

**BYE-LAWS  
OF  
STOLT-NIELSEN LIMITED**

**Adopted as of the amalgamation of  
Stolt-Nielsen Limited and Stolt-Nielsen S.A.**

## TABLE OF CONTENTS

<b>Interpretation</b>	<b>Meetings of Members</b>	40. Directors to Manage Business
1. Definitions	18. Annual General Meetings	41. Powers of the Board of Directors
<b>Shares</b>	19. Special General Meetings	42. Register of Directors and Officers
2. Power to Issue Shares	20. Requisitioned General Meetings	43. Appointment of Officers
3. Power of the Company to Purchase its Shares	21. Notice	44. Appointment of Secretary
4. Rights Attaching to Shares	22. Giving Notice and Access	45. Duties of Officers
5. Shares to be Fully Paid	23. Postponement or Cancellation of General Meeting	46. Remuneration of Officers
6. Prohibition on Financial Assistance	24. Security at General Meetings	47. Conflicts of Interest
7. Share Certificates	25. Quorum at General Meetings	48. Indemnification and Exculpation of Directors and Officers
<b>Registration of Shares</b>	26. Chairman to Preside at General Meetings	
8. Register of Members	27. Voting on Resolutions	<b>Meetings of the Board of Directors</b>
9. Registered Holder Absolute Owner	28. Power to Demand a Vote on a Poll	49. Board Meetings
10. Transfer of Registered Shares	29. Voting by Joint Holders of Shares	50. Notice of Board Meetings
11. Transmission of Registered Shares	30. Instrument of Proxy	51. Electronic Participation in Meetings
<b>Alteration of Share Capital</b>	31. Representation of Corporate Member	52. Quorum at Board Meetings
12. Power to Alter Capital	32. Adjournment of General Meeting	53. Board to Continue in the Event of Vacancy
13. Variation of Rights Attaching to Shares	33. Directors Attendance at General Meetings	54. Chairman to Preside
<b>Dividends and Capitalisation</b>	<b>Directors and Officers</b>	55. Written Resolutions
14. Dividends	34. Election of Directors	56. Validity of Prior Acts of the Board
15. Power to Set Aside Profits	35. Term of Office of Directors	<b>Corporate Records</b>
16. Method of Payment	36. Removal of Directors	57. Minutes
17. Capitalisation	37. Vacancy in the Office of Director	58. Place Where Corporate Records Kept
	38. Remuneration of Directors	59. Form and Use of Seal
	39. Defect in Appointment	

**Accounts**

- 60. Books of Account
- 61. Financial Year End

**Audits**

- 62. Annual Audit
- 63. Appointment of Auditor
- 64. Remuneration of Auditor
- 65. Duties of Auditor
- 66. Access to Records
- 67. Financial Statements
- 68. Distribution of Auditor's Report
- 69. Vacancy in the Office of Auditor

**Business Combinations**

- 70. Business Combinations

**Voluntary Winding-Up and Dissolution**

- 71. Winding-Up

**Changes to Constitution**

- 72. Changes to By-laws
- 73. Discontinuance

**Restriction on****Shareholdings**

- 74. Restriction on Shareholdings

## INTERPRETATION

### 1. Definitions

**1.1** In these Bye-laws, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	the Companies Act 1981 as amended from time to time;
Adverse Consequences	has the meaning given in Bye-law 74.1;
Affiliate or Affiliated	an “Affiliate” of, or a Person “Affiliated” with, a specified person is a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
Associate	is used to indicate a relationship with any Person, means (1) any corporation or organization (other than the Company or a Subsidiary of the Company) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such Person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the Company or any of its parents or subsidiaries;
Auditor	includes an individual or partnership;
Board	the board of directors appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the directors present at a

	meeting of directors at which there is a quorum;
Chairman	the chairman of the Board and the Company;
Company	Stolt-Nielsen Limited;
Director	a director of the Company;
Member	the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires;
Notice	written notice as further provided in these Bye-laws unless otherwise specifically stated;
Officer	any person appointed by the Board to hold an office in the Company;
Person	means any individual, firm, corporation or other entity, and shall include any Affiliate or Associate of such Person and any group comprised of any Person and any other Person with whom such person or any Affiliate or Associate of such Person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of Founder's Shares or Common Shares;
Register of Directors and Officers	the register of directors and officers referred to in these Bye-laws;
Register of Members	the register of members referred to in these Bye-laws;

Resident Representative	any person appointed to act as resident representative and includes any deputy or assistant resident representative;
Secretary	the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary;
Stolt-Nielsen S.A.	Stolt-Nielsen S.A., a Luxembourg company which amalgamated with Stolt-Nielsen Limited becoming the Company as the amalgamated company;
Subsidiary	means any corporation with respect to which the Company beneficially owns securities that represent a majority of the votes that all holders of securities of such corporation can cast with respect to elections of directors;
Treasury Share	a share of the Company that was or is treated as having been acquired and held by the Company and has been held continuously by the Company since it was so acquired and has not been cancelled; and
U.S. Person	means (a) an individual who is a citizen or resident of the United States; (b) a corporation, partnership, association or other entity organized or created under the laws of the U.S. or any state or subdivision thereof; (c) an estate or trust subject to U.S. federal income tax without regard to the source of its income; (d) any corporation or partnership organized or created under the laws of any jurisdiction outside of the U.S. if any of its shareholders or partners are, directly or indirectly, U.S. Persons as defined under clauses (a) through (c) above; (e) any trust or estate, the income of which from sources

without the U.S. which is not effectively connected with the conduct of a trade or business within the U.S. is not inclusive in gross income for U.S. Federal income tax purposes, with respect to which there is a beneficiary which is a U.S. Person as defined under clauses (a) through (c) above; or (f) any corporation organized or created under the laws of any jurisdiction outside the U.S., any of the outstanding capital stock of which is subject to an option to acquire such stock held directly by a U.S. Person as defined in clauses (a) through (c) above, and "U.S." and "U.S." means the U.S. for America, its territories, possessions and areas subject to its jurisdiction.

**1.2** In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
- (b) words denoting the masculine gender include the feminine and neuter genders;
- (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
- (d) the words:
  - (i) "may" shall be construed as permissive; and
  - (ii) "shall" shall be construed as imperative; and
- (e) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws.

**1.3** In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.

**1.4** Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.

## **SHARES**

### **2. Power to Issue Shares**

**2.1** Subject to these Bye-laws and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares on such terms and conditions as it may determine.

**2.2** If, after the original issuance of the Founder's Shares, Common Shares (or any other class of shares that carry voting rights that may be authorised and issued in the future) shall be from time to time issued for any corporate purpose, including pursuant to the exercise of options granted under an employees' share option plan or similar arrangement, then the holders of the Founder's Shares shall be entitled to purchase an additional number of Founder's Shares for a purchase price of the par value thereof, on a proportionate basis, so that the Founder's Shares shall equal at all times in the aggregate 20% of all such issued and outstanding Common Shares and Founder's Shares and other shares. If the issued and outstanding Common Shares and Founder's Shares and other shares shall at any time be changed or exchanged by a share dividend declaration, share subdivision, share consolidation, recapitalisation, merger, amalgamation, consolidation, or other corporate reorganization in which the Company is the surviving corporation, the number of issued and outstanding Founder's Shares shall be either purchased, issued or otherwise adjusted by the Company, as appropriate so as to maintain the proportionate relationship of the number of the issued and outstanding Founder's Shares and issued and outstanding Common Shares and Founder's Shares and other shares, on the basis of the former constituting 20% of the latter.

### **3. Power of the Company to Purchase its Shares**

**3.1** The Company may purchase its own shares for cancellation or acquire them as Treasury Shares in accordance with the Act on such terms as the Board shall think fit.

**3.2** The Board may exercise all the powers of the Company to purchase or acquire all or any part of its own shares in accordance with the Act.

#### **4. Rights Attaching to Shares**

**4.1** At the date these Bye-laws are adopted, the authorised share capital of the Company is divided into two classes: (i) 65,000,000 common shares of par value U.S.\$1.00 each (the "Common Shares"); and (ii) 16,250,000 Founder's shares of par value U.S.\$0.001 each (the "Founder's Shares").

**4.2** The holders of Common Shares shall, subject to these Bye-laws:

- (a) be entitled to one vote per share;
- (b) be entitled to such dividends as the Board may from time to time declare subject to the following order of priority: up to U.S.\$0.005 per share to Members holding Common Shares and Members holding Founder's Shares on an equal basis. Once U.S.\$0.005 per share has been declared in any financial year by the Members holding Common Shares and the Members holding Founder's Shares, any further amounts declared in such financial year are payable to Members holding Common Shares only;
- (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company in the following order of priority: (i) Common Shares rateably to the extent of their par value; (ii) Common Shares and Founder's Shares equally up to U.S.\$0.05 per share; and (iii) thereafter, Common Shares are entitled to all remaining assets; and
- (d) generally be entitled to enjoy all of the rights attaching to shares.

**4.3** The holders of Founder's Shares shall, subject to these Bye-laws:

- (a) be entitled to one vote per share;
- (b) be entitled to such dividends as the Board may from time to time declare subject to the following order of priority: up to U.S.\$0.005 per share to Members holding Common Shares and Members holding Founder's Shares on an equal basis. Once U.S.\$0.005 per share has been declared in any financial year by the Members holding Common Shares and the Members holding Founder's Shares, any further amounts declared in such financial year are payable to Members holding Common Shares only;
- (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the

Company in the following order of priority: (i) Common Shares rateably to the extent of their par value; (ii) Common Shares and Founder's Shares equally up to U.S.\$0.05 per share; and (iii) thereafter, Common Shares are entitled to all remaining assets;

(d) generally be entitled to enjoy all of the rights attaching to shares.

**4.4** At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the issued Common Shares, other shares, option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.

**4.5** All the rights attaching to a Treasury Share shall be suspended and shall not be exercised by the Company while it holds such Treasury Share and, except where required by the Act, all Treasury Shares shall be excluded from the calculation of any percentage or fraction of the share capital, or shares, of the Company.

## **5. Shares to be Fully Paid**

The Board shall ensure that any shares issued shall be fully paid on issue.

## **6. Prohibition on Financial Assistance**

The Company shall not give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of the acquisition or proposed acquisition by any person of any shares in the Company, but nothing in this Bye-law shall prohibit transactions permitted under the Act.

## **7. Share Certificates**

**7.1** Every Member shall be entitled to a certificate under the common seal of the Company (or a facsimile thereof) or bearing the signature (or a facsimile thereof) of a Director or Secretary or a person expressly authorised to sign specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The

Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means.

**7.2** The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom the shares have been allotted.

**7.3** If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid, or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.

**7.4** Notwithstanding any provisions of these Bye-laws:

(a) the Directors shall, subject always to the Act and any other applicable laws and regulations and the facilities and requirements of any relevant system concerned, have power to implement any arrangements they may, in their absolute discretion, think fit in relation to the evidencing of title to and transfer of uncertificated shares and to the extent such arrangements are so implemented, no provision of these Bye-laws shall apply or have effect to the extent that it is in any respect inconsistent with the holding or transfer of shares in uncertificated form; and

(b) unless otherwise determined by the Directors and as permitted by the Act and any other applicable laws and regulations, no person shall be entitled to receive a certificate in respect of any share for so long as the title to that share is evidenced otherwise than by a certificate and for so long as transfers of that share may be made otherwise than by a written instrument.

## **REGISTRATION OF SHARES**

### **8. Register of Members**

**8.1** The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.

**8.2** The Register of Members shall be open to inspection without charge at the registered office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty days in each year.

**9. Registered Holder Absolute Owner**

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person.

**10. Transfer of Registered Shares**

**10.1** An instrument of transfer shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares  
[                    ] (the "Company")

FOR VALUE RECEIVED..... [amount], I, [name of transferor] hereby sell, assign and transfer unto [transferee] of [address], [number] shares of the Company.

DATED this [ ] day of [ ], 20[ ]

Signed by:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

Transferor

Witness

\_\_\_\_\_

\_\_\_\_\_

Transferee

Witness

**10.2** Such instrument of transfer shall be signed by or on behalf of the transferor and transferee, provided that, in the case of a fully paid up share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been registered as having been transferred to the transferee in the Register of Members.

**10.3** The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

**10.4** The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.

**10.5** The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share which is not fully paid up. The Board shall



and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [ ] day of [ ], 20[ ]

Signed by:

In the presence of:

\_\_\_\_\_

Transferor

\_\_\_\_\_

Witness

\_\_\_\_\_

Transferee

\_\_\_\_\_

Witness

**11.3** On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.

**11.4** Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to such share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

#### **ALTERATION OF SHARE CAPITAL**

### **12. Power to Alter Capital**

**12.1** The Company may if authorised by resolution of the Members increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Act.

**12.2** Where, on any alteration or reduction of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit.

### **13. Variation of Rights Attaching to Shares**

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution

passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

## **DIVIDENDS AND CAPITALISATION**

### **14. Dividends**

**14.1** The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members in accordance with their respective rights and priorities as set out in these Bye-laws and in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.

**14.2** The Board may fix any date as the record date for determining the Members entitled to receive any dividend.

**14.3** The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**14.4** The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. No unpaid distribution shall bear interest as against the Company.

### **15. Power to Set Aside Profits**

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such amount as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

### **16. Method of Payment**

**16.1** Any dividend or other moneys payable in respect of a share may be paid by cheque or warrant sent through the post directed to the address of the Member in the Register of Members (in the case of joint Members, the senior joint holder, seniority being determined by the order in which the names stand in the Register of Members), or by direct transfer to such bank account as such Member may direct. Every such cheque shall be made payable to the order of the person to whom it is sent or to such persons as the Member may direct, and payment of the cheque or warrant shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of

the person entitled to the money represented thereby. If two or more persons are registered as joint holders of any shares any one of them can give an effectual receipt for any dividend paid in respect of such shares.

**16.2** The Board may deduct from the dividends or distributions payable to any Member all moneys due from such Member to the Company.

**16.3** Any dividend and or other moneys payable in respect of a share which has remained unclaimed for 7 years from the date when it became due for payment shall, if the Board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other moneys payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect thereof.

**16.4** The Company shall be entitled to cease sending dividend cheques and warrants by post or otherwise to a Member if those instruments have been returned undelivered to, or left uncashed by, that Member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the Member's new address. The entitlement conferred on the Company by this Bye-law 16.4 in respect of any Member shall cease if the Member claims a dividend or cashes a dividend cheque or warrant.

## **17. Capitalisation**

**17.1** The Board may capitalise any amount for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such amount in paying up unissued shares to be allotted as fully paid up bonus shares pro-rata (except in connection with the conversion of shares of one class to shares of another class) to the Members.

**17.2** The Board may capitalise any amount for the time being standing to the credit of a reserve account or amounts otherwise available for dividend or distribution by applying such amounts in paying up in full, partly or nil paid up shares of those Members who would have been entitled to such amounts if they were distributed by way of dividend or distribution.

## MEETINGS OF MEMBERS

### 18. Annual General Meetings

The annual general meeting of the Company shall be held in each year (other than the year of incorporation) at such time and place as the Chairman or the Board shall appoint.

### 19. Special General Meetings

The Chairman or the Board may convene a special general meeting whenever in their judgment such a meeting is necessary.

### 20. Requisitioned General Meetings

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up share capital of the Company as at the date of the deposit carries the right to vote at general meetings, forthwith proceed to convene a special general meeting and the provisions of the Act shall apply.

### 21. Notice

**21.1** At least 21 days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, place and time at which the meeting is to be held, that the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

**21.2** At least 21 days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, time, place and the general nature of the business to be considered at the meeting.

**21.3** The Board may fix any date as the record date for determining the Members entitled to receive notice of and to vote at any general meeting.

**21.4** A general meeting shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.

**21.5** The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **22. Giving Notice and Access**

**22.1** A notice may be given by the Company to a Member:

- (a) by delivering it to such Member in person; or
- (b) by sending it by letter mail or courier to such Member's address in the Register of Members; or
- (c) by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by such Member to the Company for such purpose; or
- (d) by delivering it in accordance with the provisions of the Act pertaining to delivery of electronic records by publication on a website.

**22.2** Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.

**22.3** Any notice delivered in accordance with Bye-law 22.1(a), (b) or (c) shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, and the time when it was posted, delivered to the courier or transmitted by electronic means. Any notice delivered in accordance with Bye-law 22.1(d) shall be deemed to have been delivered at the time when the requirements of the Act in that regard have been met.

## **23. Postponement or Cancellation of General Meeting**

The Chairman may, and the Secretary on instruction from the Chairman shall, postpone or cancel any general meeting called in accordance with these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement or cancellation is given to each Member before the time for such meeting. Fresh notice of the date, time and place for the postponed or cancelled meeting shall be given to the Members in accordance with these Bye-laws.

## **24. Security at General Meetings**

The Board may, and at any general meeting, the chairman of such meeting may make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property and the restriction of items that may be taken into the meeting place. The Board and,

at any general meeting, the chairman of such meeting are entitled to refuse entry to a person who refuses to comply with any such arrangements, requirements or restrictions.

**25. Quorum at General Meetings**

**25.1** At any general meeting two or more persons present in person throughout the meeting and representing in person or by proxy issued voting shares in the Company shall form a quorum for the transaction of business.

**25.2** If within half an hour from the time appointed for the meeting a quorum is not present, then, in the case of a meeting convened on a requisition, the meeting shall be deemed cancelled and, in any other case, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Secretary may determine. Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

**26. Chairman to Preside at General Meetings**

Unless otherwise agreed by a majority of those attending and entitled to vote thereat, the Chairman shall act as chairman at all general meetings at which such person is present. In his absence, a chairman shall be appointed or elected by those present at the meeting and entitled to vote.

**27. Voting on Resolutions**

**27.1** Subject to the Act and these Bye-laws, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with these Bye-laws and in the case of an equality of votes the resolution shall fail.

**27.2** At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to these Bye-laws and any rights or restrictions for the time being lawfully attached to any class of shares, every Member present in person and every person holding a valid proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his or her hand.

**27.3** At any general meeting if an amendment is proposed to any resolution under consideration and the chairman of the meeting rules on whether or not the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.

**27.4** At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to these Bye-laws, be conclusive evidence of that fact.

**28. Power to Demand a Vote on a Poll**

**28.1** Notwithstanding the foregoing, a poll may be demanded by any of the following persons:

- (a) the chairman of such meeting; or
- (b) at least three Members present in person or represented by proxy; or
- (c) any Member or Members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or
- (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total amount paid up on all such shares conferring such right.

**28.2** Where a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares, every person present at such meeting shall have one vote for each share of which such person is the holder or for which such person holds a proxy and such vote shall be counted by ballot as described herein and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

**28.3** A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and in such manner during such meeting as the chairman (or acting chairman) of the meeting may direct. Any business other than that upon which a poll has been demanded may be conducted pending the taking of the poll.

**28.4** Where a vote is taken by poll, each person physically present and entitled to vote shall be furnished with a ballot paper on which such person shall record his vote in such manner as shall be determined at the meeting having regard to the nature of the

question on which the vote is taken. Each ballot paper shall be signed or initialled or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. At the conclusion of the poll, the ballot papers and votes cast in accordance with such directions shall be examined and counted by a committee of not less than two Members or proxy holders appointed by the chairman for the purpose. The result of the poll shall be declared by the chairman.

**29. Voting by Joint Holders of Shares**

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

**30. Instrument of Proxy**

**30.1** A Member may appoint a proxy by (a) an instrument appointing a proxy in writing in substantially the following form or such other form as the Board may determine from time to time:

Proxy  
[                    ] (the "Company")

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on the [ ] day of [ ], 20[ ] and at any adjournment thereof. (Any restrictions on voting to be inserted here.)

Signed this [ ] day of [ ], 20[ ]

\_\_\_\_\_

Member(s)

or (b) such telephonic, electronic or other means as may be approved by the Board from time to time.

**30.2** The appointment of a proxy must be received by the Company at the registered office or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the appointment proposes to vote, and an appointment of proxy which is not received in the manner so permitted shall be invalid.

**30.3** A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf in respect of different shares.

**30.4** The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

### **31. Representation of Corporate Member**

**31.1** A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting and any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.

**31.2** Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

### **32. Adjournment of General Meeting**

**32.1** The chairman of any general meeting at which a quorum is present may with the consent of Members holding a majority of the voting rights of those Members present in person or by proxy (and shall if so directed by Members holding a majority of the voting rights of those Members present in person or by proxy), adjourn the meeting.

**32.2** In addition, the chairman may adjourn the meeting to another time and place without such consent or direction if it appears to him that:

- (a) it is likely to be impracticable to hold or continue that meeting because of the number of Members wishing to attend who are not present; or
- (b) the unruly conduct of persons attending the meeting prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
- (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.

**32.3** Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

### **33. Directors Attendance at General Meetings**

The Directors shall be entitled to receive notice of, attend and be heard at any general meeting.

## **DIRECTORS AND OFFICERS**

### **34. Election of Directors**

**34.1** The Board shall consist of such number of Directors being not less than three Directors and not more than nine Directors as it may determine, or such other minimum and maximum numbers as the Members may from time to time determine.

Only persons who are proposed or nominated in accordance with this Bye-law shall be eligible for election as Directors. Any Member holding [1]% or more of the shares in the Company conferring the right to vote at general meetings of the Company or the Board may propose any person for election as a Director. Where any person, other than a Director retiring at the meeting or a person proposed for re-election or election as a Director by the Board, is to be proposed for election as a Director, notice must be given to the Company of the intention to propose him and of his willingness to serve as a Director within 45 days from the financial year end of the Company.

**34.2** Where persons are validly proposed for re-election or election as a Director, the persons receiving the most votes (up to the number of Directors to be elected) shall be elected as Directors, and an absolute majority of the votes cast shall not be a prerequisite to the election of such Directors.

**34.3** At any general meeting the Members may authorise the Board to fill any vacancy in their number left unfilled at a general meeting.

### **35. Term of Office of Directors**

Directors shall hold office for such term as the Members may determine or, in the absence of such determination, until the next annual general meeting or until their successors are elected or appointed or their office is otherwise vacated.

### **36. Removal of Directors**

**36.1** Subject to any provision to the contrary in these Bye-laws, the Members entitled to vote for the election of Directors may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director, only with cause, provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal.

**36.2** If a Director is removed from the Board under the provisions of this Bye-law the Members may fill the vacancy at the meeting at which such Director is removed. In the absence of such election or appointment, the Board may fill the vacancy.

**36.3** For the purpose of Bye-law 36.1, “cause” shall mean a conviction for a criminal offence involving dishonesty or engaging in conduct which brings the Director or the Company into disrepute and which results in material financial detriment to the Company.

**37. Vacancy in the Office of Director**

**37.1** The office of Director shall be vacated if the Director:

- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;
- (b) is or becomes bankrupt, or makes any arrangement or composition with his creditors generally;
- (c) is or becomes of unsound mind or dies; or
- (d) resigns his office by notice to the Company.

**37.2** The Members in general meeting or the Board shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, disqualification or resignation of any Director or as a result of an increase in the size of the Board.

**38. Remuneration of Directors**

The remuneration (if any) of the Directors shall be determined by the Board and shall be deemed to accrue from day to day. The Directors may also be paid all travel, hotel and other expenses properly incurred by them in attending and returning from the meetings of the Board, any committee appointed by the Board, general meetings, or in connection with the business of the Company or their duties as Directors generally.

**39. Defect in Appointment**

All acts done in good faith by the Board, any Director, a member of a committee appointed by the Board, any person to whom the Board may have delegated any of its powers shall, or any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that he was, or any of them were, disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or act in the relevant capacity.

**40. Directors to Manage Business**

**40.1** The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the

Company as are not, by the Act or by these Bye-laws, required to be exercised by the Company in general meeting.

**40.2** Subject to these Bye-laws, the Board may delegate to any company, firm, person, or body of persons any power of the Board (including the power to sub-delegate).

#### **41. Powers of the Board of Directors**

The Board may:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
- (b) exercise all the powers of the Company to borrow money and to mortgage or charge or otherwise grant a security interest in its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party;
- (c) appoint one or more Directors to the office of managing director or chief executive officer of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
- (d) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
- (e) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney;
- (f) procure that the Company pays all expenses incurred in promoting and incorporating the Company and listing the shares of the Company;
- (g) delegate any of its powers (including the power to sub-delegate) to a committee appointed by the Board which may consist partly or entirely of non-Directors, provided that every such committee shall conform to such

directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;

- (h) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;
- (i) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (j) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law; and
- (k) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any deed, agreement, document or instrument on behalf of the Company.

**42. Register of Directors and Officers**

The Board shall cause to be kept in one or more books at the registered office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

**43. Appointment of Officers**

The Chairman shall be appointed by the Members from amongst the Directors. The Board may appoint such other officers (who may or may not be Directors) as the Board may determine.

**44. Appointment of Secretary**

The Secretary shall be appointed by the Board from time to time.

**45. Duties of Officers**

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

**46. Remuneration of Officers**

The Officers shall receive such remuneration as the Board may determine.

**47. Conflicts of Interest**

**47.1** Any Director, or any Director's firm, partner or any company with whom any Director is associated, may act in any capacity for, be employed by or render services to the Company and such Director or such Director's firm, partner or company shall be

entitled to remuneration as if such Director were not a Director. Nothing herein contained shall authorise a Director or Director's firm, partner or company to act as Auditor to the Company.

**47.2** A Director who is directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of such interest as required by the Act.

**47.3** Following a declaration being made pursuant to this Bye-law, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum for such meeting.

#### **48. Indemnification and Exculpation of Directors and Officers**

**48.1** The Directors, resident representative, Secretary and other Officers (such term to include any person appointed to any committee by the Board) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof, and every one of them, and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, PROVIDED THAT this indemnity shall not extend to any matter in respect of any fraud or dishonesty which may attach to any of the said persons. Each Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company or any subsidiary thereof, PROVIDED THAT such waiver

shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director or Officer.

**48.2** The Company may purchase and maintain insurance for the benefit of any Director or Officer against any liability incurred by him under the Act in his capacity as a Director or Officer or indemnifying such Director or Officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the Director or Officer may be guilty in relation to the Company or any subsidiary thereof.

**48.3** The Company may advance moneys to an Officer, Director or auditor for the costs, charges and expenses incurred by the Officer, Director or auditor in defending any civil or criminal proceedings against them, on condition that the Officer, Director or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against him.

#### **MEETINGS OF THE BOARD OF DIRECTORS**

##### **49. Board Meetings**

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit. Subject to these Bye-laws, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail.

##### **50. Notice of Board Meetings**

The Chairman, or any two Directors in the Chairman's absence, may, and the Secretary on the requisition of the Chairman or any two Directors shall, at any time summon a meeting of the Board. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to such Director verbally (including in person or by telephone) or otherwise communicated or sent to such Director by post, electronic means or other mode of representing words in a visible form at such Director's last known address or in accordance with any other instructions given by such Director to the Company for this purpose.

##### **51. Electronic Participation in Meetings**

Directors may participate in any meeting by such telephonic, electronic or other communications facilities or means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

**52. Quorum at Board Meetings**

The quorum necessary for the transaction of business at a meeting of the Board shall be a majority of the Directors then in office.

**53. Board to Continue in the Event of Vacancy**

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting to elect additional directors; or (ii) preserving the assets of the Company.

**54. Chairman to Preside**

Unless otherwise agreed by a majority of the Directors attending, the Chairman shall act as chairman at all meetings of the Board at which such person is present. In their absence a chairman shall be appointed or elected by the Directors present at the meeting.

**55. Written Resolutions**

A resolution signed by all the Directors, which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution.

**56. Validity of Prior Acts of the Board**

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

**CORPORATE RECORDS**

**57. Minutes**

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, and meetings of committees appointed by the Board.

**58. Place Where Corporate Records Kept**

Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the registered office of the Company.

**59. Form and Use of Seal**

**59.1** The Company may adopt a seal in such form as the Board may determine. The Board may adopt one or more duplicate seals for use in or outside Bermuda.

**59.2** A seal may, but need not be affixed to any deed, instrument or document, and if the seal is to be affixed thereto, it shall be attested by the signature of (i) any Director; or (ii) any Officer; or (iii) the Secretary; or (iv) any person authorised by the Board for that purpose

**59.3** A Resident Representative may, but need not, affix the seal of the Company to certify the authenticity of any copies of documents.

**ACCOUNTS**

**60. Books of Account**

**60.1** The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.

**60.2** Such records of account shall be kept at the registered office of the Company, or subject to the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

**61. Financial Year End**

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 30<sup>th</sup> November in each year.

**AUDITS**

**62. Annual Audit**

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act, the accounts of the Company shall be audited at least once in every year.

**63. Appointment of Auditor**

**63.1** Subject to the Act, at the annual general meeting or at a subsequent special general meeting in each year, an independent representative of the Members shall be appointed by them as Auditor of the accounts of the Company.

**63.2** The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

**64. Remuneration of Auditor**

The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine. In the case of an Auditor appointed pursuant to Bye-law 69, the remuneration of the Auditor shall be fixed by the Board.

**65. Duties of Auditor**

**65.1** The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.

**65.2** The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

**66. Access to Records**

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers for any information in their possession relating to the books or affairs of the Company.

**67. Financial Statements**

Subject to any rights to waive laying of accounts pursuant to the Act, financial statements as required by the Act shall be laid before the Members in general meeting.

**68. Distribution of Auditor's report**

The report of the Auditor shall be submitted to the Members in general meeting.

**69. Vacancy in the Office of Auditor**

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the vacancy thereby created shall be filled in accordance with the Act.

**BUSINESS COMBINATIONS**

**70. Business Combinations**

All transactions, deeds and acts between the Company and any Member, or with any company which is directly or indirectly controlled by a Member, or in which a Member has a direct or indirect interest in or a commercial relationship with, shall be carried out on an arm's length basis.

For the purpose of this Bye-law 70 only, the term:

"controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person who is the owner of 20% or more of the issued and outstanding voting shares of any company, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary; provided that notwithstanding the foregoing, such presumption of control shall not apply where such person holds voting shares, in good faith and not for the purpose of circumventing this provision, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

**VOLUNTARY WINDING-UP AND DISSOLUTION**

**71. Winding-Up**

**71.1** If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind and in accordance with these Bye-laws the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

## CHANGES TO CONSTITUTION

### 72. Changes to Bye-laws

No Bye-law may be rescinded, altered or amended and no new Bye-law may be made save in accordance with the Act and until the same has been approved by a resolution of the Board and by a resolution of the Members.

### 73. Discontinuance

The Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

## RESTRICTION ON SHAREHOLDINGS

### 74. Restriction on Shareholdings

**74.1** In recognition of the fact that certain shareholdings may threaten the Company, including but not limited to adverse tax consequences, hostile takeover attempts or adverse governmental sanctions (“Adverse Consequences”), the following restrictions shall apply to all persons who become either Members or shareholders of Stolt-Nielsen S.A. on or after September 1, 1987:

- (a) no person shall own, directly or indirectly, more than 20% of the issued and outstanding shares unless such ownership shall have been approved in advance by the Board of Directors;
- (b) no U.S. person (as defined hereinafter) shall own, directly or indirectly, more than 9.9% of the shares;
- (c) not more than 49.9% of the shares, in the aggregate (including for these purposes the shares of U.S. Persons who were Shareholders as of August 31, 1987), shall be owned by U.S. persons at any one time; and
- (d) all Members of any single country may not own, directly or indirectly, more than 49.9% of the shares in the aggregate.

In addition, the Board of Directors may further restrict, reduce or prevent the ownership of shares by any Person or by one or more Persons of a given nationality and/or domiciled in a given country, if it appears to the Board that such ownership may threaten the Company with Adverse Consequences.

**74.2** For the purposes of implementing and enforcing the terms hereof the Board of Directors may, and may instruct any officer, director or employee of the Company, to do any one or more of the following to the extent deemed appropriate:

- (a) decline to issue any shares and decline to register any transfer of shares where it appears to it that such registration or transfer would or might result in beneficial ownership of such shares by a person who is precluded from holding shares or acquiring additional shares in the Company;
- (b) at any time require any Person whose name is entered in, or any person seeking to register the transfer of shares on, the Register of Members to furnish it with any information, supported by affidavit, which it may consider necessary for the purpose of determining whether or not beneficial ownership of such Member's shares rests or will rest in a Person who is precluded from holding shares or a proportion of the capital of the Company;
- (c) where it appears to the Board that any Person who is precluded in whole or in part from holding shares in the Company, either alone or in conjunction with any other person, is a beneficial owner of shares in excess of the amount such Person is permitted to hold, compulsorily purchase from any such Member or Members any or all shares held by such Member or Members as the Board may deem necessary or advisable in order to satisfy the terms of these Bye-laws; and
- (d) decline to accept the vote of any Person who is precluded from holding shares in the Company at any meeting of the Members of the Company in respect of the shares which he is precluded from holding.

**74.3** Any purchases pursuant to Bye-law 74.2 above shall be effected in the following manner:

- (a) The Company shall serve a notice (hereinafter called a "Purchase Notice") upon the Member or Members appearing in the Register of Members as the owner of the shares to be purchased specifying the shares to be purchased as aforesaid the price to be paid for such shares, and the place at which the purchase price in respect of such shares is payable. Any such notice may be served upon such Member or Members by posting the same in a prepaid registered envelope addressed to each such Member at his latest address known to or appearing in the books of the Company. The said Members shall thereupon forthwith be obliged to deliver to the Company the share certificate or certificates representing the shares specified in the Purchase Notice. Immediately after the close of business on the date specified in the Purchase Notice, each such Member shall cease to be

the owner of the shares specified in such notice and his name shall be removed from the Company's Register of Members.

- (b) The price at which the shares specified in any Purchase Notice shall be purchased (herein called the "purchase price") shall be an amount equal to the lesser of (A) the aggregate amount paid for the share (if acquired within the preceding twelve months from the date of any such Purchase Notice) or (B) in case the shares of the Company shall be listed on any exchange or otherwise quoted in any market (including but not limited to the National Association of Securities Dealers Automatic Quotation System in the U.S.), the last price quoted for the shares on the business day immediately preceding the day on which the notice is served, or if the shares shall not be so listed or quoted, the book value per share determined by the auditors of the Company for the time being on the date as of which a balance sheet was most recently prepared prior to the day of service of the Purchase Notice; provided, however, that the Board may cause the amount calculated under clause (B) hereof to be paid in situations where clause (A) would otherwise apply and would result in a lower purchase price if the Board determines that inequities would otherwise result after taking into account the following as to any such Member so affected; (i) length of time the affected shares were held; (ii) the number of shares so affected; (iii) whether such shareholdings would have resulted in Adverse Consequences to the Company and the circumstances relating thereto; and (iv) any other situations or circumstances which the Board may legally consider in making such a determination.
- (c) Payment of the purchase price will be made to the owner of such shares in U.S. Dollars except during periods of U.S. Dollar exchange restrictions (in which case the currency of payment shall be at the Board's discretion, and will be deposited by the Company with a bank in [Bermuda] or elsewhere (as specified in the Purchase Notice) for payment to such owner upon surrender of the share certificate or certificates representing the shares specified in such notice. Upon deposit of such price as aforesaid, no person interested in the shares specified in such Purchase Notice shall have any further interest in such shares or any of them, or any claim against the Company or its assets in respect thereof, except the right of the shareholder appearing as the owner thereof to receive the price so deposited (without interest) from such bank upon effective surrender of the share certificate or certificates as aforesaid.
- (d) The exercise by the Board of the powers conferred by this Bye-law shall not be questioned or invalidated in any case on the grounds that there was

insufficient evidence of ownership of shares by any Persons or that the true ownership of any shares was otherwise than appeared to the Board at the date of any Purchase Notice or on the ground that payment of the purchase price or the accomplishment of the other formalities or requirements had to be deferred until such time appropriate corporate actions had been taken to legally permit the perfection of the repurchase, provided that in such case the said powers were exercised by the Board in good faith.

**74.4** For the purposes of this Bye-law 74 any Person holding shares in its name solely as depositary or nominee in the ordinary course of its business and without any beneficial interest therein shall not be deemed to be a holder of such shares, provided such depositary shall disclose the name and particulars of the beneficial owner of such shares immediately upon request by the Company.

**74.5** The restrictions and remedial actions referred to in Bye-laws 74.1, 74.2 and 74.3 shall not apply to any person who was a shareholder of Stolt-Nielsen S.A. as of August 31, 1987, or any Affiliate or Associate of such person, except in the case of Members of any publicly traded company who are deemed to be such Persons (or any Affiliates or Associates of such Persons) solely as a result of their shareholdings in such publicly traded company.

For the purpose of applying the August 31, 1987 date, all transfers having occurred following bequest, gift, inheritance or contribution to, or distribution from Affiliates and Associates shall be disregarded.