - 53.2 without the consent of the Company in general meeting holds any other office of profit under the Company;
  - 53.3 becomes bankrupt or makes any arrangement or compromise with his creditors generally;
  - 53.4 becomes prohibited from being a Director by reason of any order made under Sections 180 and 182 of the Act;
  - 53.5 becomes convicted of a felony by a court of competent jurisdiction;
  - 53.6 becomes incapable by reason of mental disorder, illness or injury of managing or administering his property or affairs;
  - 53.7 resigns his office by written notice to the Company; or
  - 53.8 is directly or indirectly interested in any contract with the Company, and fails to declare the nature of his interest in manner required by Section 193 of the Act.

A Director who is in any way whether directly or indirectly interested in a contract or grant or proposed contract or proposed grants or has any other actual or potential conflict of interest with the Company shall declare the nature and extent of his interest or conflict at a meeting of the Directors of the Company pursuant to Section 193 of the Act and shall not participate in the discussions or decisions of the Directors involving that particular issue, to the extent that such participation would present a conflict of interest.

### **DEATH OF A DIRECTOR**

54. In the event of the death of a Director, a replacement Director shall be appointed in accordance with these Articles.

### **ROTATION OF DIRECTORS**

55. The GOJ Director, the USG Director, and the TNC Director shall retire or resign at the desire of the Government of Jamaica, the Government of the United States, or The Nature Conservancy respectively. In the event that the Government of Jamaica, the Government of the United States or The Nature Conservancy wishes to replace the GOJ Director, the USG Director, or the TNC Director, respectively, pursuant to any retirement, resignation or disqualification under Article 53 hereof, the Government of Jamaica, the Government



of the United States and The Nature Conservancy respectively shall notify the Board in writing of the fact and shall provide at the same time the name of the new Director, and the appointment shall be effective immediately upon the said notification unless the notification provides otherwise. For the avoidance of doubt, in the event a Permanent Director is subject to disqualification under Article 53 hereof, only the party who appointed such Permanent Director under Article 42 hereof shall have the right to appoint the successor.

56. The Institutional Director shall retire or resign at the desire of the Government of Jamaica. In the event that the Government of Jamaica wishes to replace the Institutional Director, the Government of Jamaica shall notify the Board in writing of the fact and shall provide at the same time the name of the new Director, and the appointment shall be effective immediately upon the said notification unless the notification provides otherwise.

57. At all times there shall be seven (7) Term Directors of the Company who shall be appointed by the NGO Members pursuant to the following process and/or criteria subject to Article 44:

57.1 At the first Annual General Meeting following the date hereof the NGO Members shall appoint the initial seven (7) Term Directors, two of whom shall be appointed to a one year term, three of whom shall be appointed to a two year term, and two of whom shall be appointed to a three year term.

57.2 At the second Annual General Meeting following the date hereof, and at the Annual General Meeting in every subsequent year, the NGO Members shall appoint for a three year term the number of Term Directors necessary to replace those Term Directors whose term has ended.

57.3 A retiring Term Director shall be eligible for reelection but his term of office shall not exceed an aggregate of three terms.

57.4 The NGO Members at the meeting at which a Term Director retires in manner aforesaid may fill the vacated office by electing a person thereto.

57.5 The retirement of a retiring Term Director shall not become effective and he shall continue to serve as a Director until the appointment of his replacement takes effect, except as set out in Article 57.3.

57.6 Term Directors shall not be subject to removal by the Government of Jamaica, the Government of the United States and The Nature Conservancy except upon the request by a majority of the NGO Members made to the Government of Jamaica, the Government of the United States and The Nature Conservancy, in which case such Term Director or Term Directors may be removed with the unanimous consent of the Government of Jamaica, the Government of the United States and The Nature Conservancy.

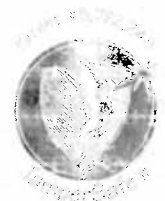


57.7 If at any time there is a vacancy in the number of Term Directors, the remaining Directors shall call an Extraordinary General Meeting within sixty (60) days. At such meeting the NGO Members shall, subject to Article 45, elect a number of Term Director necessary to fill such vacancy.

**PROCEEDINGS OF DIRECTORS**

- 58. The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit PROVIDED THAT the Directors shall meet at least once every- four (4) months. A Director may, and the Secretary on the requisition of a Director, shall, at any time summon a meeting of the Directors with no less than ten (10) days' advance written notice of such meetings given to each Director, which notice will set forth the time and place for such meeting. Prior notice of a meeting may be waived by a Director in writing and shall be deemed to have been waived by a particular Director by attendance by such Director at such meeting. Directors may participate in a meeting of the Board by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other.
- 59. (a) Questions arising at any meeting shall, be decided by a majority of votes and in the case of an equality of votes the Chairman shall have a second or casting vote, PROVIDED HOWEVER THAT any proposal to make a grant in excess of ONE HUNDRED THOUSAND UNITED STATES DOLLARS (US\$100,000.00) over the life of the project or the Jamaican dollar equivalent thereof shall be presented by the Board to the Permanent Directors who each shall, for a period of thirty (30) days after such presentation, have the power to disapprove such proposal, in which event the proposal shall be rejected, AND FURTHER PROVIDED THAT, except as otherwise provided in these Articles, any proposal regarding procedures for the operations of the Company shall be adopted by the Directors by a majority vote, provided that the majority vote includes the affirmative vote of all Permanent Directors.  
  
 (b) Any exercise of the Company's powers under Section 49 ("Borrowing Powers") shall only be decided by a vote of at least 9 Directors (a super-majority of votes).
- 60. The quorum necessary for the transaction of the business of the Directors shall, be seven (7) Directors, and shall include all Permanent Directors and a majority of the Term Directors.
- 61. The Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the Directors may act for the purpose of increasing the number and composition of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 62. The Directors may elect a Chairman (which shall not under any circumstances be a Permanent Director or an Institutional Director) of the their meetings from among the Term Directors and determine the period for which he is to hold office, but if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes

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after the time appointed for holding the same, the Directors present may choose one of their number to chair the meeting.

63. One or more committees may be appointed by the Directors (each an "Advisory Committee").

(a) The Directors may appoint new members to fill any vacancies on any Advisory Committee arising from time to time so long as such appointments are in compliance with this section. The Directors shall have the right to remove any Advisory Committee member at any time. An Advisory Committee shall perform the duties expressly assigned by the Board, and shall provide such other advice and counsel in connection with matters as requested by the Directors in connection with the Company's activities; provided that the Directors shall retain ultimate responsibility for making all decisions relating to the operation and management of the Company or relating to the conduct of its business, including making all investment and disbursement decisions. Except as otherwise expressly provided in the Articles, all Advisory Committee decisions shall be authorized by at least a majority of the Advisory Committee members pursuant to a meeting or written consent of a majority of the Advisory Committee members; provided that any such written consent has been provided by each member of the Advisory Committee to the Directors. In the event a member of the Advisory Committee has any conflict of interest with respect to any matter subject to a vote of the Advisory Committee, such member shall abstain from discussion and voting on such matter.

(b) The Directors or a majority of the members of an Advisory Committee may convene a meeting of such Advisory Committee at any time and from time to time by giving at least five (5) days prior notice thereof to each member of such Advisory Committee and the Directors. Meetings of any Advisory Committee members may be conducted in person, telephonically or through the use of other communications equipment by means of which all persons participating in the meeting can communicate with each other. The Directors shall be entitled to have representatives attend and participate in all Advisory Committee meetings and may permit non-voting observers to attend such meetings. The Company shall reimburse each Advisory Committee member, representative of the Directors, and permitted observer for his or her reasonable out-of-pocket expenses incurred in connection with the proceedings of the Advisory Committee.

(c) The members of any Advisory Committee shall not owe any fiduciary duties to the Company, any Director or any member in respect of the activities of an Advisory Committee, other than the duty to act in good faith.

64. A committee may elect a Chairman of its meeting and if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to chair the meeting.



65. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.
66. All acts done by any meeting of the Directors or of a committee of Directors or by any persons acting as a Director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
67. The Government of Jamaica may invite a representative of the Ministry responsible for finance to attend any meeting as a non-voting observer. Additional non-voting observers may be approved by the Directors from time to time.
68. A resolution in writing, signed by all the Directors for the time being entitled to receive notice of meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.

#### **SECRETARY**

69. The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.
70. A provision of the Act or these Articles requiring or authorizing a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as a Director and as, or in the place of, the Secretary.

#### **THE SEAL**

71. The Directors shall provide for the safe custody of the seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorized by the Directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.

#### **ACCOUNTS**

72. The Directors shall cause proper books of accounts to be kept with respect to:
  - 72.1. all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place.
  - 72.2. all sums of money invested by the Company and the matters in respect of which the investment takes place including the income therefrom;
  - 72.3. all sales and purchase of goods and services by the Company, and



72.4 the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if they are not kept such books of account as are necessary to give a true and fair view of the state of the Company affairs and to explain its transactions

73. The books of account shall be kept at the registered office of the Company, or subject to sub-section (3) and (4) of Section 144 of the Act, at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
74. The Directors shall from time to time determine whether and to what extent and at what times and places and under that conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account book or document of the Company except as conferred by statute or as subject to the EAI Agreement, the Debt Swap Agreement, the Swap Fee Contractual Agreement and/or the FCA Agreement or as authorized by the Directors or by the Company in general meeting.
75. The Directors shall from time to time, in accordance with Section 145 and other applicable provisions of the Act, cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.
76. A copy of every balance sheet (including every document required by law to be annexed to it) which is to be laid before the Company in general meeting, together with a copy of the auditors' annual report, the annual programme prepared by the Directors for presentation to the GOJ Member and the USG Member, and an annual report on the activities funded by the Company shall not less than twenty -one (21) days before the date of the meeting be sent to every member.

#### **AUDIT & INSPECTION**

77. Auditors shall be appointed and their duties regulated in accordance with Sections 154 and 157 of the Act.
78. The written policies, operating procedures, minutes of Directors' meetings and general meetings audited and unaudited accounts, records, reports and decision criteria used by the Company in the award of grants shall be retained in the files of the Company and shall be available for public inspection during any working day upon the giving of five (5) working days' notice.

#### **NOTICES**

79. A notice may be given by the Company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the Island) to the address, if any within the Island supplied by him to the Company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be



deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

80. Notice of every general meeting shall be given in any manner hereinbefore authorized to:-

80.1 every member, except those members who (having no registered address within the Island) have not supplied to the Company an address within the Island for the giving of notices to them;

80.2 every person being a legal personal representative or a trustee in bankruptcy of a member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

80.3 the auditor for the time being of the Company

No other person shall be entitled to receive notices of general meetings.

#### **INDEMNIFICATION**

81. The Directors and officers for the time being of the Company (and for the avoidance of doubt, all Directors and officers from time to time) acting in relation to any affairs of the Company, and their respective heirs, executors and administrators, shall be indemnified out of the assets of the Company, from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain, by reason of any act or omission in or about the execution of their duty in their respective offices (except any as they shall incur or sustain by or through their own willful neglect or default respectively), and no such Director or officer shall be personally answerable for the acts, receipts, neglects or default of any other Director or officer for joining in any receipt for the sake of conformity or for the solvency or honesty of any bankers, attorneys at law or other persons with whom any moneys or effects belonging to the Company may be lodged or deposited for safe custody or for other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office, unless the same shall happen through the willful neglect or default of such Director or officer.

#### **RULES OR BY LAWS**

82. The Directors may, by majority decision including the affirmative votes of the Permanent Directors, from time to time make such rules or by laws as it may deem necessary or convenient for the proper conduct and management of the Company.

83. The Company in general meeting with the affirmative vote of all Permanent Directors, shall have power to alter or repeal the rules or by laws and to make additions to them, and the Board shall adopt such means as it deems sufficient to bring to the notice of members



of the Company all such rules or by laws, which so long as they shall be in force, shall be binding on all members of the Company acting as such, provided nevertheless that no rule or by law shall be inconsistent with, or shall affect or repeal anything contained in, the Articles or in the EAI Agreement, the Debt Swap Agreement, the Swap Fee Contractual Agreement and/or in the FCA Agreement.

84. The headings in these Articles shall not be taken as part of them or in any manner affect the interpretation or construction of the same.
85. These Articles shall take effect upon the date of the last signature of the EAI Agreement.
86. The income and property of the Foundation, however derived, shall be applied solely towards the promotion of the objects of the Foundation as set forth herein, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus otherwise howsoever by way of profit to the members of the Foundation.

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Foundation, or to any member of the Foundation in return for any services actually rendered to the Foundation, or reasonable and proper rent for premises demised or let, by any Directors or governing body of the Foundation or any office of the Foundation paid by fees, and that no remuneration or any other benefit in money or money's worth shall be given by the Foundation to any member of such Board or governing body except repayment of out-of-pocket expenses and reasonable and proper rent for premises demised or let to the Foundation, so, however, that the provision last mentioned shall not apply to any payment, to any railway, gas, electric lighting, water, cable or telephone company of which a member of the Board of Directors or governing body may be a member or any other company in which such member shall not hold more than one-hundredth part of the capital and such member shall not be bound to account for any share of profits he may receive in respect of such payment.

87. If upon the winding up or dissolution of the Foundation there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Foundation, but shall, subject to Article X of the Agreement between the Government of the United States of America and the Government of Jamaica concerning an Enterprise for the Americas Foundation dated the 27th day of September, 1993, be given or transferred to some other institution or institutions having objects similar to the objects of the Foundation and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation under or by virtue of paragraph 3 hereof, such institution or institutions to be determined by the members of the Foundation at or before the time of winding up or in default thereof by such Judge of the Supreme Court as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

