

COMPANY REGISTRATION NO. 2774

MEMORANDUM AS AMENDED BY
SPECIAL RESOLUTION PASSED
ON 5TH JULY, 2012

THE COMPANIES ACT
(Chapter 46:03)

MEMORANDUM OF ASSOCIATION

OF

SUNBIRD TOURISM LIMITED

MEMORANDUM AS AMENDED BY SPECIAL RESOLUTION

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MEMORANDUM OF ASSOCIATION

OF

SUNBIRD TOURISM LIMITED

1. The name of the Company is **SUNBIRD TOURISM LIMITED**
2. The registered office of the Company will be situated at Mount Soche Hotel, Glyn Jones Road, Blantyre.
3. The liability of the members is limited.
4. The business which the Company is authorised to carry is unrestricted.
5. The share capital of the Company is **K14,000,000.00 (FOURTEEN MILLION KWACHA)** divided into 280,000,000 (Two Hundred and Eighty million ordinary shares of 5 (five) tambala each) with power for the Company to increase or reduce such capital and to issue any part of its capital, original or increased with or without any preference, priority or special privileges, or subject to any postponement of rights or to any conditions or restrictions, and so that unless the conditions of issue shall otherwise expressly declare, every issue of shares whether

declared to be preference or otherwise shall be subject to the power hereinbefore contained.

6. The Company is a public Company.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Names, Address and Description of Subscribers	Number of Shares taken by each Subscriber	Signature on behalf of the subscriber
Malawi Development Corporation	76.5%	
CDC Group plc	19.4%	
Investment and Development Bank Limited	4.1%	

ARTICLES AS AMENDED BY SPECIAL RESOLUTION

PASSED ON 5TH JULY, 2012

THE COMPANIES ACT
(Chapter 46.03)

ARTICLES OF ASSOCIATION

OF

SUNBIRD TOURISM LIMITED
(hereinafter referred to as the Company)

Interpretation

1. In these articles

“**the Act**” means the Companies Act, Cap. 46.03 of the Laws of Malawi, or any modification, amendment or replacement thereof for the time being in force;

“**the Seal**” means the Common Seal of the Company.

“**secretary**” means any person appointed to perform the duties of the secretary of the Company.

“**Stock Exchange**” means the Malawi Stock Exchange.

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.

Share Capital and Variation of Rights

- 2.1** The present share capital of the Company is **K14,000,000.00 (FOURTEEN MILLION KWACHA)** divided into 280,000,000 (Two Hundred and Eighty Million) ordinary shares of 5 (five) tambala each.
- 2.2** Where the equity capital includes shares with different voting rights, the designation of each class of shares other than those with the most favourable rights shall include the words `restricted voting or `limited voting`; where any preference shares are issued which do not carry voting rights the words `non-voting` will appear in the designation of such shares; all equity shares shall have unrestricted right to vote.
- 2.3** Without prejudice to any special rights previously conferred on the holders of the existing shares or class of shares, but subject to the Act, shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the Directors determine, subject to any special resolution of the Company in general meeting.

Power to issue Redeemable Preference Shares – C.A. – 62

- 2.4** Subject to the Act, any preference shares may, with the sanction of a special resolution, be issued on the terms that they are, or at the option of the Company are, liable to be redeemed.

Variation of Class Rights – C.A. 48

- 2.5** If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may whether or not the Company is being wound up, be varied the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these articles relating to general meetings shall *mutatis mutandis* apply, but subject to the following provisions –

- (a) where a class has only one member, that member shall constitute a meeting;
- (b) at any meeting of a class of members, one member of the class present in person or by proxy may demand a poll;
- (c) at any meeting of a class of members other than an adjourned meeting, the necessary quorum shall be one member present in person or by proxy, if there are not more

than two members of that class, and in any other case shall be holders of at least one third of the issued shares of the class, present in person or by proxy.

(d) At any adjourned meeting of a class of members, the necessary quorum shall be one member of that class.

3. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation of issue of further shares ranking equally therewith.

Payment of Commission – C.A. 60; MSR 12.33(a)

4. The Company may exercise the powers of paying commissions conferred by the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of five per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five per cent of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully paid shares or partly in one way and partly in the other, provided payment by allotment is authorised by the Company in general meeting. The Company may also on any issue of shares pay such brokerage as may be lawful.

Trusts – C.A. 36 and 54

5. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future, or partial interest in any share or (except only as by these articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

Issue of Share Certificates – C.A. 52; MSR 12.6(a)

6. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the Company affixed with the authority of the Directors and such certificate shall be signed by a person or persons authorised by a resolution of the Directors but in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to the first named of several joint holders shall be sufficient delivery to all such holders. Such signing may be by such mechanical means as the external auditors, any transfer auditors or bankers of the Company shall in writing have approved.

New Certificates C.A. 52; MSR 12.6(b)

7. Any member selling part of his shares shall be entitled, where

applicable, without payment to receive a certificate as provided in article 6.

8. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such reasonable fee, if any, as may be determined by the Directors from time to time (provided such fee shall be notified and not objected to by the Stock Exchange Board) and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company of investigating such evidence as the Directors think fit.

Company's Lien on Shares – C.A. 56; MSR 12.8

9. The Company shall have a first and paramount lien on every share (not being a fully-paid share) for all sums (whether presently payable or not) called or payable as a fixed time in respect of that share, but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The Company's lien, if any, on a share shall extend to all distributions attributable to that share.
10. The Company may sell in such manner as the Directors think fit any shares on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, or until the expiration of fourteen clear days after a notice in writing, stating and demanding payment of the sum presently payable, has been given to the registered holder for the time being of the share,

or the person entitled to the share by reason of his death or bankruptcy.

- 11.** To give effect to a sale the Directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
- 12.** The net proceeds of the sale shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall be held (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) by the Company on behalf of the person entitled to the shares at the date of the sale, but subject to surrender to the Company for cancellation of the certificate for the shares sold.
- 13.** Subject to article 18 and the terms of allotment, the Directors may from time to time make calls upon the members in respect of any monies unpaid on their shares, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on his shares.
- 14.** A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

15. The joint holders of share shall be jointly and severally liable to pay all calls in respect thereof.
16. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the money is due shall pay interest upon the amount unpaid at the rate of twelve percent per annum or at such rate as may be determined by the Directors from time to time from the day appointed for the payment to the time of the actual payment, but the Directors shall be at liberty to waive payment of such interest wholly or in part.
17. The provisions of these articles as to payment of interest shall apply in the case of non-payment of any money which by the terms of issue of a share becomes payable at a fixed time whether on account of the amount of the share, or by way of premium, as if it had become payable by virtue of a call duly made and notified.
18. Subject to the terms of allotment, the Directors may make arrangements on the issue of shares of different classes for a difference between the holders of the different classes in the amounts and times of payment of calls on their shares, but the Directors may not so differentiate between holders of the same class.
19. The Directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys for the time being remaining uncalled on his shares, and may pay interest upon the moneys so paid in advance, or upon so much thereof as from time to time remains in advance of the calls then made upon such shares, at such a rate as they think fit, subject to any direction by the Company

in general meeting, but such advance payment shall not entitle the holder of the shares to participate in respect thereof in a dividend subsequently declared or in a vote, where he would not otherwise be so entitled.

TRANSFER OF SHARES – C.A. 43;50; MSR 12.9

Execution of Transfer

- 20.** Subject to these regulations any member may transfer all or any of his shares by instrument in writing in the form stipulated in the Sixth Schedule to the Act or in any other form which the Directors may approve. The instrument shall be executed by or on behalf of the transferor and transferee; and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of the members in respect thereof.

Directors may decline to register transfer – C.A. 50(3) & (4);40

- 21(a)** The directors may decline to register any transfer of a share which is not fully paid to a person of whom they do not approve, and may also decline to register any transfer of shares on which the Company has a lien. The Directors may suspend the registration of transfers for such periods (not exceeding thirty days in any year) as they may determine.

Non-recognition of Instrument of Transfer

- (b) The Directors may also decline to recognise any Instrument of Transfer unless:
- (i) the instrument of transfer is duly stamped and accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer,
 - (ii) it relates only to one class of shares;
 - (iii) it is not in favour of more than four joint transferees;

Notice of refusal

22. If the Directors refuse to register a transfer of any shares they shall within sixty days after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

No fee for registration of Transfer

23. No fee shall be charged for registration of a transfer nor on registration of any other instrument relating to or affecting the title to any shares.
24. The Registration of Transfer may be closed at such time and for such periods as the Directors may determine from time to time.

TRANSMISSION OF SHARES C.A. 54; MSR 12.12

Transmission by operation of law

25. In case of death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder or last survivor of joint holder, shall be the only persons recognised by the Company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

Right of Election C.A.S. 54 (2)

26. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the Directors and subject as hereinafter provided, elect either to be registered himself as a holder of the share or to have some person nominated by him registered as the transferee thereof.

Effect of Election – C.A.S. 54(3)

- 27 (a) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the Company a notice in writing, signed by him, stating that he so elects. If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions

of these articles relating to the right to transfer and the registration of transfer of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member has not occurred and the notice or transfer were a transfer signed by that member.

- 27(b)** No shares registered in the name of the deceased or insolvent shareholders shall be forfeited if the executor or the trustee in bankruptcy fails to register them in his own or in their own name or in the name of the heir when called upon by the Directors to do so.

Rights passed by transmission

- 28.** Where the registered holder of any share dies or becomes bankrupt, his personal representative or the assignee of his estate, as the case may be, shall be entitled to the same dividends and other advantages as the registered holder would have been entitled to if he had not died or become bankrupt, and to the same rights and remedies as if he were a member of the Company, except that he shall not, before being registered as a member in respect of the share, be entitled to vote at any meeting of the Company.

Provided that the Company may at any time give notice requiring any such personal representative or assignee to elect either to be registered himself or to transfer the shares and if the notice is not complied with within three months, the Company may thereafter suspend payment of all dividends or other moneys payable in

respect of the share until the requirements of the notice have been complied with.

Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these regulations, be deemed to be joint holders of the share.

ALTERNATION OF CAPITAL – C.A. S. 64; MSB 12.13

Power to increase, consolidate capital

- 29.** The Company may from time to time by special resolution:
- (a) increase the share capital by new shares of such amount as the resolution shall prescribe;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount;
 - (c) subdivide its shares or any of them into shares of smaller amount;
 - (d) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

30. Unless the Company otherwise resolves, all new shares shall first be offered to such person as at the date of the offer are entitled to receive notices of general meetings in proportion, as nearly as possible, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may dispose of these shares in such manner as they think fit most beneficial to the Company. The Directors may likewise so dispose of any odd shares which (by reason of the ratio which the new shares bear to the shares held by persons entitled to an offer of new shares) cannot, in the opinion of the Directors, be conveniently offered under this regulation.

Reduction of Share Capital – C.A. SS.67 – 70; MSR 12.13(b)

31. The Company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised and consent required by law, provided that no reduced capital shall be repaid on the footing that it may be recalled again.

GENERAL MEETINGS – C.A. 104;MSR 12.16(a)

Annual General Meeting

32. The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next.

PROVIDED that if all the members of the Company entitled to attend and vote at any annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary to hold an annual general meeting that year.

Extra-Ordinary meetings

33. All general meetings other than annual general meetings shall be called extra-ordinary general meetings.
34. The Directors may, whenever they think fit, convene an extra-ordinary general meeting, and extra-ordinary general meetings shall also be convened on the requisition of members as provided by section 106 of the Act. If at any time there are not within Malawi, sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extra-ordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

Place of Meetings – C.A. S110

35. All general meetings shall be held in Malawi at such times and places as the Directors shall determine.

Notice of General Meetings – C.A.S 108:MSR 12.15(a)

36. General meetings shall be called by twenty-one days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for 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, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the Act or the articles of the Company, 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.

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) 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 holding not less than ninety-five per cent of the total voting rights at that meeting of all the members.

37. Notices of general meetings shall be accompanied by any statements required to be circulated therewith on behalf of members in accordance with sections 117 and 118 of the Act.
38. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

39. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the Directors and Auditors, the election of Directors in the place of those retiring, the fixing of the remuneration of the Directors and the appointment of, and the fixing of the remuneration of, the Auditors.

Quorum – C.A. S112(a); MSR 12.16 (b)

40. No business shall be transacted at any general meeting unless a quorum is present. Four persons entitled to attend and vote upon the business to be transacted, each being a member or a duly authorised representative of a corporation, shall be a quorum.

Dissolution and Adjournment

41. If within half an hour from the time appointed for the meeting a quorum is not present, 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 first 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 it is adjourned to a date which is less than twenty-one days from the date of the original meeting, notice of the adjourned meeting shall be given only by advertisement in at least one national daily newspaper and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members then present or represented by proxy shall be a quorum.

The Chairman

42. The Chairman, if any, of the board of Directors or in his absence some other Director nominated by the Directors shall preside as Chairman at every general meeting of the Company, or if there is no such Chairman, or if neither the chairman nor such other Director (if any) shall be present within fifteen minutes after the time appointed for the holding of the meeting or if the chairman or such other Director (if any) is unwilling to act, the Directors present shall choose one of their number to be Chairman of the meeting and, if there is only one Director present and willing to act, he shall be Chairman.
43. If no Director is willing to act as Chairman, or if no Director is present within fifteen minutes after the time appointed for holding the

meeting, the members present and entitled to vote shall choose one of their number to be chairman of the meeting.

Adjournments

44. 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 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 as at an adjourned meeting.

Voting at General Meetings C.A. S114; MSR 12.17 (a)

45. At any general meeting a resolution put to the vote of the meeting, shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded –
- (a) by the Chairman; or
 - (b) by at least three members in person or by proxy; or
 - (c) by any member or members present in person or by proxy and representing not less than one-twentieth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll 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 the proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a pool may be withdrawn.

Poll

- 46.** Except as provided in article 48, if a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 47.** In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll demanded shall be entitled to a second or casting vote.
- 48.** A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll 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 poll has been demanded may be proceeded with pending the taking of the poll.

Written Resolution – C.A. S. 121

49. Subject to the provisions 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 bodies corporate or unincorporated associations, by their duly authorised representatives) shall be as valid and effective as if it had been passed at a general meeting of the Company duly convened and held.

VOTES OF MEMBERS

Right to Vote C.A. 112 (c); MSR 12.17 (a)

50. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every individual present and entitled to vote shall have one vote, and on a poll every member present or represented by proxy shall have one vote for each share of which he is the holder.

Joint Holders

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

No right to vote for members in arrears

52. No member shall be entitled to vote at any general meeting unless all sums presently payable by him in respect of shares in the Company have been paid.
53. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

Votes by Proxy – C.A. 113 (1); MSR 12.17

54. On a poll, votes may be given either personally or by proxy. A member having more than one share carrying voting rights may appoint separate proxies to represent respectively such number of the shares held by him as may be specified by him in their instruments of appointment.

Proxy to be in writing – C.A. 113 (3); MSR 12.17

55. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a body corporate, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the Company.

56. 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 such other place within Malawi as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument or proxy shall not be treated as valid. Provided that a shorter notice of the proxy may be given following an adjournment of less than seven days.

Form of Proxy – C.A. 113 (4 and 5)

57. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit.

SUNBIRD TOURISM LIMITED

I/We

.....

of

(address), being a member/members of the above-named Company,

hereby appoint

.....

a member/members of the above-named Company, hereby appoint

.....

of

or failing him

of

as my/our proxy to vote for me/us on my/our behalf at the (annual or extra-ordinary, as the case may be) general meeting of the Company, to be held on the day of 20, and at any adjournment thereof.

This form is to be used –

In favour of

..... resolution no.

Against

In favour of

*..... resolution no.

Against

In favour of

*..... resolution no.

Unless otherwise instructed, the proxy will vote as he thinks fit.

Date Signed

- Strike out whichever is not desired.

A proxy need not be a member of the Company.

Proxy may demand poll

- 58.** The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Revocation of Authority

59. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company as at its head office or at such other place within Malawi as its specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relating to the meeting before the commencement of the meeting or adjourned meeting at which the proxy is used.

Bodies Corporate and Unincorporated Associations acting by representatives at meetings – C.A. 116

60. Any body corporate or unincorporated association which is a member of the Company may by resolution of its Director or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate or unincorporated association which he represents as that body corporate or unincorporated association could exercise if it were an individual member of the Company, and shall be deemed to be a member for the purpose of reckoning a quorum.

DIRECTORS – C.A. 141

- 61.** The Board shall consist of ten (10) Directors.

- 62.** The current majority shareholder, i.e., MDC Limited, (in liquidation) or any other Agent entrusted by the majority shareholder to administer the majority shareholder’s investment in the Company shall, provided and so long as the majority shareholder holds at least 50% of the voting shares of the Company, be entitled to appoint seven (7) of the ten (10) Directors of the Company.

- 63.** Any member or group of members holding more than 10% (ten percent) of the issued share capital of the Company (provided that each member, if it is a group, holds 1% (one percent) or more of the issued share capital of the Company) may by written notice to the Company appoint one Director for each 10% (ten percent) “shareholding and upon the Director or Directors so appointed retiring or otherwise ceasing to be Director or Directors, their replacements shall be appointed in accordance with the provisions of this Article.”

- 64.** Subject to the provisions of Article 146 of the Company’s Act, in the event of any Director nominated by a Party under Article 62.1 resigning his office or being appointed, removed from office or ceasing for any reason to be a Director, the Party on whose behalf he was appointed shall be responsible for appointing a replacement to fill the vacancy. No decision to fill the vacancy shall be made by the

Board without the approval of the Party on whose behalf the appointment is being made”.

Number of Directors – MSR 12.18(c)

65. The number of Directors shall not be less than three and until otherwise determined by the Company in general meeting not more than ten. The Directors shall be subject to removal by the Company in general meeting or as provided by these articles.

Remuneration – MSR 12.18(b)

66. The remuneration of the Directors shall from time to time be determined by the Company in general meeting. Such remuneration shall be deemed to accrue from day to day. The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of Directors or general meeting of the Company or in connection with the business of the Company.

Qualification of Directors – C.A. 144; MSR 12.18 (note)

67. The shareholding qualification for Directors may be fixed by the Company in general meeting, and unless and until so fixed no shareholding qualification shall be required.

BORROWING POWERS – C.A. 76; MSR 12.14

68.1 Subject as provided by this regulation, 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 any third party:

Provided that the aggregate amount for the time being remaining undischarged of moneys borrowed by the Company and its subsidiary companies (exclusive of inter-Company borrowing and apart from temporary loans obtained from the Company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the Company in general meeting by ordinary resolution, exceed a reasonable fixed amount or percentage of the paid up share capital of the Company for the time being issued and reserves of the Company, and the Directors will procure that the aggregate amount at any time owing in respect of monies borrowed by the Company (including overdue creditors) will not without such sanction exceed the said limit, but nevertheless, no leader or other person dealing with the Company shall be concerned to see or enquire whether this limit is observed.

Issue of Debentures with Special Privileges –MSR 12.14(b)

68.2 The Company may issue debentures with special privileges as to allotment of shares or stock, attending and voting at general meetings, appointment of Directors or otherwise – provided that such special

privileges shall not be afforded except with the sanction of the Company in general meeting.

POWERS AND DUTIES OF DIRECTORS

Powers and Duties

69.1 The business of the Company shall be managed by the Directors who 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 the Act and to these articles.

Disposal of Assets – MSR 12.18(k)

69.2 Any agreement by the Directors for the sale and/or alienation of all or a major portion of the assets of the Company shall be provisional only subject to ratification by the members of the Company.

Power of Attorney

70. The Directors may from time to time and at any time by power of attorney appoint any body corporate, firm or person or body of persons, whether nominated directly or indirectly by the Directors to be the attorney or attorneys of the Company for such purposes with such powers, authorities and discretions (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 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 delegate all or any of the powers, authorities and discretions vested in him.

Revocation of Power of Attorney

70.2 Even after the giving and lodging of notice of revocation of power of attorney, the Company shall be entitled to give effect to any instrument signed under power of attorney and certified by any officer of the Company as being in order before the giving and lodging of such notice.

Contracts C.A. 150; MSR 12.8

71.1 A Director who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract with the Company shall declare the nature and extent of his interest at a meeting of the Directors or shareholders in accordance with section 150 of the Act.

71.2 Subject to these articles, a Director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to –

- (a) any arrangement for giving any Director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Company; or
- (b) any arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company for which the Director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a Director to subscribe for or underwrite shares or debentures of the Company

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the Company in general meeting.

72. A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to account to the Company for any profit realised by such contract or

arrangement by reason of such Director holding that office or of the fiduciary relation thereby established.

73.1 A Director may not be counted in the quorum present at any meeting whereat he is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged, and he may not vote on any such appointment or arrangement of the terms thereof.

73.2 Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director, provided that nothing herein contained shall authorise a Director or his firm to act as Auditor to the Company.

73.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys 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.

Minutes – C.A. 125;

74. The Directors shall cause minutes to be made in books provided for this purpose.

(a) of all appointments of officers made by the Directors;

- (b) of the names of the Directors present at each meeting of the Directors and of any Committee of the Directors;
- (c) of all resolutions and proceedings at all meetings of the Company, and of the Directors, and of Committees of Directors.

Pension

- 75.** The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

DISQUALIFICATION OF DIRECTORS – C.A. 142, 144

- 76.** The office of Director shall be vacated if the Director:-
- (a) ceases to be a Director by virtue of section 144 of the Act; or
 - (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (c) becomes prohibited or disqualified from being a Director by reason of any order made by a competent court; or

- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the Company; or
- (f) shall for more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated; or
- (g) is directly or indirectly materially interested in any contract or proposed contract with the Company and fails to declare the nature of his interest in manner required by the Act; or
- (h) is requested in writing by all the other Directors to resign his office.

ROTATION OF DIRECTORS – MSR 12.18

Rotation of Retirement

77. At the annual general meeting of the Company in every year one-third of the Directors for the time being, (but excluding any executive Director during his terms of appointment to such office and also excluding any Director appointed pursuant to article 61), or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

Retirement of Directors

- 78.** The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director shall be eligible for re-election.
- 79.** The Company at the meeting at which a Director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring 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 Director shall have been put to the meeting and lost.
- 80.** No person other than a Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of Director at any general meeting unless not less than seven nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the Company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.
- 81.** The Company may from time to time by ordinary resolution increase or reduce the number of Directors, and may also determine in what rotation the increased or reduced number is to go out of office.

- 82.** The Directors shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these articles. Any Director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at such meeting.
- 83.** The Company may by ordinary resolution, of which notice has been given in accordance with section 146 of the Act, remove any Director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the Company and such Director. Such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company.
- 84.** The Company may by ordinary resolution appoint another person in place of a Director removed from office under the immediately preceding articles, and without prejudice to the powers of the Directors under article 79 the Company in general meeting may appoint any person to be a Director either to fill a casual vacancy or as an additional Director. A person appointed in place of a Director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

PROCEEDINGS OF DIRECTORS – MSR 12.18

Meetings of Directors

- 85.1** The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. A Director may, and the secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. It shall not be necessary to give notice of a meeting of Directors to any Director for the time being absent from Malawi.
- 85.2** At any meeting of Directors a resolution put to the vote of the meeting shall be decided on a show of hands and each Director or his alternate, present shall be entitled to one vote. Each of the Directors shall be at liberty so long as he shall be a Director, by writing under his hand to authorise any other Director of the Company to vote for him at any meeting or meetings of the Directors, and such authority may be general or may be limited to any one or more meetings, or to any specified question or questions, and must, if required, be produced at any meetings at which the holder of the authority proposes to vote.
- 85.3** In case of an equality of votes, the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and such other time and place as the Directors may determine and notice of the adjourned meeting shall be given (in the same manner as the notice convening the meeting) and if at the adjournment meeting there is again an equality of votes, the meeting shall stand adjourned in

the same manner and this process shall continue until the subject matter is resolved by a majority vote.

Quorum

- 86.1** The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be four, provided that if the quorum of Directors is two, the Chairman shall not be permitted to have a casting vote if only two Directors are present at the meeting of Directors.
- 86.2** If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place as the Directors may determine and notice of the adjourned meeting shall be given (in the same manner as the notice convening the original meeting) and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Directors then present shall be a quorum.
- 87.** The continuing 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 the articles of the Company as the minimum number of Directors, the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

The Chairman Committee

- 88.** The Directors may elect a Chairman and Deputy Chairman of their meetings and determine the period (not exceeding one year) for which they are to hold office, but if no such Chairman or Deputy Chairman is elected, or if at any meeting the Chairman or the Deputy Chairman are not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.
- 89.** The Directors may delegate any of their powers to Committees consisting of such member or members of their body as they think fit; any Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors. The Directors may from time to time appoint and replace Chairman of such Committees from among the members of each Committee.
- 90.** Unless the Directors shall have appointed a Chairman, a Committee may elect a Chairman of its meetings; 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 be Chairman of the meeting.
- 91.** 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 casting vote. 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.

- 92.** All acts done by any meeting of the Directors of a Committee of Directors or by any person 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.
- 93.** A resolution in writing, signed or approved by letter by each Director or his alternate, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held and when signed may consist of several documents each signed by one or more of the persons aforesaid.

ALTERNATE DIRECTORS

- 94.1** A Director may, either generally or in respect of any period in which he is absent from Malawi or unable for any reason to act as a Director, appoint another Director, or any other person approved by a resolution of the Board of Directors, as an alternate Director. Such appointment shall be in writing signed by the appointor and lodged with the Company.
- 94.2** Every alternate Director so appointed shall during the currency of such appointment be deemed for all purposes to be a Director and Officer of the Company and not the agent of his appointor, and shall be entitled

to receive all notices of meetings and to attend, speak and vote at all meetings accordingly; but he shall not himself be entitled to appoint an alternate Director.

- 95.** The Company shall not be liable to pay additional remuneration by reason of the appointment of an alternate Director.
- 96.** An alternate Director who is himself a Director shall have an additional vote for each Director for whom he acts as alternate at every meeting of the Directors.
- 97.** The appointment of an alternate Director shall cease at the expiration of the period, if any, for which he was appointed, or if his appointor gives written notice to that effect to the Company, or (where applicable) if his appointor ceases for any reason to be a Director or if the alternate resigns by notice in writing to the Company.
- 98.** Until the cessation of the appointment of an alternate Director both the substantive and alternate shall be and may act as Directors of the Company, but no alternate, unless a Director in his own right, shall attend or vote at any meeting of the Directors or any Committee of Directors at which his substantive Director is present.

MANAGING AND EXECUTIVE DIRECTORS

Power to Appoint Executive Directors – MSR 12.19

- 99.** The Directors may from time to time appoint one or more of their number to any executive office including that of Managing Director, Joint or Assistant Managing Director, Finance Director or Operations Director, for such period (but not exceeding five years) and on such terms (subject as hereafter provided) as they think fit and, subject to the terms of any agreement between the Managing Director and the Company, may revoke such appointment. An Executive Director so appointed shall not, while holding office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of Directors, but (subject to any right to treat such determination as a breach of contract) his appointment shall be subject to determination if he ceases for any cause to be a Director of the Company.
- 100.** An Executive Director shall receive such remuneration (including pension contributions) as the Directors may determine subject to confirmation by the Company in general meeting.
- 101.** The Directors may entrust to and confer upon an Executive Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all any of such powers.

SECRETARY

Appointment

- 102.** 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.
- 103.** A provision of the Act on these articles requiring or authorising 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 Director and as, or in the place of, the secretary.

THE SEAL – C.A. 131

- 104.** 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 authorised 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.

DIVIDENDS AND RESERVE

Declaration of dividends MSR 12.20

- 105.** Only the Company in general meeting may declare final dividends, but no dividend shall exceed the amount recommended by the

Directors and the dividend thus declared shall be in accordance with the listing requirements of the Stock Exchange prevailing from time to time.

- 106.** The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company. If an interim dividend is paid prior to the publication of the annual accounts, the dividend notice given to members will contain a statement of the ascertained or estimated combined net trading profits of the Company or group for the year, and any abnormal receipts or payment, detail appropriation of those profits and also particulars of any amounts from reserves, capital profits, accumulated profits of the past year or other special source, to provide wholly or partly for the dividend.
- 107.** No dividend shall be paid otherwise than out of profits.
- 108.** If the Directors do not recommend a dividend on any class of quoted shares for any year, the Secretary of the Malawi Stock Exchange shall be notified.
- 109.** Any final dividend or interim dividend shall be expressed to be payable to person registered at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later, as the holders of the shares in respect of which the dividend is declared, notwithstanding that such person may not be so registered on the date of the declaration. A period of fourteen days at least shall be allowed between the date of declaration or

confirmation of the dividend, whichever is the later, and the date of the closing of the transfer registers in respect of such dividends.

- 110.** The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they may think prudent not to distribute.
- 111.** Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any Company or in any one or more of such ways, and the Directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Directors.

112. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

113.1 No dividend shall bear interest against the Company.

113.2 All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

113.3 All dividends unclaimed for twelve years after having been declared may be forfeited by the Directors for the benefit of the Company and shall remain the property of the Company.

ACCOUNTS

114. The Directors shall cause proper accounting records to be kept with respect to:-

- (a) All sums of money received and extended by the Company and the matters in respect of which the receipts and expenditure takes places;
- (b) All sales (except ordinary retail sales) and purchases of goods by the Company; and
- (c) All assets and liabilities of the Company.

Proper accounting records shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affair and to explain its operations and transactions.

- 115.** The accounting records shall be kept at the registered office of the Company, or, subject to section 180 of the Act, at such other place or places in Malawi as the Directors think fit, and shall always be open to the inspection of any Director.
- 116.** The Directors shall from time to time determine whether and to what extent and at what time and places and under what 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 or book or document of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

- 117.** The Directors shall from time to time, in accordance with 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 required by law.
- 118.** The Company shall, not less than twenty-one days before the date of the meeting before which they are to be laid, once at least in every calendar year at intervals of not more than fifteen months cause to be prepared and sent to every member of the Company and to every holder of debentures of the Company and at the same time to the Secretary of the Malawi Stock Exchange (or its successor) a printed copy of each (three copies in the case of the Malawi Stock Exchange) of the following:
- (a) a profit and loss account and balance sheet;
 - (b) a report by the Directors thereon (also containing the information hereafter stipulated, if applicable); and
 - (c) any report by the Auditors

If the Company is a holding Company as defined in the statutes, the Directors' report attached to each annual balance sheet issued by the Company pursuant to the statutes shall disclose full details of all resolutions passed at extraordinary general meetings of the Company's subsidiaries since the date of the Director's report attached to the previous annual balance sheet of the Company.

Provided that this article shall not require a copy of such documents to be sent to a member or debenture holder of whose address the Company is unaware, but such person shall be entitled to be furnished on demand without charge with a copy of the last of such profit and loss accounts and balance sheets and Directors' and Auditors' reports.

- 119.** Unless the holding of an annual general meeting is waived by the members in accordance with section 114 of the Act, the documents referred to in article 115 shall be laid before the Company in general meeting.

CAPITALISATION OF PROFITS

- 120.** The Company in general meeting may upon the recommendation of the Directors with authority of special resolution resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members or any class of members pro rata to their respective shareholding on condition that the same be not paid in cash but be applied in paying up in full unissued shares or debentures of the Company to be allocated, distributed and credited as fully paid up to and amongst such members in the proportion aforesaid, and the Directors shall give effect to such resolution.

Provided that a share premium account and a redemption reserve fund may, for the purposes of this article, only be applied in the paying up of unissued shares to be issued to members of the Company as fully paid bonus shares.

- 121.** Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the sums resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, and any agreement made under such authority shall be effective and binding on all such members.

AUDIT

- 122.** Auditors shall be appointed and their duties regulated in accordance with the Act.

NOTICES

- 123.1** A notice may be given by the Company to any member either personally or by sending it by post, fax or telex to him or to his address on the register of members, or (if he has no such address) to the address, if any, supplied by him to the Company for the giving of notice to him or by leaving it for him with some person apparently over the age of eighteen years at such address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected at the expiration of seven days or, if it is sent to an address outside Malawi, fourteen days after the letter containing the same is posted; and if transmitted by fax or telex the next business day.
- 123.2** All members of the Company (including all joint holders of shares and persons entitled to a share in consequence of death, bankruptcy or receivership of a member) shall register with the Company an address in Malawi or outside Malawi for the service of notices.
- 124.** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first-named in the register of members in respect of the share.
- 125.** A notice may be given by the Company to the persons entitled to a share in consequence of the death, receivership or bankruptcy of a member either personally or by sending it through the post in a prepaid letter addressed to them by name, or by the title of

representatives of the deceased, receiver, or trustee of the bankrupt, or by any like description, at the address, if any, within Malawi, supplied for the purpose by the persons claiming to be so entitled, or by leaving it for them with some person apparently over the age of eighteen years at such address, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.

126. Notice of every general meeting shall be given in any manner hereinafter authorised to:-

- (a) every member except those members who have not supplied to the Company an address for the giving of notices to them;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative, a receiver a trustee in bankruptcy of a member where the member but for his death, receivership or bankruptcy would be entitled to receive notice of the meeting;
- (c) every Director of the Company;
- (d) the Auditor for the time being of the Company; and
- (e) the Secretary of the Malawi Stock Exchange at the same time when it is given to members.

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

- 127.** Any notice required to be given by the Company to the members or any of them shall also be given by advertisement which is inserted in at least one national daily newspaper, and such notice shall be sufficiently given by such advertisement. Any notice given by advertisement shall be deemed to have been served before noon on the day on which the advertisement appears.

WINDING UP

- 128.** If the Company shall be wound up the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purposes set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit.

INDEMNITY

- 129.** Every Director, Managing Director, Agent, Auditor, Secretary and other Officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under section 341 of the Act in which relief is granted to him by the court from liability in negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

UNTRACED MEMBERS

- 130.** The Company shall be entitled to sell any share of a member or any share to which a person is entitled by transmission or bankruptcy if and provided that:
- (a) for a period of twelve years no cheque or warrant sent by the Company through the post in a pre-paid letter addressed to the member, to the person entitled by transmission or bankruptcy, at his address on the register or other the last known address on the register or other the last known address given by the member, or the person so entitled by transmission or bankruptcy, to which cheques, dividends and warrants are to be sent, has been cashed and no communication has been received by the Company from the

member, or the person so entitled by transmission or bankruptcy, and during such period at least three dividends in respect of the shares in question have been paid by the Company;

- (b) the Company has at the expiration of the said period of twelve years by advertisement in a national daily newspaper given notice of its intention to sell such shares;
- (c) the Company has not during the further period of three months after the date of the advertisement and prior to the exercise of the power of sale received any communication from the member or person entitled by transmission; and
- (d) the Company has first given notice in writing to the Malawi Stock Exchange or its successor of its intention to sell such shares.

131. To give effect to any such sale as provided in article 127, the Company may appoint any person to execute as transferor an instrument of transfer of such shares and such instrument of transfer shall be as effective as if it had been executed by the registered holder of or person entitled by transmission or bankruptcy to such shares. The Company shall account to the member or other person entitled to such shares for the net proceeds of such sale by carrying all monies in respect thereof to a separate account which shall be a permanent debt of the Company, and the Company shall be deemed to be a debtor and not a trustee in

respect thereof for such member or other person. Monies carried to such separate account may either be employed in the business of the Company or invested in such investments (other than shares of the Company) as the Directors may from time to time think fit. No interest shall be payable in respect of the net proceeds and the Company shall be payable in respect of the net proceeds and the Company shall not be required to account for any money earned on the same.

DECLARATION OF SECRECY

132. Every Director, Managing Director, Executive Director, alternate Director, Manager, Trustee, Auditor, the Secretary and every Officer, Servant, Clerk, Agent or other person employed in the business of the Company shall before entering upon his duties subscribe such a declaration as the Directors may from time to time prescribe, engaging themselves to observe a strict secrecy with respect to the dealings and the state of the accounts of the several customers of and the persons dealing with the Company and any other matters which come to their respective knowledge by virtue of their respective offices, except only so far as it is necessary to the execution of their respective offices, trust or duty to disclose the same.

ABBREVIATIONS

C.A. Companies Act

M.S.R. Malawi Stock Exchange Rules