



6TH AGM  
**PACK –**  
20 JUNE 2022



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## ANNUAL GENERAL MEETING NOTICE/AGENDA

Notice is hereby given to all shareholders, directors, secretary and company auditor that the 6th Annual Meeting of the Company will be held at the First Capital Bank Training Centre, First House, Blantyre, Malawi on 20 June 2022 at 15h30.

### THE PROCEDURE FOR HOLDING THE MEETING

- A. The Annual Meeting Pack consisting of the Notice, Agenda, Minutes, a Proxy Form, Voting Slip and an Annual Report will be sent to all shareholders using the email addresses and will also be made available on the company website (<https://fmbcapitalgroup.com>) from 1 June 2022 onwards.
- B. Shareholders who wish to have a hard copy of the Annual Meeting Pack sent to them must do so by contacting the Transfer Secretary/Company Secretary as follows:
- 1) By email: [transfersecretary@firstcapitalbank.co.mw](mailto:transfersecretary@firstcapitalbank.co.mw)
- C. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his or her stead. The proxy need not be a member of the Company. Proxy forms should be sent to the Company's registered office, to reach there not later than forty-eight (48) hours before the time scheduled for the meeting, in default of which the instrument of Proxy shall be treated as invalid.

### BUSINESS TO BE TRANSACTED AT THE MEETING

#### 1. Minutes of the Last Annual Meeting

To note and approve the minutes of the 5th Annual Meeting of the Company held virtually on 21 June 2021.

#### 2. Audited Financial Statements

To receive and adopt the audited financial statements for the year ended 31 December 2021 together with the reports of the auditors and directors thereon.

#### 3. Dividend

To declare a final dividend amounting to US\$2,458,250.00 in respect of profits for the year ended 31 December 2021 representing 0.1 US\$ cents per ordinary share as recommended by the Directors. The final dividend will be paid on 22 July 2022 to shareholders whose names appear on the register of members as at close of business on 15 July 2022. The register of members will be closed from 18 July to 22 July 2022. During this time, no share transactions will be conducted.

#### 4. Directors

- 4.1 To re-elect directors, Mr Mahendra Gursahani, Mr Hitesh Natwarlal Anadkat and Ms. Susanne Alfs who retire by rotation but being eligible offer themselves for re-election.
- 4.2 To authorise the non-executive directors to determine the remuneration of the executive directors for the year ending 31 December 2022.
- 4.3 To consider the restructuring of directors' fees and allowances as a lumpsum amount (to be paid quarterly) and fix such remuneration for the year ending 31 December 2022. Proposed fees are:
- 4.3.1. Annual fees for the Chairman, US\$20,000 per annum, from US\$18,000 in 2021,
- 4.3.2. Annual fees for the Chairman, US\$40,000 per annum, unchanged from 2021 as a retainer for his time spent on Group Board responsibilities,
- 4.3.3. Annual fees for other non-executive directors, US\$18,000 per annum from US\$16,000 in 2021.

#### 5. Auditors

- 5.1 To approve the payment of audit fees of US\$ 94,875.00 inclusive of tax to Deloitte in respect of the audit of the financial statements for the year ended 31 December 2021.
- 5.2 To approve the re-appointment of Deloitte as auditors for the year ending 31 December 2022.

#### 6. Alteration of Company Constitution

It is noted that the Company has adopted a constitution on 22 March 2017 (the "Constitution").

It is now proposed to amend the Constitution as follows:

- (a) the terms "FMB Capital Holdings Plc" and "FMB Capital Holdings Ltd" be replaced by "FMBcapital Holdings Plc" throughout the Constitution;
- (b) a new definition be inserted in clause 1.1 of the Constitution as follows:  
**"Resident Directors** has the meaning given to it under clause 23.1.2."
- (c) the existing clause 3 of the Constitution be deleted and replaced by the following:  
**"The registered office of the Company will be situated at C/o JTC Fiduciary Services (Mauritius) Limited, Suite 2004, Level 2, Alexander**

*House, 35 Cybercity, Ebene, Mauritius or in such other place as the Board may, from time to time, determine."*

- (d) a new paragraph be inserted after clause 18.2.3 of the Constitution, as follows:  
*"Where the Board declares a dividend, it shall ensure that that dividend is paid not later than 12 months after the date on which the dividend is declared."*
- (e) the existing clause 22.1(b) of the Constitution be deleted and replaced by the following:  
*"not later than nine (9) months after the Balance Sheet Date of the Company; and"*
- (f) a new paragraph be inserted after clause 22.5.4 of the Constitution, as follows:  
*"The notice shall be accompanied by a detailed agenda together with any other document relevant to the meeting."*
- (g) the existing clause 23.1.1 of the Constitution be deleted and replaced by the following:  
*"The Board shall consist of not less than 6 (six) and not more than 11 (eleven) Directors of which 2 (two) shall be resident in Mauritius."*
- (h) the existing clause 23.1.2 of the Constitution be deleted and replaced by the following:  
*"Save for the 2 (two) Directors resident in Mauritius (the "Resident Directors"), each holder of twelve and a half percent (12.5%) of the share capital of the Company can appoint 1 Director by giving written notice to the Company to that effect. The appointment shall take effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date, subject at all times to the consent form being signed by the proposed Director. The 2 Resident Directors shall be appointed by Ordinary Resolution."*
- (i) a new paragraph (n) be added in clause 24.3.1 of the Constitution as follows:  
*"at all times act in a manner which is not, oppressive, unfairly discriminatory, or unfairly prejudicial to the Shareholders."*
- (j) a new paragraph be inserted in clause 33 of the Constitution as follows:  
*"The Directors shall, at all times and even where the Company is removed from the register, ensure that the records referred to above are kept for a period of at least 7 (seven) years from the date of the completion of the transaction, act or operation to which it relates."*

It is now desirable that the Constitution be amended as mentioned above.

**We, the undersigned, being the shareholders of the Company hereby pass the following special resolutions:**

#### THAT:

- (a) The alteration of the Constitution to include the aforementioned amendment in accordance with section 44(2) of the Companies Act 2001, be and is hereby approved; and
- (b) Any one of the directors of the Company or the secretary of the Company, be and is hereby authorised, for and on behalf of the Company, to undertake and complete all the necessary filing procedures with the local authorities accordingly to give effect to the above resolutions.

#### 7. Issue of further shares

Rule 5.85 read together with Rule 5.86 of the Listings Requirements of the Malawi Stock Exchange ("MSE") permits the issue in aggregate of new shares for cash over a 36-month period up to a maximum of 15% of the total issued shares at the beginning of such period.

- 7.1 To authorise the directors to issue, for cash and in accordance with Rules 5.84 to 5.92 of the Listings Requirements of the MSE, new ordinary shares of the Company up to a maximum of 368 737 500 shares, equivalent to 15% of the total issued ordinary shares at the beginning of the 2021 financial year, such authority being valid until the date of the next annual meeting of the Company provided that the authority will not extend beyond 15 months from the date of this special resolution.

#### 8. Other Business

To transact such other business as may be transacted at an Annual Meeting of members of which prior notice should have been given to the Company Secretary not less than 14 days before the date of the Annual Meeting.

**JTC Fiduciary Services (Mauritius) Limited**  
 Corporate Secretary

Dated: 31 May 2022

# Minutes of 5th Annual Meeting of FMBcapital Holdings Plc held virtually on 21 June 2021 from First Capital Bank Plc Boardroom, Blantyre, Malawi.

## Directors In Attendance

Mr. Terence Michael Davidson	Chairman
Mr. Hitesh Natwarlal Anadkat	Director
Mr. Mahendra Gursahani	Director
Ms. Sussanne Alfs	Director
Mr. Gavin J. Chapman	Director
Mr. John Michael O'Neill	Director
Mr. Johannes Christoffel Els	Director
Mr. Kamal Taposeea	Director
Ms. Priscilla Balgobin	Director

## Shareholders Present

Mr. Thomas J. Kadantot  
 Ms. Agness Jazza  
 Hitesh Anadkat  
 Ravi H Savjani  
 Shaun Anadkat  
 Lekani Katandula  
 Wilson Kuyokwa  
 Dillon Anadkat  
 Chiza Jere

## Observers Present

Agrawal Vishal  
 Tafadzwa Mwawa  
 James Mbingwa  
 Bryan Mandy  
 Fortune Mwawa  
 Kelline Christabel Kanyangala  
 Meenakshi Poongavanon  
 L Makawa  
 Madalitso Mittochi  
 Dennis Mambure  
 Douglas David  
 Nyirenda Mtisunge Kadazi  
 Emmanuel Chokani  
 Dhanishtah Canoo  
 Madalitso Mitochi

## Shareholders Present Through Proxies

### Proxy Name

Mark Mikwamba  
 Mark Mikwamba  
 Hitesh Anadkat  
 Hitesh Anadkat  
 Mark Mikwamba  
 Mark Mikwamba  
 Hitesh Anadkat  
 Hitesh Anadkat  
 Mark Mikwamba  
 Bharat Jani  
 Bharat Jani  
 Ravi Savjani  
 Ravi Savjani  
 Ravi Savjani  
 Ravi Savjani  
 Mark Mikwamba  
 Mark Mikwamba  
 Mark Mikwamba  
 Mark Mikwamba  
 Sean O'Neill

### Shareholder Name

Aviation Pension Fund  
 CHAM Pension Fund  
 Livingstone Exports Limited  
 Livingstone Holdings Limited  
 MADZI Pension Fund  
 MAGETSI Pension Fund  
 MAGNI Holdings Limited  
 NG Anadkat Limited  
 Old Mutual Life Assurance Co (MW) LTD  
 Prime Bank Limited  
 Prime Capital Holdings Limited  
 Prudential Holdings Limited  
 Equity Investment Limited  
 Fidelity Limited  
 General Alliance  
 Public Services Pension Trust Fund  
 RBM Pension Fund  
 STD Bank ITF OMUT Balanced Fund  
 TNM Pension Fund  
 Omega O'Neill

## Quorum

The Chairman reported that a quorum of members was present and he called the meeting to order at 3.30 pm. It was agreed that the notice of the meeting, which was properly given, be taken as read.

The Chairman explained how the virtual Annual Meeting would be conducted in light of the Coronavirus Pandemic.

### 1. Approval of Minutes of the Last Annual Meeting

The minutes of the 4th Annual Meeting circulated to members were approved as a true record of the meeting.

### 2. Audited Financial Statements

The audited financial statements for the year ended 31st December 2020 together with the reports of the auditors and directors thereon were approved and adopted.

### 3. Dividend

As recommended by directors a final dividend of USD 1,966,600 representing US\$0.08 cents per ordinary share should be paid in respect of the financial year ended 31st December 2020.

### 4. Directors Appointments and Remuneration

- 4.1. The appointment as director of Ms. Susanne Alfs who was co-opted to the Board since the last Annual Meeting was approved.
- 4.2. The appointment of Mr. Gavin John Chapman who was co-opted to the Board since the last Annual Meeting was approved.
- 4.3. The appointment of Mrs. Priscilla Balgobin-Bhoayrul who was co-opted to the Board since the last Annual Meeting was approved.
- 4.4. The appointment as directors of Messrs, Rajkamal Taposeea, Johannes Christo Els and John Michael O'Neill who retired by rotation but being eligible offered themselves for re-election was approved.
- 4.5. The non-executive directors were authorised to determine the remuneration of the executive directors for the forthcoming year, 31st December 2021.
- 4.6. The decision not to increase fees and sitting allowances for the Chairman and other non-executive directors for the year ending 31st December 2021 was approved.

### 5. Auditors

- 5.1. The payment of audit fees of US\$ 86 250.00 inclusive of tax to Deloitte in respect of the audit of the financial statements for the year ended 31st December 2020 was approved.
- 5.2. Deloitte was appointed as auditor of the Company for the year ending 31st December 2021.

### 6. Maximum number of Directors

- 6.1. Resolution to amend Clause 23.1.1 of the Company's Constitution was removed from the agenda.

### 7. Issue of further shares

- 7.1. Resolution to authorize the directors to issue, for cash and in accordance with Rules 5.84 to 5.92 of the Listings Requirements of the Malawi Stock Exchange, new ordinary shares of the Company up to a maximum of 368,737,500 shares, equivalent to 15% of the total issued ordinary shares at the beginning of the 2021 financial year, was approved. This authority was approved as valid until the date of the next annual meeting of the Company provided that the authority will not extend beyond 15 months from the date of the resolution.

### 8. Other Business

There being no other business of which due notice had been given the meeting was closed.

**Terence Davidson**  
Chairman

# FMBcapital Holdings Plc

## Registered office:

C/o JTC Fiduciary Services (Mauritius) Limited,  
Suite 2004, Level 2, Alexander House,  
35 Cybercity Ebene, Mauritius  
(the "Company")

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## Written resolution of the shareholders of the Company passed in accordance with section 117 of the Companies Act 2001.

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### ALTERATION OF CONSTITUTION

#### WHEREAS:

It is noted that the Company has adopted a constitution on 22 March 2017 (the "Constitution").

It is now proposed to amend the Constitution as follows:

- (a) the terms "FMB Capital Holdings Plc" and "FMB Capital Holdings Ltd" be replaced by "FMBcapital Holdings Plc" throughout the Constitution;
- (b) a new definition be inserted in clause 1.1 of the Constitution as follows:  
*"Resident Directors has the meaning given to it under clause 23.1.2."*
- (c) the existing clause 3 of the Constitution be deleted and replaced by the following:  
*"The registered office of the Company will be situated at C/o JTC Fiduciary Services (Mauritius) Limited, Suite 2004, Level 2, Alexander House, 35 Cybercity, Ebene, Mauritius or in such other place as the Board may, from time to time, determine."*
- (d) a new paragraph be inserted after clause 18.2.3 of the Constitution, as follows:  
*"Where the Board declares a dividend, it shall ensure that that dividend is paid not later than 12 months after the date on which the dividend is declared."*
- (e) the existing clause 22.1(b) of the Constitution be deleted and replaced by the following:  
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- (h) the existing clause 23.1.2 of the Constitution be deleted and replaced by the following:  
*"Save for the 2 (two) Directors resident in Mauritius (the "Resident Directors"), each holder of twelve and a half percent (12.5%) of the share capital of the Company can appoint 1 Director by giving written notice to the Company to that effect. The appointment shall take effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date, subject at all times to the consent form being signed by the proposed Director. The 2 Resident Directors shall be appointed by Ordinary Resolution."*
- (i) a new paragraph (n) be added in clause 24.3.1 of the Constitution as follows:  
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*"The Directors shall, at all times and even where the Company is removed from the register, ensure that the records referred to above are kept for a period of at least 7 (seven) years from the date of the completion of the transaction, act or operation to which it relates."*

It is now desirable that the Constitution be amended as mentioned above.

**We, the undersigned, being the shareholders of the Company hereby pass the following special resolutions:**

**THAT:**

- (a) The alteration of the Constitution to include the aforementioned amendment in accordance with section 44(2) of the Companies Act 2001, be and is hereby approved; and
- (b) Any one of the directors of the Company or the secretary of the Company, be and is hereby authorised, for and on behalf of the Company, to undertake and complete all the necessary filing procedures with the local authorities accordingly to give effect to the above resolutions.

Dated this [•] 2022

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For and on behalf of [...]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For and on behalf of [...]

*This written resolution may consist of several counterparts (including facsimile or other similar means of communication or by e-mail attachment, provided such attachment is in pdf format or a similar format which contains the signature) in substantially like form, each signed or purported to have been dispatched by one or more shareholders and shall be effective and valid as if it has been passed at a meeting of shareholders duly called and constituted but all such counterparts taken together shall constitute one and the same document.*



**The Companies Act 2001**  
**A public company limited by shares**

**Constitution**  
**of FMBcapital Holdings Plc**  
**(as adopted by a Special Resolution of the Company**  
**passed on XX MONTH 2022)**

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# Constitution OF FMBcapital Holdings Plc

## A Public Company Limited by Shares

### PURSUANT TO THE COMPANIES ACT 2001

#### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Accounting Year** means a year starting on 1st January extending to the 31st December in any year.

**Act** means the Companies Act 2001 of Mauritius.

**Alternate Director** means a Director appointed pursuant to clause 23.6.

**Amalgamation** means the completed act of the Company and one or more other companies amalgamating pursuant to Sections 244 to 252 of the Act.

**Annual Meeting** means a meeting of Shareholders held pursuant to Section 115 of the Act.

**Balance Sheet Date** means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements.

**Board** means the Directors numbering not less than the required quorum acting together as the Board of Directors of the Company.

**Call** means a resolution of the Board under clause 12 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Shares and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution.

**Class and Class of Shares** means a Class of Shares having attached to them identical rights, privileges, limitations, and conditions.

**Chairperson** means the Chairperson of the Board, elected under clause 25.1.

**Company** means FMBcapital Holdings Plc.

**Constitution** means this Constitution of the Company and all amendments to it made from time to time.

**Day** means calendar days.

**Director** means, subject to Section 128 of the Act, a person appointed and continuing in office for the time being, in accordance with this Constitution, as a Director of the Company.

**Distribution in relation to Shares held by a Shareholder**, means the direct or indirect transfer of money or property, other than Shares, by the Company, to or for the benefit of that Shareholder; or the incurring of a debt by the Company to or for the benefit of a Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a Distribution of indebtedness or by some other means.

**Dividend** means a Distribution by the Company other than a Distribution to which section 68 (acquisition of Company's own Shares) or section 81 (financial assistance in acquisition of company's shares) of the Act applies.

**Financial Year** means the Accounting Year.

**General Meeting** means any meeting of Shareholders.

**Interests Register** means a register kept by the Company at its registered office as required by section 190(2)(c) of the Act.

**International Accounting Standards** means the International Accounting Standards issued by the International Accounting Standards Committee; and includes the Interpretations of the Standing Interpretations Committee issued by the International Accounting Standards Committee; and any other entity to which the responsibility for setting accounting standards has been assigned by the International Accounting Standards Committee.

**Major Transaction in relation to the Company**, means, subject to Sections 130(5) and 130(6) of the Act:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than seventy five per cent (75%) of the value of the Company's assets before the acquisition; or
- (b) the disposition of; or an agreement to dispose of, assets of the Company the value of which is more than seventy five per cent (75%) of the value of the Company's assets before the disposition; or
- (c) transaction that has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than seventy five per cent (75%) of the value of the Company's assets before the transaction.

**Month** means a calendar month.

**Notices** means any communication between the Company and a Shareholder or director on any matter.

**Ordinary Resolution** means a resolution approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the matter which is the subject of the resolution.

**Ordinary Share** means a share which confers on the holder:

- (a) the right to vote at meetings of Shareholders and on a poll to cast one vote for each share held;
- (b) subject to the rights of any other Class of Shares, the right to an equal share in Dividends and other Distributions made by the Company; and
- (c) subject to the rights of any other Class of Shares, the right to an equal share in the Distribution of the surplus assets of the Company on its liquidation.

**Register of Debenture Holders** means the Register of Debenture Holders required to be kept by section 124 of the Act.

**Registrar** means the Registrar of Companies appointed under section 10 of the Act.

**Relevant Stock Exchange** means a stock exchange in any country on which the Company may be listed.

**Resident Directors** has the meaning given to it under clause 23.1.2.

**Share** means a share of whatever Class in the share capital of the Company.

**Shareholder** means a person:

- (a) whose name is entered in the Share Register as the holder for the time being of one or more Shares; or
- (b) until the person's name is entered in the Share Register, a person named as a Shareholder in the application for registration of the Company at the time of incorporation of the Company; or
- (c) until the person's name is entered in the Share Register, a person who is entitled to have his name entered in the Share Register under a registered Amalgamation proposal, as a shareholder in an amalgamated company.

**Share Register** means the register of Shares required to be maintained by clause 11 of this Constitution and section 91 of the Act.

**Signed**

- (a) means subscribed by a person under his hand with his signature; and
- (b) includes the signature of the person given electronically where it carries that person's personal encryption.

**Solvency Test** has the meaning as set out in section 6 of the Act.

**Special Meeting** means any meeting (other than an Annual Meeting) of the Shareholders entitled to vote on an issue, called at any time by the Board, or by any other person who is authorised by this Constitution or by the Act to call Special Meetings of Shareholders.

**Special Resolution** means a resolution of Shareholders approved by a majority of seventy five per cent (75 %) of the votes of those Shareholders entitled to vote and voting on the question.

**Unanimous Resolution** means a resolution which has the assent of every Shareholder entitled to vote on the matter which is the subject of the resolution in accordance with Section 106 of the Act.

**Unanimous Shareholders' Agreement** means an agreement whereby all Shareholders agree to or concur in any action which has been taken or is to be taken by the Company.

**Writing** includes the recording of words in a permanent or legible form and the display of words by any form of electronic or other means of communication in a manner that enables the word to be readily stored in a permanent form and, with or without the aid of any equipment, to be retrieved and read.

## 1.2 Rules of interpretation

- (a) Unless defined above, capitalised words and expressions have the same meaning as in the Act.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a person includes any firm, company or group of persons, whether corporate or unincorporated.
- (d) Words importing one gender include the other genders.
- (e) Subject to this clause 1, expressions contained in this Constitution bear the same meaning as specified in the Act at the date on which this Constitution becomes binding on the Company.
- (f) A reference to a clause means a clause of this Constitution.
- (g) The clause headings are included for convenience only and do not affect the construction of this Constitution.

## 2 NAME OF COMPANY

2.1 The name of the Company is FMBcapital Holdings Plc.

2.2 The name of the Company shall be clearly stated in every written communication sent by, or on behalf of, the Company; and on every document issued or signed by, or on behalf of, the Company and which evidences or creates a legal obligation to the Company.

## 3 REGISTERED OFFICE

The registered office of the Company will be situated at C/o JTC Fiduciary Services (Mauritius) Limited, Suite 2004, Level 2, Alexander House, 35 Cybercity, Ebene, Mauritius or in such other place as the Board may, from time to time, determine.

## 4 BALANCE SHEET DATE

The balance sheet date of the Company is the 31 December of each year or such other day as the Board may determine from time to time.

## 5 TYPE OF COMPANY

The Company shall be a public company limited by shares.

## 6 LEGAL PERSONALITY AND DURATION

The Company shall enjoy legal personality separate and distinct from its shareholders. The duration of the Company is unlimited.

## 7 CAPACITY

Subject to the Act and any other enactment and the general law, the Company shall have full capacity to carry on and undertake any business or activity, to do any act or enter into any transaction both within and outside the Republic of Mauritius.

## 8 SHARES

### Existing Shares

The Company has on issue 100 Ordinary Shares of no par value which confers upon its holder:

- (a) the right to one vote on a poll at a meeting of the Company on any resolution;
- (b) the right to an equal share in dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of surplus assets of the Company.

## 9 ISSUING OF FURTHER SHARES

### 9.1 Issue of Shares

9.1.1 The Board may with the approval of an Ordinary Resolution issue Shares (and rights or options to acquire Shares) of any Class at any time, to any person and in such numbers as approved by Ordinary Resolution.

9.1.2 Where the Company issues shares which rank equally with, or in priority to existing shares as to voting or distribution rights, those shares shall be offered to the holders of existing Shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders.

- 9.1.3 Notwithstanding Clauses 9.1.1 and 9.1.2,
- (a) the Board may, in its discretion and without the approval of a shareholders' resolution, issue the lower of the number of shares prescribed in any rules of a Relevant Stock Exchange issuable without the approval of the shareholders, and the number of shares issuable under this Clause being:
    - (i) in any one Financial Year, 10% of the total number of outstanding Shares;
    - (ii) in any three Financial Years, 15% of the total number of outstanding Shares;
  - (b) shares issued under paragraph (a) shall not be issued more than 15 months from the date of the Directors' resolution approving such issue.
- 9.1.4 If Shares are issued which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares, and if Shares are issued with different voting rights, the designation of each Class of Shares, other than those with most favourable voting rights, shall include the words "restricted voting" or "limited voting".

## 9.2 Consideration for issue of Shares

- 9.2.1 Subject to clause 9.2.2, before the Board issues Shares it must:
- (a) determine the amount of the consideration for which the Shares will be issued and the terms on which they will be issued;
  - (b) if the Shares are to be issued for consideration other than cash, determine the reasonable present cash value of the consideration for the issue and ensure that the present cash value of that consideration is fair and reasonable to the Company and is not less than the amount to be credited in respect of the Shares; and
  - (c) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders.
- 9.2.2 Clause 9.2.1 shall not apply to the issue of Shares on the conversion of any convertible securities; or the exercise of any option to acquire Shares in the Company.

## 9.3 Issue of Shares not paid for in cash

When issuing Shares for consideration other than cash, any one of the Directors or his agent authorized in writing shall sign a certificate:

- (a) stating the present cash value of the consideration and the basis for assessing it;
  - (b) that the present cash value of the consideration is fair and reasonable to the Company and to all existing Shareholders; and
  - (c) that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares.
- (d) A copy of the certificate given under clause 9.4 shall be filed with the Registrar within fourteen (14) days of its signature.

## 9.4 Amount owing on issue of Shares

Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount shall not be treated as a Call and no notice shall be required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

# 10 PRE-EMPTIVE RIGHTS

## 10.1 Pre-emptive rights on new issue of Shares

Shares issued or proposed to be issued by the Company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the Company shall, unless otherwise provided in the resolution approving the issue under clause 9.1 above, be offered to the holders of Shares already issued in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders in accordance with the provisions of Section 55(1) of the Act.

## 10.2 Time limit for acceptance

An offer under clause 10.1 shall remain open for acceptance for a reasonable time, which shall not be less than fourteen days.

### 10.3 Disposal of unwanted new shares

New shares offered to Shareholders pursuant to clause 10.1 above and not accepted within the prescribed time or in respect of which an intimation is received from the person to whom the offer is made declining such offer may be disposed of by the Board within a period of twelve months from the date of such authorisation in such manner as it thinks most beneficial to the Company.

## 11 SHARE REGISTERS

### 11.1 The Company shall maintain:

- (a) a share register in accordance with section 91 of the Act, which shall record all the shares issued by the Company and which shall state that there are no restrictions or limitations on their transfer; and
- (b) a register of substantial shareholders recording their particulars in accordance with section 91 of the Act.

11.2 The Company shall not be bound to register more than four persons as the joint holders of any share or shares and in the case of a share held jointly by several persons. The Company shall not be bound to issue more than one certificate therefor (where applicable), and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

### 11.3 Trust not to be registered or recognised

Where any Shares are held in trust, the name of the trustee (acting in its capacity as trustee) shall be entered on the Share Register. This entry shall not imply that the Company has notice of the rights and obligations of any person under the Trust, whether express, implied or constructive.

### 11.4 Branch Register

The Company may divide the share register into 2 or more registers in accordance with section 92 of the Act, and the directors may in that regard make and vary such regulations as they may think fit in respect of the keeping of any such register.

### 11.5 Closing of Share Register

The Company may, where so allowed by the Relevant Stock Exchange, close the Share Register for the purposes of determining entitlement of Shareholders to participate in a dividend or other corporate action.

## 12 CALLS ON SHARES

### 12.1 Board may make calls

The Board may from time to time make such calls as it thinks fit upon the shareholders in respect of any moneys unpaid on their Shares and, by the conditions of issue thereof, not made payable at a fixed time or times, and each shareholder shall, subject to receiving at least fourteen (14) working days' written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called. A call may be revoked or postponed as the Board may determine.

### 12.2 Timing of calls

A call may be made payable at such times and in such amount as the Board may decide. Liability of joint holders.

The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.

### 12.3 Interest

If a sum called in respect of a Share is not paid before or on the time appointed for payment thereof, the person from whom the sum is due shall pay interest on that sum from the time appointed for payment thereof to the time of actual payment at such rate not exceeding ten percent (10%) per annum as the Board may determine, but the Board shall be at liberty to waive payment of that interest wholly or in part.

### 12.4 Instalments

Any sum which by the terms of issue of a share becomes payable on issue or at any fixed time shall for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions hereof relating to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

## 13 FORFEITURE OF SHARES

### 13.1 Notice of default

If any person liable therefor fails to pay any call or any instalment thereof at the time appointed for payment thereof, the Board may at any time thereafter serve notice on such person requiring payment of the moneys unpaid together with any interest which may have accrued.

### 13.2 Final payment date

The notice under clause 13.1 shall name a further day (not earlier than the expiry of fourteen (14) days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment on or before the time appointed, the shares in respect of which the money was owing will be liable to be forfeited.

### 13.3 Forfeiture

If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may be forfeited at any time before the required payment has been made by a resolution of the Board to that effect. Any forfeiture under this clause shall include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.

### 13.4 Disposal of forfeited shares

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Board thinks fit. If any forfeited share shall be sold within twelve (12) months of the date of forfeiture, the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all moneys owing in respect of the forfeited share and interest thereon as aforesaid shall be paid to the person whose share has been forfeited or to such person's executors, administrators or assigns.

### 13.5 Cessation of shareholding

A person whose share has been forfeited shall cease to be a shareholder in respect of the forfeited share, but shall, nevertheless, remain liable to pay to the Company all money which, at the time of forfeiture, was payable by such person to the Company in respect of the share, but that liability shall cease if and when the Company receives payment in full of all such money in respect of the share.

### 13.6 Evidence of forfeiture

A statutory declaration in writing declaring that the declarant is a Director of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

### 13.7 Validity of sale

The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and such person shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall such person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

## 14 SHARE CERTIFICATES

### 14.1 Company to issue share certificate

The Company shall, unless its shares have been deposited under a system conducted by a central depository and settlement company approved under the laws of Mauritius or of a foreign state, within twenty-eight (28) days after the issue or registration of a transfer of shares in the Company, as the case may be, send a share certificate to every holder of those shares stating:

- (a) the name of the Company;
- (b) the class of shares held by the shareholder; and
- (c) the number of shares held by the shareholder.

### 14.2 A share certificate shall bear the seal of the Company which shall be affixed as provided in clause 31 provided that:

- 14.2.1 the directors may by resolution determine generally or in any particular case or cases that the signature of a director may be affixed by such mechanical means and to such certificates as the transfer secretaries may have approved in writing;



- 14.2.2 the directors may make it a condition to the issue of any partly paid shares that the member in whose name they are registered shall not be entitled to receive any certificates with respect to such shares while partly paid up.
- 14.3 **Loss or destruction of share certificate**
- Where a certificate relating to a share or debenture is lost or destroyed, the Company shall, on application being made by the owner and on payment of the prescribed fee, within the parameter accepted by any Relevant Stock Exchange, issue a duplicate thereof in accordance with the provisions of Section 98 of the Act and only upon being satisfied that the original has been destroyed and that where the holder has sold part of his holding, he shall be entitled to a certificate for the balance without charge.

## 15 TRANSFER AND TRANSMISSION OF SHARES

### 15.1 Freedom to transfer is unlimited

There shall be no restrictions on the transfer of fully paid up shares in the Company and the Company shall have no lien on fully paid shares. Transfers and other documents relating to or affecting the title to any shares shall be registered with the Company without payment of any fee.

### 15.2 Transfer of Shares

Every instrument of transfer of Shares shall be in writing in such common form as the directors may approve and subject to the provisions of the Act. The instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

### 15.3 Transmission

- 15.3.1 Shares of the Company depending from the estate of a deceased shareholder shall be transferred by the Board to the said shareholder's heirs, legatees, widow or widower, as the case may be, on the Board being satisfied that the party applying for the transfer is entitled thereto; likewise, Shares of the Company depending from the bankruptcy or insolvency of a Shareholder, or from its winding up, or from a reduction of its share capital, if such shareholder is a company or a partnership, shall be transferred to such persons who shall satisfy the Board of their right to have such transfer in their names.
- 15.3.2 Every instrument of transfer shall be left at the transfer office of the Company, where there is one in any country where the Company's Shares are listed, at which it is presented for registration accompanied by the certificate of the securities to be transferred and or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the securities.
- 15.3.3 All authorities to sign transfer deeds granted by Shareholders for the purpose of transferring securities which may be lodged, produced or exhibited with or to the Company at any of its offices shall as between the Company and the grantor of such authorities be taken and deemed to continue and remain in full force and effect and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited.
- 15.3.4 The Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company even after the giving and lodging of such notices as being in order before the giving and lodging of such notice.
- 15.3.5 Pending the division of Shares of the Company depending from the estate and succession of a deceased shareholder, or from the bankruptcy, or insolvency, or winding up or reduction of capital of a shareholder, and the registration thereof in the share register in the name of the party or in the names of the parties respectively entitled thereto, such party or parties shall have to appoint an agent for the purpose of receiving all dividends declared on such shares and of acting as their representative at all meetings of the Company.

### 15.4 Transfer of shares in pledge

- 15.4.1 Any Share or debenture may be given in pledge in all civil and commercial transactions.
- 15.4.2 The Company shall keep a register in which:
- (a) the transfer of Shares or debentures given in pledge may be inscribed;
  - (b) it shall be stated that the pledgee holds the Share or debenture not as owner but in pledge of a debt the amount of which shall, in the case of a civil pledge, be mentioned or ascertainable.

- 15.4.3 A pledge shall be sufficiently proved by a transfer inscribed in the register.
- 15.4.4 The transfer shall be signed by the pledger and by the pledgee and by the secretary of the Company.

## 16 REFUSAL TO REGISTER TRANSFERS

### 16.1 Grounds for refusal

- 16.1.1 The Board shall refuse to register a transfer of a Share on which the Company has a lien.
- 16.1.2 The Board may, for any good cause, which the Board shall solely and in its best judgment determine, decline:
  - (a) to register a transfer of a Share;
  - (b) to recognise any instrument of transfer unless:

### 16.2 Deposit of transfer

- 16.2.1 The instrument of transfer is deposited at the office of the Company accompanied by the certificate of the Shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do).
- 16.2.2 All instruments of transfer which are registered may be retained by the Company.

### 16.3 Central Depository System

Notwithstanding clauses 16.1 and 16.2, the Company shall comply with the provisions of any applicable law or rules relating to the central depository, clearing and settlement of securities, whether in Mauritius or in any other jurisdiction.

### 16.4 Partly paid shares

In the case of partly paid shares, any amount already called thereon has been settled and the transfer document contains an undertaking by the transferee to pay on due date any amount payable in terms of the issue of the Share so transferred.

## 17 DISTRIBUTIONS

### 17.1 Solvency Test

- 17.1.1 The final Distribution may only on recommendation of the directors be declared by the Company in General Meeting, but no Dividend shall exceed the amount recommended by the directors.
- 17.1.2 If the directors do not recommend a dividend on any class of quoted shares for any year, then the directors shall notify the relevant Stock Exchange in compliance with the applicable listing requirements.
- 17.1.3 The Board may, without the approval of the Shareholders, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution, authorise an interim Distribution by the Company of any amount and to any class of the Shareholders.
- 17.1.4 The Directors who vote in favour of a Distribution shall sign a certificate stating that, in their opinion, the Company will satisfy the Solvency Test immediately after the Distribution.

### 17.2 Shares in lieu of dividends

The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends provided that:

- (a) the right to receive Shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all Shareholders of the same Class on the same terms;
- (b) where all Shareholders elected to receive the Shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained;
- (c) the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;
- (d) the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares; and
- (e) the provisions of section 56 of the Act are complied with by the Board.

## 18 DIVIDENDS

### 18.1 Deduction of unpaid calls

The Board may deduct from any dividend payable to any shareholder any sums of money, if any, presently payable by such shareholder to the Company on account of calls or otherwise in relation to the Shares on which such dividends are payable.

### 18.2 Payment by cheque or warrant

18.2.1 Any dividend, interest or other money payable in cash in respect of Shares may be paid by crossed 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 in the share register or to 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 money payable in respect of the Shares held by them as joint holders.

18.2.2 Payment may also be made by electronic means where the shareholder or the joint shareholders have consented in writing to that form of payment being used by the Company and the shareholder or joint shareholders have provided an account(s) to which money may be sent.

18.2.3 Dividends shall be payable to the Shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend whichever is the later subject to the provisions of the Act. A minimum period of 14 days should be allowed between the date of declaration of the dividend, whichever is the later and the date of the closing of the registers of transfer in respect of such dividend.

18.2.4 Where the Board declares a dividend, it shall ensure that the dividend is paid not later than 12 months after the date on which the dividend is declared.

### 18.3 No interest

No dividend shall bear interest against the Company.

### 18.4 Unclaimed dividends

All dividends unclaimed for one year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, and all dividends unclaimed for a maximum of 12 years after having been declared may be forfeited by the Board for the benefit of the Company. At the expiry of 12 years from the date of declaration of dividend, the holder of the Shares shall forfeit any claim to the dividend declared.

### 18.5 Dividends on Shares not fully paid up to be paid pro rata

Subject to the rights of persons, if any, entitled to Shares with special rights as to dividends, all dividends on shares not fully paid up shall be authorised and paid in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the Shares either under this constitution of the Company or pursuant to the terms of issue of the Shares. No amount paid or credited as paid on a Share in advance of calls shall be treated for these purposes as paid on the Share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any or portions of the period in respect of which the dividend is paid, but if any Share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

### 18.6 Declaration of dividends

In the event the Board of the Company does not declare any dividends in a year on any class of Shares being listed, the Board shall, so long as the Company is listed on a Relevant Stock Exchange, send a notification of its decision to the secretary or other appointed official of that exchange.

## 19 ACQUISITION OF COMPANY'S OWN SHARES

The Company is hereby expressly authorised to purchase or otherwise acquire its Shares, and may hold the acquired Shares in accordance with the Act.

## 20 REDUCTION OF STATED CAPITAL

The Company may, to the extent provided by the provisions of Section 62 of the Act, by Special Resolution, reduce its stated capital to such amount as it thinks fit.

## 21 EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

### 21.1 Powers reserved to Shareholders

21.1.1 Powers reserved to Shareholders of the Company by the Act or by this Constitution may be exercised:

- (a) at a General Meeting; or
- (b) by a resolution in lieu of a meeting pursuant to clause 22.3.
- (c) by a Unanimous Resolution in writing.

21.1.2 Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

### 21.2 Special Resolutions

21.2.1 When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) a Major Transaction;
- (c) an Amalgamation (except an amalgamation between related companies under section 247 of the Act);
- (d) the liquidation of the Company.

21.2.2 Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

### 21.3 Management review by Shareholders

21.3.1 The Chairperson of any General Meeting shall give the Shareholders a reasonable opportunity to discuss and comment on the management of the Company.

21.3.2 A General Meeting may pass a resolution which makes recommendations to the Board on matters affecting the management of the Company.

21.3.3 A resolution relating to the management of the Company passed at a General Meeting (in accordance with clause 21.3) is not binding on the Board, unless it is carried as a Special Resolution.

### 21.4 Dissenting Shareholder may require Company to purchase Shares

21.4.1 A Shareholder may require the Company to purchase its Shares where:

- (a) a Special Resolution is passed under clause 21.2.1(a) for the purposes of altering the Constitution of the Company with a view to imposing or removing a restriction on the business or activities of the Company, or clause 21.2.1(b) or 21.2.1(c); and
- (b) the Shareholder casts all the votes attached to Shares registered in his name and for which he is the beneficial owner against the resolution; or
- (c) where the resolution to exercise the power was passed under section 117 of the Act, the Shareholder did not sign the resolution.

21.4.2 A request under clause 21.4.1 shall be addressed to the Company by the dissenting Shareholder by notice in Writing within fourteen (14) days of either the passing of the resolution at a General Meeting or the date on which notice of the passing of the written resolution is given to him.

21.4.3 Upon receiving a notice from a dissenting Shareholder given under clause 21.4.2, the Board shall to the extent that this is required in terms of the Act:

- (a) agree to the purchase of the Shares by the Company from the Shareholder giving the notice; or
- (b) arrange for some other person to agree to buy the Shares; or
- (c) apply to the Court under section 112 or section 113 of the Act for an order exempting the Company from the obligation to purchase the Shares; or
- (d) arrange, before taking the action concerned, for the Special Resolution entitling the Shareholder to give the notice, to be rescinded by a Special Resolution, or decide in the appropriate manner not to take the action concerned.

- 21.4.4 The Board shall within twenty-eight (28) days of receipt of the notice under clause 21.4.2 give written notice to the dissenting Shareholder of its decision under clause 21.4.3.
- 21.4.5 Where the Board agrees to the Company purchasing the Shares, pursuant to clause (a), it shall do so in accordance with section 110 of the Act.

## 22 GENERAL MEETINGS

### 22.1 Annual Meetings

The Board shall call an Annual Meeting of Shareholders to be held:

- (a) not more than once in each year;
- (b) not later than nine (9) months after the Balance Sheet Date of the Company; and
- (c) not later than fifteen (15) months after the previous Annual Meeting.

The business to be transacted at an Annual Meeting shall, unless already dealt with by the Company, include:

- (a) the consideration and approval of the financial statements;
- (b) the receiving of any auditor's report;
- (c) the consideration of the annual report;
- (d) the appointment of any Directors including those whose annual appointment is required by the Act;
- (e) the appointment of any auditor pursuant to Section 195 of the Act;
- (f) the remuneration of any Director and of the auditor; and
- (g) power to sanction or declare a distribution on the recommendation of the Directors.

### 22.2 Special Meetings

A Special Meeting may be called at any time by the Board and shall be so called on the written request of Shareholders holding Shares carrying together not less than five per cent (5%) of the voting rights entitled to be exercised on the issue.

### 22.3 Resolution in lieu of meeting

Anything that may be done by the Company in General Meeting (other than an Annual Meeting) under the Act or this Constitution may be done by a resolution in lieu of meeting in the manner provided for by section 117 of the Act.

### 22.4 Chairperson

- 22.4.1 Where the Directors have elected a Chairperson of the Board, and the Chairperson of the Board is present at a General Meeting, he shall chair the General Meeting.
- 22.4.2 Where no Chairperson of the Board has been elected or if, at any General Meeting, the Chairperson of the Board is not present within fifteen (15) minutes of the time appointed for the commencement of the General Meeting, the Directors present shall elect one of their number to be Chairperson of the General Meeting.
- 22.4.3 Where no Director is willing to act as Chairperson, or where no Director is present within fifteen (15) minutes of the time appointed for holding the General Meeting, the Shareholders present may choose one of their number to be Chairperson of the General Meeting.

### 22.5 Notice of General Meetings

- 22.5.1 Written notice of the time and place of a General Meeting shall be sent to every Shareholder entitled to receive notice of the General Meeting and to every Director, secretary and auditor of the Company not less than twenty one (21) days before the General Meeting.
- 22.5.2 Notice of meeting may also be sent to a Shareholder by electronic means of communication provided that – the shareholder has consented in writing to that form of communication being used by Company; and the Shareholder has provided an electronic address to which such communication may be sent.
- 22.5.3 In the event of a notice given by advertisement, such notice shall be published in English and in at least two daily newspapers of wide circulation in the country where the Company maintains a listing on a Relevant Stock Exchange.

- 22.5.4 The notice shall state:
- (a) the nature of the business to be transacted at the General Meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - (b) the text of any Ordinary or Special Resolution to be submitted to the General Meeting.
- 22.5.5 The notice shall be accompanied by a detailed agenda together with any other document relevant to the meeting.
- 22.5.6 Any irregularity in a notice of a General Meeting shall be waived where all the Shareholders entitled to attend and vote at the General Meeting attend the General Meeting without protest as to the irregularity, or where all such Shareholders agree to the waiver.
- 22.5.7 Any accidental omission to give notice of a General Meeting to, or the failure to receive notice of a General Meeting by, a Shareholder shall not invalidate the proceedings at that General Meeting.
- 22.5.8 The Chairperson may, or where directed by the General Meeting, shall, adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 22.5.9 When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned General Meeting shall be given as in the case of an original General Meeting or by way of an advertisement in one or more daily newspapers of wide circulation in each of the countries where the Company is listed on a Relevant Stock Exchange, if the adjournment is less than twenty one (21) days.
- 22.6 Methods of holding General Meetings**
- 22.6.1 A General Meeting shall be held either:
- (a) by a number of Shareholders who constitute a quorum, being assembled together at the place, date, and time appointed for the General Meeting; or
  - (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the General Meeting.
- 22.6.2 Anything that may be done by the Company in General Meeting under the Act or this Constitution may be done by a resolution in lieu of meeting in the manner provided for by section 117 of the Act.
- 22.7 Quorum**
- 22.7.1 Where a quorum is not present, no business shall, subject to clause 22.7.4, be transacted at a General Meeting.
- 22.7.2 There shall be a quorum for holding a General Meeting where at least two Shareholders or their proxies are present, and they make up, between them, no less than 50% of the total voting rights of the issued Shares.
- 22.7.3 A quorum for a class meeting ( other than an adjourned meeting) to consider a variation of the rights of any class of shareholders shall be met where the Shareholders or their proxies present, make up between them one third of the voting rights of the shares of that class.
- 22.7.4 Where a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting:
- (a) in the case of a General Meeting called under section 118(1)(b) of the Act, the General Meeting shall be dissolved;
  - (b) in the case of any other General Meeting, the General Meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint; and
  - (c) where, at the adjourned General Meeting, a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, the Shareholders or their proxies present shall be a quorum.

## 22.8 Voting

- 22.8.1 Where a General Meeting is held under clause 22.6 (a), unless a poll is demanded, voting at the General Meeting shall be by whichever of the following methods is decided by the Chairperson of the General Meeting:
- (a) voting by voice; or
  - (b) voting by show of hands.
- 22.8.2 Where a General Meeting is held under clause 22.6 (b), unless a poll is demanded, voting at the General Meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 22.8.3 A declaration by the Chairperson of the General Meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded in accordance with clause 22.8.4.
- 22.8.4 At a General Meeting, a poll may be demanded by :
- (a) not less than five (5) Shareholders having the right to vote at the General Meeting;
  - (b) a Shareholder or Shareholders representing not less than ten percent (10%) of the total voting rights of all Shareholders having the right to vote at the General Meeting;
  - (c) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the General Meeting and on which the aggregate amount paid up is not less than ten percent (10%) of the total amount paid up on all Shares that confer that right; or
  - (d) the Chairperson of the General Meeting.
- 22.8.5 A poll shall be demanded either before or after the vote is taken on a resolution:
- 22.8.6 Where a poll is taken, votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- 22.8.7 The demand for a poll may be withdrawn.
- 22.8.8 Where a poll is duly demanded, it shall, subject to this clause 22.8, be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll is demanded.
- 22.8.9 A poll demanded on the election of a Chairperson or on a question of adjournment, shall be taken immediately. On any other question, if a poll is demanded, it shall be taken at such time and place as the General Meeting directs. And any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.
- 22.8.10 The Chairperson of a General Meeting shall not be entitled to a casting vote.
- 22.8.11 For the purposes of clause 22.8, the instrument appointing a proxy to vote at a General Meeting shall confer authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder shall have the same effect as a demand by the Shareholder.
- 22.8.12 Subject to any rights or restrictions for the time being attached to any Class of Shares, every Shareholder present in person or by proxy and voting by voice or by show of hands and every Shareholder voting by postal vote (where this is permitted) shall have one vote.
- 22.8.13 The Chairperson may demand a poll on a resolution either before or after a vote thereon by voice or by show of hands.
- 22.8.14 In case of Shares conferring the right to vote burdened with an usufruct, the bare owner thereof shall be the only person entitled to vote.
- 22.8.15 Any power which the Act or this Constitution requires to be exercised by an Ordinary Resolution or a Special Resolution may be exercised by way of a Unanimous Resolution.

## 22.9 Proxies

- 22.9.1 A Shareholder shall exercise the right to vote either by being present in person or by proxy.
- 22.9.2 A proxy for a Shareholder may attend and be heard at a General Meeting as if the proxy were the Shareholder.
- 22.9.3 A proxy shall be appointed by notice in Writing signed by the Shareholder and the notice shall state whether the appointment is for a particular General Meeting or a specified term.

- 22.9.4 No proxy shall be effective in relation to a General Meeting unless a copy of the notice of appointment is produced not less than twenty-four (24) hours before the start of the General Meeting.
- 22.9.5 Any power of attorney or other authority under which the proxy is signed or a notarially certified copy shall also be produced.
- 22.9.6 A proxy form shall be sent with each notice calling a General Meeting of the Company.
- 22.9.7 The instrument appointing a proxy shall be in Writing under the hand of the appointer or of his agent duly authorised in Writing or in the case of a corporation under the hand of an officer or of an agent duly authorised.
- 22.9.8 The instrument appointing a proxy shall be in the following form:

FMBcapital Holdings Plc

I/we \_\_\_\_\_ of \_\_\_\_\_ being a shareholder/s of the above named Company hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him/her, \_\_\_\_\_ of \_\_\_\_\_ or the Chairperson as my/our proxy to vote for me/us at the Annual/Special Meeting of the Company to be held at \_\_\_\_\_ on \_\_\_\_\_ and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

(Usual Signature/s)

#### 22.10 Postal votes and Electronic Votes

##### Postal Vote

- 22.10.1 The right to vote at a meeting by casting a postal vote is hereby prohibited.

##### Electronic Vote

- 22.10.2 A shareholder may exercise the right to vote at a meeting by casting an electronic vote in accordance with this clause 22.10.
- 22.10.3 The notice of a meeting at which shareholders are entitled to cast an electronic vote must state:
- (a) That a shareholder may exercise the right to vote at a meeting by casting an electronic vote; and
  - (b) Subject to clause 22.10.4, the name of the person authorized by the Board to receive and count electronic votes at that meeting.
- 22.10.4 If no person has been authorized to receive and count electronic votes at a meeting, or if no person is named as being so authorized in the notice of the meeting, then every Director is deemed to be so authorized.
- 22.10.5 A shareholder may cast an electronic vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her Shares are to be voted to a person authorized to receive and count electronic votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 22.10.6 It is the duty of a person authorized to receive and count electronic votes at a meeting:
- (a) to collect together all electronic votes received by him or her, or by the Company; and
  - (b) in relation to each resolution to be voted on at the meeting, to count:
    - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
    - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution; and
    - (iii) to sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this sub-clause and which sets out the results of the counts required by paragraph (b) of this sub-clause; and
    - (iv) to ensure that the certificate required by paragraph (c) of this sub-clause is presented to the Chairperson of the meeting.



- 22.10.7 If a vote is taken at a meeting on a resolution on which electronic votes have been cast, the Chairperson of the meeting must:
- (a) On a vote by show of hands, count each shareholder who has submitted an electronic vote for or against the resolution;
  - (b) On a poll, count the votes cast by each shareholder who has submitted an electronic vote for or against the resolution.
- 22.10.8 The Chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient electronic votes where he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 22.10.9 The Chairperson of a meeting must ensure that a certificate of electronic votes held by him or her is annexed to the minutes of the meeting.
- 22.11 Minutes**
- 22.11.1 The Board shall ensure that minutes are kept of all proceedings at General Meetings.
- 22.11.2 Minutes which have been certified correct and signed by the Chairperson of the General Meeting shall be prima facie evidence of the proceedings.
- 22.12 Shareholder proposals**
- 22.12.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next General Meeting at which the Shareholder is entitled to vote.
- 22.12.2 Where the notice is received by the Board not less than seven (7) days and not more than twenty eight (28) days before the last day on which notice of the relevant General Meeting is required to be given by the Board, shall, at the expense of the Shareholder, give notice of the shareholder's proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the General Meeting.
- 22.12.3 Where the notice is received by the Board less than seven (7) days before the last day on which notice of the relevant General Meeting of shareholders required to be given by the Board, the Board may, where practicable, and at the expense of the Shareholder, give notice of the Shareholder's proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the General Meeting.
- 22.12.4 Where the Directors intend that Shareholders may vote on the proposal by proxy, they shall give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than one thousand (1000) words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- 22.12.5 The Board shall not be required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- 22.12.6 Where the costs of giving notice of the Shareholder's proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder shall, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.
- 22.13 Corporations may act by representative**
- A body corporate which is a Shareholder may appoint a representative to attend a General Meeting on its behalf in the same manner as that in which it could appoint a proxy.
- 22.14 Votes of joint holders**
- Where two (2) or more persons are registered as the holder of a Share, the vote of the person named first in the Share Register and voting on a matter shall be accepted to the exclusion of the votes of the other joint holders.
- 22.15 No voting right where Calls unpaid**
- Where a sum due to the Company in respect of a Share has not been paid, that Share shall not confer a right to vote at a shareholder's meeting.
- 22.16 Other proceedings**
- Unless otherwise expressly provided in this Constitution, a General Meeting may regulate its own procedure.

## 23 APPOINTMENT AND REMOVAL OF DIRECTORS

### 23.1 Number of Directors

- 23.1.1 The Board shall consist of not less than 6 (six) and not more than 11 (eleven) Directors of which 2 (two) shall be resident in Mauritius.
- 23.1.2 Save for the 2 (two) Directors resident in Mauritius (the "Resident Directors"), each holder of twelve and a half percent (12.5%) of the share capital of the Company can appoint 1 Director by giving written notice to the Company to that effect. The appointment shall take effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date, subject at all times to the consent form being signed by the proposed Director. The 2 Resident Directors shall be appointed by Ordinary Resolution.

### 23.2 Appointment of Directors

- 23.2.1 As at the date of adoption of this Constitution, the number of Directors of the Company is two.
- 23.2.2 All directors shall retire at the first annual General Meeting following the adoption of this new Constitution, and at each subsequent annual General Meeting, at least one third of the directors shall vacate the office by rotation, which initial manner of rotation may be determined by the Chairperson. Retiring Directors are eligible to reappointment.
- 23.2.3 In addition to the appointment of Directors under clause 23.3, a Director must be appointed by an Ordinary Resolution.
- 23.2.4 No person not being a Director retiring at the meeting shall, unless recommended by the Board for election, be eligible for appointment to the office of Director at any general meeting unless, not less than seven days before the day appointed for the meeting there shall have been received by the Secretary notice from a member (other than the person to be proposed) entitled to attend and vote at the meeting for which such notice shall be given of the intention of such member to propose such person for appointment. The required minimum period of notice to the Company by such person proposed of his willingness to be elected shall be at least seven days and that the latest date for lodgement of such notices shall be not more than seven days prior to the date of the meeting appointed for such election.
- 23.2.5 A resolution to appoint two or more Directors may be voted on one resolution without each appointment being voted individually only if a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

### 23.3 Directors may fill up Casual Vacancy

- 23.3.1 Notwithstanding clauses 23.1 and 23.2, 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 this Constitution. The Director so appointed shall hold office only until the next following annual General Meeting and shall then be eligible for re-election.
- 23.3.2 The continuing Directors shall act notwithstanding any vacancy on the Board. If their number is reduced below the number fixed by, or pursuant to, this Constitution as the minimum number of Directors, the continuing Directors will act only for the purpose of summoning a General Meeting of the Company or filling vacancies.

### 23.4 Disqualification vacation of office and removal of Directors.

- 23.4.1 A person will be debarred from holding the office of Director, or if already appointed as Director, shall cease to hold office as Director, where that person:
- (a) is removed by Ordinary Resolution passed at a General Meeting called for that purpose; or
  - (b) resigns in Writing and is not reappointed in accordance with this Constitution; or
  - (c) is required to vacate office at the expiry of his tenure in accordance with the terms of his appointment; or
  - (d) is declared unfit to serve office as a director by a decision of a regulatory authority in any country where the Company is conducting business;
  - (e) becomes disqualified from being a Director pursuant to section 133 of the Act; or
  - (f) is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a Company under section 337 or 338 of the Act; or

- (g) dies; or
- (h) is under eighteen (18) years of age; or
- (i) is an undischarged bankrupt.

23.4.2 A person shall cease automatically to be a director at the conclusion of the annual meeting commencing next after he attains the age of 70 years unless his appointment as director is extended by an Ordinary Resolution of which no shorter notice is given than that required to be given for the holding of a meeting of shareholders, till the next annual meeting of the Company.

#### 23.5 **Shareholding qualification.**

A Director shall not be required to hold Shares.

#### 23.6 **Alternate Directors**

- 23.6.1 Every Director may, by notice given in Writing to the Company but subject to the approval of the majority of Directors, appoint any person (including any other Director) to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings at which the Director is not present.
- 23.6.2 The appointing Director may, at his discretion, by notice in Writing to the Company, remove his Alternate Director.
- 23.6.3 An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as Chairperson) of the appointing Director. The Alternate Director shall be subject, in all respects, to the same terms and provisions as those regarding the appointment of his appointing Director, except as regards remuneration and the power to appoint an Alternate Director under this Constitution.
- 23.6.4 A Director who is also an Alternate Director shall be entitled, in addition to his own vote, to a separate vote on behalf of the Director he is representing.
- 23.6.5 An Alternate Director's shall lapse upon his appointing Director ceasing to be a Director.
- 23.6.6 The notice of appointment of an Alternate Director shall include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.
- 23.6.7 An Alternate Director shall not be the agent of his appointor, and shall exercise his duties as a Director independently of his appointor.

## 24 **POWERS AND DUTIES OF THE BOARD**

### 24.1 **Powers of the Board**

- 24.1.1 The business and affairs of the Company shall be managed by or under the direction or supervision of the Board.
- 24.1.2 The Board shall have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.
- 24.1.3 The Directors may raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company, save that the Directors shall procure that the aggregate amount borrowed, and for the time being remaining outstanding, by the Company and its subsidiaries (exclusive of inter-company borrowing and apart from temporary loans obtained from the Company's bankers) shall not, without the approval by Ordinary Resolution of the Shareholders, exceed a reasonable fixed amount or percentage of the paid up share capital of the Company for the time being issued and reserves, and the directors will procure that the aggregate amount at any time owing in respect of monies borrowed by the Company (including creditors) will not without such sanction exceed the said limit, but nevertheless, no lender or other person dealing with the Company shall be concerned to see or enquire whether this limit is observed.

## 24.2 Delegation by Board

24.2.1 The Board may delegate to a committee of Directors, a Director, an employee of the Company, or any other person, any one or more of its powers, other than the powers provided for under any of the following sections which are listed in the Seventh Schedule to the Act:

- (a) section 52 (Issue of other shares);
- (b) Section 56 (Consideration for issue of shares);
- (c) section 57(3) (Shares not paid for in cash);
- (d) section 61 (Board may authorise Distribution);
- (e) section 64 (Shares in lieu of Dividend);
- (f) section 65 (Shareholder discount);
- (g) section 69 (Purchase of own shares);
- (h) section 78 (Redemption at option of Company);
- (i) section 81 (Restrictions on giving financial assistance);
- (j) section 188 (Change of registered office);
- (k) section 246 (Approval of Amalgamation proposal);
- (l) section 247 (Short form Amalgamation).

24.2.2 The Board shall be responsible for the exercise of a power by any delegate (where that power is delegated under this clause 24.2) as if the power had been exercised by the Board, unless the Board:

- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and
- (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

## 24.3 Directors to act in good faith and in best interests of Company

24.3.1 Subject to this clause 24.3, the Directors of the Company shall:

- (a) exercise their powers in accordance with the Act and with the limits and subject to the conditions and restrictions established by this Constitution;
- (b) obtain the authorisation of a General Meeting before doing any act or entering into any transaction for which the authorisation or consent of such Meeting is required by the Act or this Constitution;
- (c) exercise their powers honestly, in good faith, in the best interests of the Company and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) exercise the degree of care, diligence and skill required by the Act;
- (e) not agree to the Company incurring any obligation unless the Directors believe at that time, on reasonable grounds, that the Company shall be able to perform the obligation when it is required to do so;
- (f) account to the Company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as Directors of the Company, except remuneration, pensions provisions and compensation for loss of office in respect of their directorships of any company which are dealt with in accordance with the Act;
- (g) not make use of, or disclose, any confidential information received by them on behalf of the Company as Directors otherwise than as permitted and in accordance with the Act;
- (h) not compete with the Company or become a Director or officer of a competing company, unless it is approved by the Company;
- (i) where Directors are interested in a transaction to which the Company is a party, disclose such interest;
- (j) not use any assets of the Company for any illegal purpose or purpose in breach of sub clauses (a) and (c), and not do, or knowingly allow to be done, anything by which the Company's assets may be damaged or lost, otherwise than in the ordinary course of carrying on its business;

- (k) transfer forthwith to the Company all cash or assets acquired on its behalf, whether before or after its incorporation, or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the Company and to use it only for the purposes of the Company;
- (l) attend meetings of the Directors with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse;
- (m) keep proper accounting records in accordance with the Act and make such records available for inspection in accordance with the Act; and
- (n) at all times act in a manner which is not, oppressive, unfairly discriminatory, or unfairly prejudicial to the Shareholders.

24.3.2 Nothing in this clause 24.3 shall limit the power of a Director to make provision for the benefit of employees of the Company (as the terms “employees” and “Company” are defined in section 144 of the Act) in connection with the Company ceasing to carry on the whole or part of its business.

#### 24.4 **Major Transactions and other transactions under Section 130 of the Act.**

24.4.1 The Board shall not procure or permit the Company to enter into a Major Transaction unless the transaction is approved by a Special Resolution or contingent on approval by Special Resolution.

24.4.2 The Board shall not procure or permit the Company to enter into a transaction of the kind contemplated by section 130(3) of the Act unless the transaction is approved by an Ordinary Resolution or contingent on approval by Ordinary Resolution.

## 25 **PROCEEDINGS OF THE BOARD**

### 25.1 **Chairperson**

25.1.1 The Directors shall elect one of their number as Chairperson of the Board and determine the period for which he is to hold office, which period, shall not exceed one year.

25.1.2 Where no Chairperson is elected, or where at a meeting of the Board the Chairperson is not present within fifteen (15) minutes after the time appointed for the commencement of the meeting, the Directors present shall choose one of their number to be Chairperson of the meeting.

### 25.2 **Notice of meeting**

25.2.1 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause 25.2.

25.2.2 A notice of a meeting of the Board shall be sent to every Director, and the notice shall include the date, time, and place of the meeting and the matters to be discussed.

25.2.3 An irregularity in the notice of a meeting shall be waived where all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or where all Directors entitled to receive notice of the meeting agree to the waiver.

### 25.3 **Method of holding meetings.**

A meeting of the Board shall be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### 25.4 **Quorum**

25.4.1 A quorum for a meeting of the Board shall be fixed by the Board, and if not so fixed shall be a majority of the directors provided such quorum includes at least one Mauritius resident Director.

25.4.2 No business shall be transacted at a meeting of Directors if a quorum is not present.

25.4.3 A Director having an interest as specified in clause 26 will not be counted in a quorum in accordance with clause 25.

25.4.4 If within fifteen (15) minutes past the time appointed for any meeting of Board, the quorum is not present, such meeting shall stand adjourned to the next day at the same time and place provided such day is a working day and otherwise to the next following working day; if at such adjourned meeting a quorum is not present, the Directors present not being less than two (2) shall form a quorum and may transact the business standing to the order of the day.

## 25.5 **Voting**

- 25.5.1 Every Director (other than a Director having an interest pursuant to clause 26) shall have one vote.
- 25.5.2 The Chairperson shall not have a casting vote.
- 25.5.3 A resolution of the Board shall be passed if it is agreed to by a majority of the Directors present.

## 25.6 **Minutes.**

The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

## 25.7 **Resolution in Writing**

- 25.7.1 A resolution in Writing, signed or assented to, by all the Directors then entitled to receive notice of a Board meeting, shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 25.7.2 Any such resolution may consist of several documents in like form each signed or assented to by one or more Directors.
- 25.7.3 A copy of any such resolution shall be entered in the minute book of Board proceedings.

# 26 **REMUNERATION AND OTHER INTERESTS OF DIRECTORS**

## 26.1 **Authority to remunerate Directors**

- 26.1.1 The Shareholders by Ordinary Resolution, shall approve:
  - (a) the payment of remuneration (or the provision of other benefits) by the Company to a Director for his services as a Director, or the payment of compensation for loss of office and shall be paid all travelling and other expenses properly and necessarily incurred by them for the purposes of the business of the Company namely in attending meetings of Directors or committees thereof; and
  - (b) the making of loans and the giving of guarantees by the Company to a Director in accordance with section 159 (6) of the Act.
- 26.1.2 The Board shall ensure that, forthwith after authorising any payment under clause 26.1, particulars of such payment are entered in the Interests Register, where there is one.
- 26.1.3 Notwithstanding the provisions of this clause, the Shareholders of the Company may, by Unanimous Resolution or by Unanimous Shareholder's Agreement, approve any payment, provision, benefit, assistance or other distribution referred to in section 159 of the Act provided that there are reasonable grounds to believe that, after the distribution, the Company is likely to satisfy the Solvency Test.

## 26.2 **Other offices with Company held by Director**

- 26.2.1 Any Director may act by himself, or his firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause shall authorise a Director or a Director's firm to act as auditor for the Company.
- 26.2.2 A Director may hold any other office in the Company (other than the office of auditor), for such period and on such terms (as to remuneration and otherwise) as the Board shall determine provided that his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors.
- 26.2.3 A director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as a member or otherwise, and no such director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of or from his interest in, such other company unless the Company otherwise directs. Provided that if a director shall be or become a director and/or an employee of a subsidiary company, the appointment and the terms thereof and the remuneration payable shall be determined by a disinterested quorum of directors.
- 26.2.4 Other than as provided in clause 26.3 a Director shall not be disqualified by virtue of his office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he was not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.

### 26.3 Notice of interest to be given

- 26.3.1 A Director shall, forthwith after becoming aware of the fact that he is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, where it has one, and, where the Company has more than one Director, disclose to the Board of the Company:
- (a) where the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (b) where the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- 26.3.2 A Director shall not be required to comply with clause 26.3.1 where the transaction or proposed transaction between the Director and the Company is or is to be entered into in the ordinary course of the Company's business on the usual terms and conditions.
- 26.3.3 For the purposes of clause 26.3.1, a general notice entered in the Interests Register, where there is one, or disclosed to the Board to the effect that a Director is a Shareholder, Director, officer or trustee of another company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that Company or person, is a sufficient disclosure of interest in relation to that transaction.
- 26.3.4 A failure by a Director to comply with clause 26.3.1 shall not affect the validity of a transaction entered into by the Company or the Director.

### 26.4 Interested director may not vote

- 26.4.1 Subject to clause 25.4.3, a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may:
- (a) not vote on any matter relating to the transaction, and if he does vote, his vote shall not be counted;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises but shall not be included among the directors present at the meeting for the purpose of a quorum;
  - (c) sign a document relating to the transaction on behalf of the Company; and
  - (d) do any other thing in his capacity as a director in relation to the transaction, as if the director were not interested in the transaction.
- 26.4.2 This clause 26.4 shall not apply to:
- (a) a transaction approved by the Company pursuant to section 146 of the Act.
  - (b) the giving of any security or indemnity either:
    - (i) to the Director in respect of money lent or obligations incurred or undertaken by him at the request of or for the benefit of the Company or any of its subsidiaries; or
    - (ii) to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the director has himself assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;
    - (iii) any proposal concerning an offer of shares or debentures or other securities of or by the Company or any other company which the issuer may promote or be interested in for subscription or purchase where the director is or is to be interested as a participant in the underwriting or sub-underwriting of the offer;
    - (iv) any proposal concerning any other company in which the director is interested only, whether directly or indirectly, as an officer or executive or shareholder or in which the director is beneficially interested in shares of that company, provided that he, together with any of his associates, is not beneficially interested in five per cent. or more of the issued shares of any class of such company (or of any third company through which his interest is derived) or of the voting rights;
      - (aa) any proposal or arrangement concerning the benefit of employees of the Company or its subsidiaries including:
      - (bb) the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which he may benefit; or

- (cc) the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme which relates both to directors and employees of the Company or any of its subsidiaries and does not provide in respect of any director as such any privilege or advantage not generally accorded to the class of persons to which such scheme or fund relates; and
- (dd) any contract or arrangement in which the director is interested in the same manner as other holders of shares or debentures or other securities of the Company by virtue only of his interest in shares or debentures or other securities of the Company.

## 27 EXECUTIVE DIRECTORS

### 27.1 Appointment of Executive Director

#### 27.1.1 *The Board may from time to time*

- (a) appoint one or more Directors to be the holder of any executive office on such terms and conditions and for a maximum period of five years as the Board may (subject to the provisions of the Act) determine; and,
- (b) without prejudice to the terms and conditions of any contract of service which the Company may enter into regarding any such appointment, at any time revoke any such appointment.

27.1.2 The remuneration (including pension benefits) of the executive directors shall be ratified by the Shareholders of the Company in a General Meeting.

### 27.2 Powers of Executive Director

27.2.1 The Board may entrust to and confer upon a Director holding any executive office any of the powers exercisable by the Board upon such terms and conditions and subject to such restrictions as the Board shall determine and either collaterally with, or to the exclusion of, the Board's own powers, but always subject to section 131 of the Act, and may, from time to time, revoke, withdraw, alter or vary all or any of the powers so conferred by the Board.

## 28 INDEMNITY AND INSURANCE

### 28.1 Indemnity of Directors and employees

28.1.1 The Board shall cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him in any proceedings:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
- (b) in which judgment is given in his favour or in which he is acquitted or which is discontinued.

28.1.2 The Board shall cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in his capacity as a Director or employee; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceedings relating to any liability under clause 28.1.1 above; not being criminal liability or liability for the breach of section 131 of the Act.

### 28.2 Insurance of Directors and employees

28.2.1 The Board may cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:

- (a) liability not being criminal liability for any act or omission in his capacity as a Director or employee; or
- (b) costs incurred by such Directors or employees in defending or settling any claim or proceedings relating to any such liability; or
- (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in that person's capacity as Director or employee, in which he is acquitted or in relation to which a nolle prosequi is entered.

28.2.2 The Directors who vote in favour of a decision to effect insurance under clause 28.2.1 shall sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.



28.2.3 The Board shall ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related Company are forthwith entered in the Interests Register.

**28.3 Definitions.**

For the purpose of this clause 28, "Director" includes a former Director and "employee" includes a former employee.

## **29 SECRETARY**

**29.1 Company to have a secretary**

29.1.1 The Company shall have one or more secretaries (referred to as "The Secretary" in this constitution) to be appointed by the Board from time to time.

29.1.2 The Secretary shall also be as of right the secretary of the Board.

**29.2 Qualifications**

No person shall be appointed as Secretary of the Company unless:

- (a) he is a natural person of full age and capacity ordinarily resident in Mauritius;
- (b) he holds the necessary qualifications specified under Section 165 of the Act; or
- (c) in the case of a firm or corporation, approval has first been obtained from the Registrar for such firm or corporation to act as Secretary of the Company or of companies in general, conformably to the provisions of Section 164 of the Act.

**29.3 Vacancy**

29.3.1 The office of Secretary shall not be left vacant for more than three consecutive months at any time.

29.3.2 If the office of Secretary is vacant for more than three consecutive months, anything required or authorised to be done by or in relation to a Secretary may be done by any officer of the Company authorised generally or specifically for the purpose by the Board.

**29.4 Removal from office**

The Board may, subject to the provisions of Section 167 of the Act, remove, from time to time, the Secretary from office.

## **30 WINDING UP**

**30.1 Distribution of surplus assets.**

Subject to the terms of issue of any Shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of Shares in proportion to their shareholding, provided however that a holder of Shares not fully paid up shall receive only a proportionate share of his entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares.

**30.2 Division in kind**

30.2.1 When assets are distributed, the liquidator may, with the sanction of a Special Resolution, divide in kind amongst the Shareholders the assets of the Company, whether they consist of property of the same kind or not, and may for that purpose set such value as he shall deem fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different Classes of Shareholders.

30.2.2 The liquidator may, with the like sanction, vest any such assets in such persons for the benefit of contributories as the liquidator, with the like sanction, shall think fit.

30.2.3 Nothing in this clause shall require a Shareholder to accept any share or other security on which there is any liability.

## **31 COMMON SEAL, AUTHENTICATION OF DEEDS AND DOCUMENTS**

**31.1 Form of instruments**

31.1.1 The Company may have a seal, known as the common seal, which shall contain the name of the Company and which shall not be affixed to any instrument without the authority of the Board.

31.1.2 The common seal may be affixed to any instrument, including a deed, and if not so affixed, the validity of the execution of the instrument will be determined in accordance with section 181 of the Act.

- 31.1.3 All instruments, deeds, acts and documents executed on behalf of the Company may be in such form and contain such powers, provisos, conditions, covenants, clauses and agreements as the Board shall think fit, and shall be signed either by two Directors or by one Director and one of the secretaries or by such other person or persons as the Board may from time to time appoint.
- 31.1.4 All bills of exchange, promissory notes or other negotiable instruments shall be accepted, made, drawn or endorsed for and on behalf of the Company and all cheques or orders for payment shall be signed either by two Directors or by one Director and one of the secretaries or by such other person or persons as the Board may from time to time appoint.
- 31.1.5 Cheques or other negotiable instruments paid to the Company's bankers for collection and requiring the endorsement of the Company, shall be endorsed on its behalf by one of the Directors or by one of the secretaries or by such other officer as the Board may from time to time appoint.
- 31.1.6 All moneys belonging to the Company shall be paid to such bankers as the Directors shall from time to time appoint and all receipts for money paid to the Company shall be signed by one of the Directors or by one of the secretaries or by such other officer as the Board may from time to time appoint and such receipt shall be an effectual discharge for the money therein stated to be received.

**31.2 Instrument to be binding**

Every instrument to which the seal of the Company is so affixed and which is so signed shall be binding on the Company.

## **32 ACTIONS OF PROCEEDINGS**

The Company may sue and be sued in its corporate name acting by and through the Board or The Secretary provided that the power to sue shall only be exercised by The Secretary after he has been duly authorised thereto by the Board and service of all summonses, process notices and the like shall be valid and effectual if served at the Registered Office of the Company.

## **33 COMPANY RECORDS**

**33.1 The Company shall keep at its registered office the following records:**

- (a) the Constitution of the Company;
- (b) minutes of all meetings and resolutions of shareholders for the last seven (7) years;
- (c) an interests register;
- (d) minutes of all meetings and resolutions of Directors and Directors' committees for the last seven (7) years;
- (e) certificates given by Directors under the Act for the last seven (7) years;
- (f) the full names and addresses of the current Directors;
- (g) copies of all written communications to all shareholders or all holders of the same class of shares during the last seven (7) years, including annual reports made under section 218 of the Act;
- (h) copies of all financial statements and group financial statements required to be completed by section 210 of the Act for the last seven (7) completed accounting periods of the Company;
- (i) the accounting records required by section 193 of the Act for the current accounting period and for the last seven (7) completed accounting periods of the Company;
- (j) the share register required to be kept under clause 11 of this Constitution; and
- (k) the copies of instruments creating or evidencing charges required to be registered under section 127 of the Act.

33.2 The Directors shall, at all times and even where the Company is removed from the register, ensure that the records referred to above are kept for a period of at least 7 (seven) years from the date of the completion of the transaction, act or operation to which it relates.

## 34 NOTICES

### 34.1 Service

34.1.1 A notice may be served by the Company upon any director or shareholder-

- (a) personally; or
- (b) by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address; or
- (c) by electronic means if the Shareholder or director has consented in writing to that form of communication being used by the Company and the Shareholder or director has provided an electronic address to which such communication may be sent.

34.1.2 In compliance with the rules of a Relevant Stock Exchange, a notice to all Shareholders may also be sent to the secretary or other appointed official or committee of that exchange, and shall be published in the English language in one or more daily newspapers of wide circulation in the country of the Relevant Stock Exchange and in accordance with the provisions of rules of that exchange.

Notice shall be given to every Shareholder, whether residing in or outside Mauritius.

### 34.2 Time of service

Any notice given by personal delivery or by a delivery service will be conclusively deemed to have been given at the time of delivery and, if given by telecopier or by electronic mail, on the on the first business day following the day of transmittal.

### 34.3 Proof of service

In proving service it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted with all attached postal charges paid.

### 34.4 Service on joint holders

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 share register in respect of the share.

### 34.5 Service on representatives

A notice may be given by the Company to the person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within Mauritius supplied for the purpose by the person or persons claiming to be so entitled, 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 or bankruptcy had not occurred.

## 35 ACCOUNTS

### 35.1 Accounts to be kept

35.1.1 The Board shall cause proper accounting and other records to be kept as required by the Act, and shall make available such accounting and other records for inspection in accordance with sections 225 to 228 of the Act.

35.1.2 A printed copy of the annual report and accounts (including the balance sheet and every document required by law to be annexed thereto and profit and loss account or income and expenditure account) shall, at least 21 days before the date of the General Meeting, be delivered or sent by post to the registered address of every Shareholder or by electronic means.

### 35.2 Compliance with Rules of Relevant Stock Exchange

35.2.1 The Company shall comply with the rules of the Relevant Exchange in sending the required number of copies of the annual report and accounts to the secretary or other appointed official or committee of the Relevant Stock Exchange.

35.2.2 Provided that this Clause shall not require a copy of such documents to be sent to any person of whose address the Company is not aware of or to more than one of the joint holders of any shares, stock or debentures.

35.2.3 Where the Company is a holding company as defined in this Constitution or in the Act or in the rules of a Relevant Stock Exchange, the directors' report attached to each annual balance sheet issued by the Company shall disclose full details of all resolutions passed at General Meetings and Special Meetings of the Company's subsidiary companies since the date of the directors report attached to the previous annual balance sheet of the Company.

### **36 REVOCATION OF POWER OF ATTORNEY**

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.

### **37 AUDITORS**

Auditors shall be appointed and removed and their duties and remuneration regulated in accordance with Sections 195 to 208 of the Act.

### **38 SERVICE OF DOCUMENTS**

The service of documents on or by the Company shall be regulated in accordance with sections 323 to 328 of the Act.

### **39 REMOVAL FROM THE MAURITIUS REGISTER**

The Board may request the Registrar to remove the Company from the Register in the event that:

- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
- (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under Section 312 of the Act for an order putting the Company into liquidation.

### **40 ALTERATION OF CONSTITUTION**

The Company in a General Meeting shall have power to alter this Constitution within the limits and under the conditions imposed by law and, where required by the rules of a Relevant Stock Exchange shall seek its prior written approval.

### **41 ARBITRATION**

Any dispute, controversy or claim arising out of or relating to this Constitution or the breach, termination or invalidity thereof, or relating to the Company, shall be settled by international arbitration under the International Arbitration Act 2008 ("**IAA 2008**"). The arbitration shall be conducted by an arbitral tribunal which shall consist of a single arbitrator under the LCIA-MIAC Arbitration Rules as established by the London Court of International Arbitration (**LCIA**) and Mauritius International Arbitration Centre Limited (**MIAC**). The juridical seat of arbitration and the geographical location of the arbitration shall be Mauritius and the language to be used in the arbitral proceedings shall be the English language. The award given by the arbitrator shall be conclusive, final and binding on all the parties.

We, hereby certify that this document has been approved by Special Resolution of Shareholders as the constitution of FMBcapital Holdings Plc.

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For and on behalf of

**JTC Fiduciary Services (Mauritius) Limited**  
*Company Secretary of FMBcapital Holdings Plc*

Date: xx MONTH 2022

**Registered office:**

C/o JTC Fiduciary Services (Mauritius) Limited,  
Suite 2004, Level 2, Alexander House,  
35 Cybercity Ebene, Mauritius  
(the "Company")

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## PROXY FORM

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I/We \_\_\_\_\_ of  
\_\_\_\_\_  
(address), being 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 6th Annual Meeting of the Company to be held on 20 June 2022  
and at any adjournment thereof.

This form is to be used as follows:

	In Favour	Against	Abstain
<b>Resolution No. 1</b> – Minutes of the Last Annual Meeting			
<b>Resolution No. 2</b> – Audited Financial Statements			
<b>Resolution No 3</b> – Dividend			
<b>Resolution No. 4.1.1</b> – Re-elect Director – Mr. Mahendra Gursahani			
<b>Resolution No. 4.1.2</b> – Re-elect Director – Mr. Hitesh Natwarlal Anadkat			
<b>Resolution No. 4.1.3</b> – Re-elect Director – Ms. Susanne Alfs			
<b>Resolution No. 4.2</b> – Remuneration of the executive directors			
<b>Resolution No. 4.3.1</b> – Annual fees for the Chairman			
<b>Resolution No. 4.3.2</b> – Annual retainer for the Chairman			
<b>Resolution No. 4.3.3</b> – Annual fees for other non-executive directors			
<b>Resolution No. 5.1</b> – Audit fees for 2021			
<b>Resolution No. 5.2</b> – Auditors – Re-appointment			
<b>Special Resolution No. 6</b> – Amended Constitution			
(a) the terms "FMB Capital Holdings Plc" and " <b>FMB Capital Holdings Ltd</b> " be replaced by "FMBcapital Holdings Plc" throughout the Constitution;			
(b) a new definition be inserted in clause 1.1 of the Constitution as follows: " <b>Resident Directors</b> has the meaning given to it under clause 23.1.2."			

	In Favour	Against	Abstain
(c) the existing clause 3 of the Constitution be deleted and replaced by the following: <i>"The registered office of the Company will be situated at C/o JTC Fiduciary Services (Mauritius) Limited, Suite 2004, Level 2, Alexander House, 35 Cybercity, Ebene, Mauritius or in such other place as the Board may, from time to time, determine."</i>			
(d) a new paragraph be inserted after clause 18.2.3 of the Constitution, as follows: <i>"Where the Board declares a dividend, it shall ensure that that dividend is paid not later than 12 months after the date on which the dividend is declared."</i>			
(e) the existing clause 22.1(b) of the Constitution be deleted and replaced by the following: <i>"not later than nine (9) months after the Balance Sheet Date of the Company; and"</i>			
(f) a new paragraph be inserted after clause 22.5.4 of the Constitution, as follows: <i>"The notice shall be accompanied by a detailed agenda together with any other document relevant to the meeting."</i>			
(g) the existing clause 23.1.1 of the Constitution be deleted and replaced by the following: <i>"The Board shall consist of not less than 6 (six) and not more than 11 (eleven) Directors of which 2 (two) shall be resident in Mauritius."</i>			
(h) the existing clause 23.1.2 of the Constitution be deleted and replaced by the following: <i>"Save for the 2 (two) Directors resident in Mauritius (the "Resident Directors"), each holder of twelve and a half percent (12.5%) of the share capital of the Company can appoint 1 Director by giving written notice to the Company to that effect. The appointment shall take effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date, subject at all times to the consent form being signed by the proposed Director. The 2 Resident Directors shall be appointed by Ordinary Resolution."</i>			
(i) a new paragraph (n) be added in clause 24.3.1 of the Constitution as follows: <i>"at all times act in a manner which is not, oppressive, unfairly discriminatory, or unfairly prejudicial to the Shareholders."</i>			
(j) a new paragraph be inserted in clause 33 of the Constitution as follows: <i>"The Directors shall, at all times and even where the Company is removed from the register, ensure that the records referred to above are kept for a period of at least 7 (seven) years from the date of the completion of the transaction, act or operation to which it relates."</i>			
<b>Special Resolution No. 7 – Issue of further shares</b>			

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

Date \_\_\_\_\_ Signed \_\_\_\_\_

A PROXY NEED NOT BE A MEMBER OF THE COMPANY





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[www.fmbcapitalgroup.com](http://www.fmbcapitalgroup.com)