

**ARTICLES OF ASSOCIATION OF THE CARIBBEAN BIODIVERSITY FUND**

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## The Companies Acts 2006

### Company Limited by Guarantee and not having a Share Capital

#### Articles of Association of the Caribbean Biodiversity Fund

#### 1. Interpretation

##### 1.1 In these Articles:

“Administrative Expenses” means staff salaries and employment benefits, consultant fees and expenses, meeting costs, staff training costs, publications costs, office operating costs, staff vehicle costs and staff travel costs;

“Address” means a postal address or, for the purposes of electronic communication, a fax number, an e-mail address or postal address or a telephone number in each case registered with the Charity;

“Annual Meeting” has the meaning given in Section 7.1;

“Articles” means the Charity’s articles of association as adopted from time to time;

“Board” means the board of directors of the Charity appointed pursuant to Section 17;

“Charity” means the Caribbean Biodiversity Fund;

“Clear Days” in relation to the period of a notice means a period excluding (a) the day when the notice is given or deemed to be given and (b) the day for which it is given or on which it is to take effect;

“Commission” means the Charity Commission for England and Wales;

“Committee” has the meaning given in Section 20.1;

“Companies Acts” means the Companies Acts (as defined in Section 2 of the Companies Acts 2006), in so far as they apply to the Charity;

“Corporate Member” means an organization admitted to membership which is an incorporated body;

“Corporate Member Representative” has the meaning given in Section 5.4;

“Director” means a member of the Board appointed in accordance with Section 17;

“Director Interest” has the meaning given in Section 23;

“Disqualification” has the meaning given in Section 18.2;

“Donors” means each of the International Bank for Reconstruction and Development (acting as an Implementing Agency of the Global Environment Facility), the German

government, through KfW, and TNC and any other donors to the Charity as recorded in the Operational Manual from time to time;

“Electronic Means” has the meaning given in Section 1168 of the Companies Act 2006;

“General Meeting” has the meaning given in Section 7.2;

“Finance Committee” has the meaning given in Section 20.

“Fiscal Year” means from October 1 until September 30 in each calendar year;

“Investment Guidelines” means the investment policy, objectives and guidelines that have been approved by Special Majority Vote, as may be amended or restated from time to time;

“KfW” means KfW Entwicklungsbank (also known as the German Development Bank);

“KfW Director” means the Director appointed by KfW in accordance with Section 17;

“Matching Requirement” has the meaning given in Section 28.1;

“Meeting” has the meaning given in Section 7.2;

“Member” means a subscriber to the Memorandum and such other Persons as are admitted to membership in accordance with these Articles which such Person has agreed to be entered as such in the Charity’s register of members, including any Corporate Member;

“Member Resolution” means a special resolution by the Members directing the Directors to take, or refrain from taking, specified action.

“Members Meeting” means a meeting of the Members of the Charity as may be called by the Members from time to time.

“Memorandum” means the Memorandum of Association of the Charity;

“National Protected Areas Systems” means the areas of land and/or sea especially dedicated to the protection and maintenance of biological diversity and natural resources or any other area of environmental significance;

“National Protected Areas Trust Fund” means a protected areas entity established by a Participating Country and conforming to requirements established by the Charity;

“Notice” means notification of a Meeting pursuant to Section 8;

“NPATF Sub-Account” has the meaning given in Section 28.2.

“Objects” has the meaning given in Section 2;

“Observer Rights” has the meaning given in Section 17.5;

“Operational Manual” means the manual of the Charity adopted by the Board in accordance with these Articles;

“Participating Countries” means such Caribbean countries and other Caribbean territories in each case as the Board may by Special Majority Vote decide to include and “Participating Country” means any one of them;

“Person” means an individual, partnership, limited liability company, corporation, association, trust, unincorporated organization or association, a government, or an agency or political subdivision thereof or other entity;

“Proxy” means a person or entity appointed by a Member to act on such Member’s behalf;

“Proxy Notice” means the written notice appointing a Proxy;

“Proxy Notification Address” has the meaning given in Section 13.1;

“Recapitalization” means the restructuring the Charity’s capital structure;

“Reconvened Meeting” has the meaning given in Section 9.4;

“Reference Endowment Value” means the monthly average of the value of the Charity’s endowment over the preceding thirty six (36) months (or such number of months as are available for the calculation), calculated by reference to the monthly figures which are notified to the Charity by its investment manager;

“Removal” has the meaning given in Section 18.2;

“Resignation” has the meaning given in Section 18.2;

“Special Majority Vote” has the meaning given in Section 10.2;

“TNC” means The Nature Conservancy (a U.S. not-for-profit charitable organization);

“TNC Director” means the Director appointed by TNC in accordance with Section 17;

“Vacancy” has the meaning given in Section 18.3;

“Vertical Agreement” means each vertical agreement between the Charity and a National Protected Areas Trust Fund as may be amended or restated from time to time; and

words importing one gender shall include all genders, and the singular includes the plural and vice versa.

Unless the context otherwise requires words or expressions contained in these Articles have the same meaning as in the Companies Acts but excluding any statutory modification not in force when this constitution becomes binding on the Charity.

## 2. Objects

- 2.1 The objects of the Charity are to promote for the benefit of the public the conservation, protection, management and expansion of the National Protected Areas Systems of the Participating Countries by providing a sustainable flow of funds to support, without limitation, enforcement, infrastructure, monitoring needs and other activities that contribute substantially to the conservation, protection and maintenance of biodiversity within the National Protected Areas Systems or any other area of environmental significance of the Participating Countries (the “Objects”). The Charity’s income and assets shall be used exclusively for charitable, educational and scientific purposes for the benefit of the public, and the provisions of these Articles shall be interpreted in a manner consistent with these Objects.
- 2.2 In achieving the Objects, the Charity can contribute to the implementation of the Convention on Biological Diversity, other multilateral environmental agreements, other regional initiatives (such as the Caribbean Challenge Initiative), national environmental plans or other public and private initiatives.

## 3. Powers

The Charity has the power to do anything that is calculated to further its Objects or is conducive or incidental to doing so. In addition to any powers and duties set forth in the Operational Manual, to further its Objects the Charity has the specific power:

- 3.1 to review and approve Vertical Agreements between the Charity and each National Protected Areas Trust Fund;
- 3.2 to review, approve and modify the Operational Manual;
- 3.3 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- 3.4 to review and approve the annual budget and financial reports of the Charity in accordance with any applicable provisions of the Operational Manual;
- 3.5 to raise funds;
- 3.6 to seek and accept donations to the Charity, including acceptance of donations with restrictions on the use of such donations;
- 3.7 to open and operate bank accounts and other facilities for banking;
- 3.8 to, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000:
- (a) deposit or invest the Charity’s assets in accordance with the Charity’s Investment Guidelines;
  - (b) appoint or replace an investment manager; and
  - (c) arrange for investments or any other property of the Charity to be held in the name of a nominee;

- 3.9 to appoint or replace independent outside auditors;
- 3.10 to employ or remunerate such staff as are necessary for carrying out the work of the Charity;
- 3.11 to decide on issues concerning the Directors, including their removal, reimbursement of expenses and conflicts of interest;
- 3.12 to provide indemnity insurance for the Directors in accordance with, and subject to the conditions in, Section 73F of the Charities Act 1993;
- 3.13 to pay out of the assets of the Charity the costs of forming and registering the Charity both as a company and as a charity; and
- 3.14 to do all other lawful things necessary for the administration and operation of the Charity consistent with its Objects.

#### 4. Limitation on Private Benefits

4.1 The income and assets of the Charity shall be applied solely towards the promotion of its Objects.

4.2 None of the income or assets of the Charity will be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any Member; provided, however, that the foregoing shall not prevent any Member who is not also a Director from receiving (a) a benefit from the Charity in his, her or its capacity as a beneficiary of the Charity or (b) reasonable and proper remuneration for any goods or services supplied to the Charity.

4.3 Unless permitted by the Section 4.4, no Director may:

- (a) buy any goods or services from the Charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services or any interest in land to the Charity;
- (c) be employed by, or receive any remuneration from, the Charity; or
- (d) receive any other financial benefit from the Charity.

4.4 A Director may receive the following direct or indirect benefits from the Charity:

- (a) subject to these Articles, the Charity may make payments to a National Protected Areas Trust Fund from which a Director has been appointed;
- (b) a Director may receive a benefit from the Charity in the capacity of a beneficiary of the Charity, provided that a majority of the Directors do not benefit in this way and the benefit is approved by a majority of the disinterested Directors;
- (c) a Director may receive reasonable and proper payments from a donee or grantee of the National Protected Areas Trust Fund that appointed such

Director on account of services performed by such Director on behalf of such donee or grantee;

- (d) the Directors may arrange for the purchase, out of the assets of the Charity, of insurance designed to indemnify the Directors in accordance with the terms of, and subject to the conditions in, Section 73F of the Charities Act 1933;
- (e) the Charity may pay reasonable and proper premiums in respect of indemnity insurance effected in accordance with Section 34; and
- (f) a Director or other officer of the Charity may receive payment under an indemnity from the Charity in accordance with the indemnity provisions set out at Section 34.

4.5 Where benefits are conferred upon a Director under Section 4.4, such Director must comply with the provisions of Section 23 in respect of any such benefit.

## 5. Members

5.1 The Members shall be the subscribers to the Memorandum and such other persons as are admitted to membership in accordance with these Articles.

5.2 With the exception of the subscribers to the Memorandum, no person or entity may become a member of the Charity unless:

- (a) such person or entity has applied for membership in a manner approved by all of the Members; and
- (b) all of the Members have approved the application. The Members may in their absolute discretion decline to accept any person as a Member and need not give reasons for so doing.

5.3 The Members may from time to time prescribe criteria for membership but will not be obliged to accept as Members any Persons fulfilling such criteria.

5.4 A Corporate Member may authorise any Person or Persons to act as its authorised representative or representatives (a “Corporate Member Representative”) at any meeting of the Charity.

5.5 A Corporate Member Representative person authorised under Section 5.4 may exercise (on behalf of the Corporate Member) the same powers as the Corporate Member.

5.6 The Directors must keep a register of names and addresses of the Members.

## 6. Termination of Membership

6.1 A Member shall cease to be a Member:

- (a) if the Member dies or, if the Member is an organisation, ceases to exist; or

- (b) if the Member resigns by written notice to the Charity unless, after such resignation, there would be no Members, in which case such Member may resolve to wind up or dissolve the Charity in accordance with Section 35.

## **7. Meetings of the Board of Directors**

- 7.1 The Board shall meet at least one (1) time each year, including the annual general meeting of the Board (the "Annual Meeting").
- 7.2 The Directors may call a general meeting of the Board (a "General Meeting" and, together with the Annual Meeting and Members Meetings, the "Meetings") at any time. The Directors must call a General Meeting if required to do so by the Members under the Companies Acts.
- 7.3 General Meetings or Members Meetings may be held by electronic means such as telephone- or video- conferences.
- 7.4 The Charity must hold its first Annual Meeting within twelve (12) months of the date of its incorporation. Thereafter, the Annual Meeting must be held once in each subsequent calendar year and not more than fifteen (15) months may elapse between successive Annual Meetings. Each Annual Meeting shall be held at such time and place as may be fixed from time to time by the Board. Unless otherwise specified in the Operational Manual, each Director must be present in person for the Annual Meeting.
- 7.5 Subject to Section 19, the Chairperson shall preside at all General Meetings and the Annual Meeting.

## **8. Notice**

- 8.1 Meetings may be called upon:
  - (a) at least thirty (30) Clear Days' notice; or
  - (b) shorter notice if it is so agreed by a majority in number of the Members and/or Directors having a right to attend and vote at such Meeting (any notice given under Section 8.1(a) or 8.1(b), a "Notice").
- 8.2 Every Notice must contain
  - (a) the date, time and place of such Meeting and the general nature of the business to be transacted;
  - (b) a statement setting out the right of Members to appoint a Proxy under Section 324 of the Companies Act 2006 and Section 12; and
  - (c) if the meeting is to be the Annual Meeting, the Notice must say so.
- 8.3 If a Member Resolution is to be proposed, the Notice must include the proposed resolution and specify that it is proposed as a Member Resolution.



8.4 If the Charity gives an electronic Address in any Notice, the Charity will be deemed to have agreed that any document or other information relating to proceedings at the meeting may be sent by Electronic Means to that Address (subject to any conditions or limitations specified in the Notice).

8.5 Notice of any Meeting must be given to each Member and/or Director, as applicable, and, with respect to Annual Meetings, to the auditors of the Charity.

## 9. Quorum

9.1 No business shall be transacted at any Meeting unless a quorum is present.

9.2 A quorum is the majority of Member or Directors, as applicable, entitled to vote upon the business to be conducted at such Meeting.

9.3 If (a) a quorum is not present within one (1) hour from the time appointed for the Meeting or (b) during a Meeting a quorum ceases to be present, the Meeting shall be adjourned to such time and place as the Members and/or Directors, as applicable, shall determine.

9.4 The Members and/or Directors, as applicable, must reconvene the Meeting and must give at least seven (7) Clear Days' notice of the reconvened meeting (the "Reconvened Meeting") stating the date, time and place of the Reconvened Meeting.

9.5 If no quorum is present at the Reconvened Meeting within one (1) hour of the time specified for the start of such Reconvened Meeting the Members and/or Directors, as applicable, present at that time shall constitute the quorum for such Reconvened Meeting.

## 10. Voting

### 10.1 Members

- (a) Every Member shall have one (1) vote in relation to Members powers.
- (b) Unless otherwise required by these Articles, decisions of the Members shall be by simple majority.
- (c) A resolution in writing signed by each Member (or in the case of a Corporate Member, by its Corporate Member Representative) who would have been entitled to vote upon it at a Meeting shall be effective; provided that such resolution is contained in an authenticated document which has been received at the registered office within the period of twenty-eight (28) days beginning with the circulation date. A resolution in writing may comprise several copies each signed by or on behalf of one or more Members.

### 10.2 Directors

- (a) Subject to Section 18.3, every Director shall have one (1) vote in relation to powers of Directors.

- (b) Any objection to the qualification of any Director must be raised at the Meeting at which the vote is tendered and the decision of the person who is chairing such Meeting shall be final.
- (c) Decisions of the Directors shall be by simple majority; provided, however, that, subject to Section 18.3, a vote of at least three-quarters (3/4) of the Directors then serving (a “Special Majority Vote”) shall be required to:
  - (i) adopt, or amend, the Operational Manual;
  - (ii) adopt, or amend, the Charity’s Investment Guidelines;
  - (iii) appoint, or replace, the Charity’s auditor;
  - (iv) appoint, or replace, the Charity’s investment advisor;
  - (v) request any amendment or change to these Articles by the Members;
  - (vi) grant Observer Rights to any person; or
  - (vii) remove a Director in accordance with Section 18.2.

**11. Members’ Reserve Power**

11.1 The Members may, by Member Resolution, direct the Directors to take, or refrain from taking any specified action.

11.2 A Member Resolution is required to:

- (a) amend, restate, modify or replace the Memorandum or these Articles;
- (b) enter into, amend, restate, modify, assign or terminate any Vertical Agreement;
- (c) cause a suspension or termination or otherwise affect a National Protected Areas Trust Fund’s right to receive payments under a Vertical Agreement;
- (d) authorize the payment of any Administrative Expenses that would cause the total cost of Administrative Expenses in any Fiscal Year to exceed one percent (1%) of the Reference Endowment Value;
- (e) authorize any Recapitalization; or
- (f) admit new Members.

**12. Appointment of Proxies**

12.1 A Member is entitled to appoint another person or entity to act as such Member’s proxy (a “Proxy”) to exercise any or all of such Member’s rights to attend, speak and vote at a Meeting. A Proxy shall vote in accordance with the instructions, if any, given by the Member by whom such Proxy is appointed.

12.2 Proxies must be appointed by a Proxy Notice which:

- (a) states the name and address of the Member appointing the Proxy;
  - (b) identifies the person appointed to be such Member's Proxy;
  - (c) is signed by or on behalf of the Member appointing the Proxy, or is authenticated in such manner as the Members may determine; and
  - (d) is delivered to the Charity in accordance with these Articles.
- 12.3 Proxy Notices may specify how the Proxy appointed under them is to vote (or that such Proxy is to abstain from voting) on one or more resolutions.
- 12.4 Unless a Proxy Notice indicates otherwise, it must be treated as allowing the Proxy discretion as to how to vote on any resolutions or other matters put to any Meeting.
- 12.5 A Member (including a Corporate Member Representative) who is entitled to attend, speak or vote at a Meeting remains so entitled even though a valid Proxy Notice has been delivered to the Charity by or on behalf of such Member. If such Member or Corporate Member Representative casts a vote in such circumstances, any vote cast by the Proxy appointed under the Proxy Notice is not valid.
- 13. Delivery of Proxy Notices**
- 13.1 The proxy notification address (the "Proxy Notification Address") is:
- (a) the registered office of the Charity; or
  - (b) any other Address or Addresses specified by the Charity as an Address at which the Charity or its agents will receive Proxy Notices relating to that Meeting, or any adjournment of such Meeting.
- 13.2 Unless the Members decide otherwise, a Proxy Notice must be received at a Proxy Notification Address not less than forty-eight (48) hours before it is intended to take effect.
- 13.3 Saturdays, Sundays, and public holidays are not counted when calculating the forty-eight (48) hour period referred to in this Section 13.
- 14. Revocation of Proxies**
- 14.1 A Member may revoke an appointment under a Proxy Notice by delivering a written notice of revocation to a Proxy Notification Address.
- 15. Directors**
- 15.1 A Director must be a natural person aged eighteen (18) years or older.
- 15.2 No one may be appointed as Director if he or she would be disqualified from acting under the provisions of these Articles.
- 15.3 The number of Directors shall be as set forth in Section 17.

- 15.4 Unless approved by the Board, a Director may not appoint an alternate director or anyone to act on his or her behalf at Meetings.
- 15.5 Each Director, observer or ex-officio member, if any, should (but is not required to) have experience and expertise in one or more of the following or similar fields: ecological science, biodiversity conservation, finance, law, investment management, fundraising, grant making or such other areas of expertise as the entity appointing such Director determines may be helpful to the Charity in fulfilling its Objects.
- 15.6 In addition and without limit to any Director's statutory and common law duties, and to the extent such Director is also appointed to also act as a trustee of the Charity, such Director shall:
- (a) ensure that the Charity's resources are used prudently and lawfully in the furtherance of its charitable objects;
  - (b) act with integrity and not do anything to harm the reputation of the Charity;
  - (c) maintain overall responsibility for fundraising and the appropriate use of funds raised;
  - (d) not to receive any benefit from the Charity unless expressly authorised by the Charity's constitution or the Commission; and
  - (e) procure, together with the other Directors, that the Charity shall file an annual report and accounts with the Commission.

**16. Powers of Directors**

- 16.1 The Directors shall manage the business of the Charity and may exercise all powers of the Charity unless they are subject to any restrictions imposed by the Companies Act, these Articles or any Member Resolution.
- 16.2 No alteration of these Articles or any Member Resolution shall have retrospective effect to invalidate any prior act of the Directors.
- 16.3 Any meeting of Directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Directors.

**17. Establishment and Constitution of the Board**

- 17.1 As of the establishment of the Charity, the Board shall be constituted by
- (a) one (1) Director appointed by KfW (the "KfW Director"), who shall initially be Peter Hiliges; and
  - (b) one (1) Director appointed by TNC (the "TNC Director") who shall initially be Robert Weary.
- 17.2 Additional Directors may be appointed by a National Protected Areas Trust Fund if, as soon as practicable after the effective date of a Vertical Agreement, such National

Protected Areas Trust Fund appoints a Director in accordance with such Vertical Agreement.

- 17.3 At all times the Directors constituting a majority of the Board must not be affiliated with the governments of any of the Participating Countries and must also be representatives of civil society, including, but not limited to, representatives of national, international and local non-governmental organizations, research and scientific organizations, universities and the private sector.
- 17.4 If a Vertical Agreement is terminated for any reason, any and all Directors appointed by the National Protected Areas Trust Fund that is a party to such Vertical Agreement shall cease to be Directors under these Articles (a) if the right to receive payments under such Vertical Agreement was suspended, until such time as the right to receive payments is restored under the Vertical Agreement, or (b) if such right is terminated or if the Vertical Agreement is terminated, indefinitely, until the Members cause the Charity to restore such right; provided, that, the Members may, by Member Resolution, and without effect to any other provision of these Articles, waive in whole or in part the provisions of this Section 17.4 or, alternatively, in their sole discretion provide that any such Director be granted observational rights on the Board, limited in any manner, including time, as the Members may in their sole discretion determine. For the sake of clarity, the removal of a Director pursuant to this Section 17.4 shall not constitute a Vacancy for purposes of these Articles.
- 17.5 The Board may in its reasonable discretion grant to any party observational rights, revocable by the Board at any time, relating to General Meetings or Annual Meetings (the “Observer Rights”). Observer Rights shall not include any rights under these Articles other than the right upon request to observe at any Annual Meeting or General Meeting, and the Board shall have no obligations to such Persons with Observer Rights other than to grant such request if received within a reasonable time in advance of such Annual Meeting or General Meeting.

**18. Terms of Office of Directors**

- 18.1 Directors shall serve for terms of up to two (2) years, renewable twice, but are eligible for reappointment, as if they had never served, after an absence from the Board for at least two (2) consecutive years, or until the earlier of their resignation, death, incapacity or removal by the Board, as further provided in this Section 18 and as the Board may further provide in the Operational Manual.
- 18.2 Disqualification, Resignation and Removal of Directors
- (a) A Director shall automatically cease to hold office (a “Disqualification”) if:
- (i) such Director ceases to be a Director by virtue of any provision in the Companies Acts or is prohibited by law from being a trustee or director;
  - (ii) such Director is disqualified from acting as a trustee by virtue of Section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision);

- (iii) such Director is or has been convicted in any country for any felony or for the crimes of forgery and use of forgery in a private or commercial instrument, embezzlement of public monies and extortion of funds, theft, swindle, breach of trust, issuance or acceptance of a check not backed by sufficient funds;
  - (iv) such Director has been declared to be bankrupt with the exception of a pardon granted on his or her behalf;
  - (v) such Director becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
  - (vi) in the case of the KfW Director, KfW decides at any time and for any reason to dismiss their nominated Director and nominate a different individual to be the replacement KfW Director to succeed or fill the place of the dismissed KfW Director; or
  - (vii) in the case of the TNC Director, TNC decides at any time and for any reason to dismiss their nominated Director and nominate a different individual to be the replacement TNC Director to succeed or fill the place of the dismissed TNC Director.
- (b) Any Director may resign at any time by delivering written notice of his or her resignation (a “Resignation”) to the Chairperson or Vice Chairperson of the Board. Such Resignation shall be effective upon receipt unless specified to be effective at some other time, at which time such Director shall cease to hold office.
- (c) A Director, other than the KfW Director, the TNC Director or a Donor Director, may be dismissed (a “Removal”) by Special Majority Vote, at which time such Director shall cease to hold office, if such Director:
- (i) knowingly fails to notify the Board of a Director Interest;
  - (ii) no longer fulfils the conditions of appointment as set forth in Section 17; or
  - (iii) acts in a way that is detrimental to the mission, the reputation or the operations of the Charity.

### 18.3 Vacancies

- (a) The Directors may exercise all of their powers notwithstanding any Disqualification, Resignation or Removal (Disqualification, Resignation or Removal constituting a “Vacancy”) of any Director. In the event of a Vacancy of:
- (i) the KfW Director, as soon as reasonably practicable, KfW shall appoint a replacement KfW Director in accordance with Section 17. If KfW is unwilling or unable to appoint a replacement Director, no such replacement shall be appointed and the Vacancy with respect to the KfW Director shall terminate. The replacement KfW Director, if any,

shall, subject to these Articles, serve until the end of the term of the Director which he or she replaced in accordance with this Section 17;

- (ii) the TNC Director, as soon as reasonably practicable, TNC shall appoint a replacement TNC Director in accordance with Section 17; or
- (iii) any other Director, as soon as reasonably practicable, the National Protected Areas Trust Fund that appointed such Director shall appoint a replacement Director in accordance with Section 17. If such National Protected Areas Trust Fund is unwilling or unable to appoint a replacement Director, no such replacement shall be appointed and the Vacancy with respect to such Director shall terminate. The replacement Director, if any, shall, subject to these Articles, serve until the end of the term of the Director which he or she replaced in accordance with this Section 17.

- (b) At all times the Board shall consist of a majority of Directors not affiliated with the governments of any of the Participating Countries and must also be representatives of civil society, including, but not limited to, representatives of national, international and local non-governmental organizations, research and scientific organizations, universities and the private sector.

## **19. Chairperson, Vice Chairperson and Treasurer**

- 19.1 At the first meeting of the Board and at least once every two (2) years thereafter, unless otherwise specified by Member Resolution, the Directors will elect officers from among themselves, including, without limitation, a Chairperson, Vice Chairperson and Treasurer who will each serve for a term that is concurrent with their remaining term as a Director, but that in no event is longer than two (2) years. Each officer will be eligible for re-election to such positions for as long as he or she remains a Director.
- 19.2 The Chairperson of the Board shall preside over the Annual Meeting and General Meetings, and have such other powers and duties as may be set forth in the Operational Manual.
- 19.3 The Vice-Chairperson shall replace the Chairperson and exercise all of the powers and duties of the latter in the event of an absence or Vacancy of the Chairperson. In the event of the absence or Vacancy of both the Chairperson and Vice-Chairperson, the Directors in attendance shall appoint from among themselves a meeting Chairperson.
- 19.4 The Treasurer shall oversee the Charity's financial activities.

## **20. Committees**

- 20.1 The Directors shall establish a finance committee (the "Finance Committee") and may, subject to these Articles or any Member Resolution, establish more committees (each a "Committee") to advise it or to carry out specific responsibilities of the Board in accordance with the Operational Manual. Members of a Committee may, but need not be, Directors; provided, that each Committee must be chaired by a Director

appointed by the Board. The Board may establish procedures for Committees, and delegate to a Committee such authority as may be necessary or desirable for the efficient management of the property, affairs, business and activities of the Charity. A Committee's authority shall continue until terminated by the Board.

- 20.2 The Finance Committee shall include at least one (1) Director with (i) an understanding of generally accepted accounting principles and their application to the preparation of financial statements as well as accounting for estimates, accruals and reserves, (ii) experience preparing, auditing, analyzing or evaluating financial statements that are generally comparable in breadth and complexity of issues to those of the Charity and (iii) an understanding of internal control over financial reporting and audit committee functions, or such other Director together with suitably qualified advisors and/or other members of the Finance Committee as the Board shall reasonably consider appropriate and appoint for such function. Such financially qualified Director or other Director appoint by the Board as above, along with any other advisors and/or members of the Finance Committee (as applicable), shall review and recommend to the Board strategies and procedures for the investment of funds held by the Charity. It shall also supervise the management of the investment of assets the Charity.

**21. Directors' Remuneration**

The Directors shall serve on a voluntary basis and must not be paid any remuneration for serving as Directors notwithstanding that any reimbursement of expenses incurred for attending Meetings and payment of costs and expenses of a Director actually incurred for conducting other business of the Charity may be determined by the Board, subject to any limits set forth in the Operational Manual and these Articles.

**22. Loans to Directors and Officers**

No loans shall be made by the Charity to any of its Directors, officers, agents or employees.

**23. Conflicts of Interest**

- 23.1 Whenever there is a reasonably foreseeable possibility that any Director, a member of such Director's immediate family, or an organization of which the Director is an employee, officer, member or more than a ten percent (10%) shareholder, may benefit or suffer loss from any decision to be made by the Board on any matter relating to the activities of the Charity (a "Director Interest"), the Director must disclose the material facts as to the Director Interest, including the nature and extent of the Director Interest, to the Board, and must absent himself or herself from any discussions or votes of the Directors related to such matter, unless otherwise determined by the Board.

**24. Assets of the Charity**

- 24.1 The Charity's assets shall consist of all property that it has acquired by gift, bequest, grant, contract, sale, purchase investment or otherwise, and shall be used exclusively to promote the Objects.



- 24.2 Subject to Sections 27 and 28, the Board may periodically distribute all or part of a National Protected Areas Trust Fund's pro rata share of the income and gains generated by the Charity to such National Protected Areas Trust Fund, but in no event may the Board be permitted to withdraw, borrow from, borrow against, dispose of, or otherwise so affect the capital of the Charity.
- 24.3 No monies shall be paid out of the Charity's assets except with the authority, and in accordance with any general or special directions, of the Board.
- 24.4 Regardless of the source of the Charity's assets, such assets shall be considered in all respects to be separate from the consolidated revenues of any governments, and shall not be subject to any laws governing public or government funds. The Charity may transfer funds into and out of the United Kingdom, maintain foreign currency accounts and deal in foreign currency.

**25. Revenues of the Charity**

- 25.1 The revenues of the Charity may be generated from the following sources:
- (a) income and capital gains generated from investment of the Charity's assets;
  - (b) gifts and bequests;
  - (c) public and private donations from national and international sources;
  - (d) budgetary allocations from any government;
  - (e) proceeds from the sale, lease or transfer of tangible and intangible property;
  - (f) exceptional and miscellaneous income or gains; and
  - (g) any other sources of revenue deemed appropriate by the Board.
- 25.2 The Board may reject any gifts, bequests, donations, revenues, proceeds or income that may be offered to the Charity or otherwise accrue to it.

**26. Investment of the Charity's Assets**

- 26.1 As may be further specified in the Operational Manual and the Investment Guidelines, the assets of the Charity shall be invested by an internationally recognized investment manager selected by the Directors through a transparent and competitive public tender process, subject to the approval of a Special Majority Vote.
- 26.2 All investments shall be made in accordance with the Investment Guidelines.

**27. National Protected Areas Trust Fund Payment Eligibility**

- 27.1 The Board may make a payment to a National Protected Areas Trust Fund only if the National Protected Areas Trust Fund:
- (a) has as its main purpose the conservation of biodiversity in the National Protected Areas System of one of the Participating Countries;

- (b) has first entered into a binding Vertical Agreement with the Charity, except in the discretionary circumstances described in Section 27.4;
- (c) agrees to use any funds transferred by the Charity to pay only for:
  - (i) government agencies beneficiaries' direct project implementation costs that are additional to existing government budgets;
  - (ii) civil society beneficiaries' direct and indirect project implementation costs; and
  - (iii) projects that are consistent with internationally recognized environmental and social safeguards;
- (d) agrees not to use any funds transferred by the Charity to pay, directly or indirectly, for:
  - (i) activities relating to the extraction of non-renewable natural resources; or
  - (ii) any other use not consistent with these Articles; and
- (e) uses any such funds provided from the Charity in accordance with any other criteria, priorities and procedures that may hereafter be established by the Board.

27.2 The Vertical Agreement shall govern the transfer of funds from the Charity to the National Protected Areas Trust Funds, together with any detailed payments procedures and guidelines set out in the Operational Manual from time to time. Each year, the Board shall consider requests from each National Protected Areas Trust Fund for payments to each of them pursuant to the Articles and to each Vertical Agreement with a National Protected Areas Trust Fund.

27.3 Each Fiscal Year, the Board may approve up to an amount representing five percent (5%) of the Reference Endowment Value to be transferred to the National Protected Areas Trust Funds in proportion to each National Protected Areas Trust Fund's allocation of the total contributions from the Donors as set out in the schedule of Donor contributions and country allocations produced pursuant to the Operational Manual from time to time.

27.4 The Board may approve an amount representing proportionate and reasonable assistance for the costs and expenses of the set-up and operationalization of any National Protected Areas Trust Fund to be distributed from the income and gains of the Charity's investments at the Charity's absolute discretion and the Charity may distribute any such amount prior to the relevant National Protected Areas Trust Fund's entry into a Vertical Agreement or at such other time, in each case at the Charity's absolute discretion.

## **28. Matching Requirement**

28.1 Transfer of the allocations in 27.3(a) is made provided that, starting on the second (2nd) anniversary of the date of its entry into a Vertical Agreement, each National

Protected Areas Trust Fund shall be required to generate, receive and apply new and additional funding, through sustainable finance mechanisms, on an annual basis for supporting the Objects.

This new and additional funding must be of an amount no less than the annual disbursements made by the Charity to the National Protected Areas Trust Fund in each applicable disbursement period (which amount is hereafter referred to as the “Matching Requirement”).

28.2 If a National Protected Areas Trust Fund fails in any year after the second (2nd) anniversary of the date of a National Protected Areas Trust Fund’s entry into a Vertical Agreement to generate, receive and apply its annual Matching Requirement in its entirety, then the amount of the National Protected Areas Trust Fund’s pro-rata share of the Reference Endowment Value that would otherwise be transferred to such National Protected Areas Trust Fund shall be reduced by any amount which is equal to the shortfall between the Matching Requirement and the amount that is actually generated that year by the National Protected Areas Trust Fund, and where deemed reasonably commercially prudent by the Directors such amount not transferred shall be held by the Charity in the separate sub-account applicable to that National Protected Areas Trust Fund (a “NPATF Sub-Account”) until such time as the National Protected Areas Trust Fund is able to generate the Matching Requirement in its entirety for that year, without effect on any prior or subsequent periods for which the National Protected Areas Trust Fund is required to meet the Matching Requirement. Any cash held in a NPATF Sub-Account and not transferred to a National Protected Areas Trust Fund within that year will be reinvested on behalf of such National Protected Areas Trust Fund.

**29. Limits on the Charity’s Administrative Expenses**

- 29.1 Unless otherwise approved by the Members, in each Fiscal Year the Charity may not use for Administrative Expenses more than one percent (1%) of the Reference Endowment Value.
- 29.2 The Charity intends that any funds to be used for Administrative Expenses or otherwise shall not be distributed from sums representing capital in the Charity’s endowment and it shall use all reasonable endeavours to disburse any such funds from the income and gains of the Charity’s investments, save that the Board reserves its discretion in that regard in order to secure the operational capability and stability of the Charity’s secretariat.

**30. Seal**

If the Charity has a seal it must only be used by the authority of the Directors or of a Committee. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by at least two (2) Directors.

**31. Minutes**

- 31.1 The Director must cause minutes to be kept of all:

- (a) appointments of officers made by the Directors;
- (b) proceedings at Meetings; and
- (c) Meetings of the Directors and Committees including
  - (i) the names of the Directors present; and
  - (ii) any decisions made at the Meetings.

### **32. Accounts and Audit**

- 32.1 The Directors shall comply with the requirements of the Companies Acts and of the Charities Act 1993 as to maintaining a Member's register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Commission of annual reports, annual returns and annual statements of account.
- 32.2 The Directors shall keep or cause to be kept full and correct accounts on a regular basis of all monies received and expended by the Charity. The Directors shall prepare or cause to be prepared on a quarterly basis, pro forma budgets and financial statements, which the Charity will make available upon request to the Donors and the Board.
- 32.3 The Directors shall appoint an independent external auditor of internationally recognized standing and competence to audit the financial accounts of the Charity on an annual basis.
- 32.4 The auditor shall verify the Charity's balance sheet and other financial accounts for each Fiscal Year and shall prepare a comprehensive, detailed written report that shall be presented to the Directors no later than six (6) months after the conclusion of the Charity's Fiscal Year. The Directors shall make the auditor's completed annual report publicly available. A copy of the auditor's completed annual report shall be provided to the Donors, the Members and the Board.

### **33. Liability of Members**

- 33.1 The liability of each Member is limited to a sum not exceeding £10, being the amount that each Member undertakes to contribute to the assets of the Charity in the event of its being wound up while he, she or it is a Member or within one (1) year after he, she or it ceases to be a Member, for
  - (a) payment of the Charity's debts and liabilities contracted before he, she or it ceases to be a Member;
  - (b) payment of the costs, charges and expenses of winding up; and
  - (c) adjustment of the rights of the contributories among themselves.

**34. Indemnity**

34.1 Subject to the provisions of the Companies Acts, but without prejudice to any indemnity to which Members, Directors and Officers may otherwise be entitled, every Member, Director or Officer of the Charity shall be indemnified out of the assets of the Charity against any liability incurred by him or her in their capacity as Member, Director or Officer of the Charity. The Charity may purchase indemnity insurance for such purpose.

**35. Dissolution**

35.1 It is intended that the Charity shall have perpetual existence.

35.2 The Directors may make a request to the Members that the Charity be dissolved and wound up if it has become impracticable to achieve the Objects, or upon a Special Majority Vote.

35.3 At any time before, and in expectation of, the dissolution of the Charity, the Members of the Charity or, subject to a Member Resolution, the Directors, may resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision has been made for them, shall on the dissolution of the Charity be applied or transferred in any of the following ways:

- (a) directly for the Objects;
- (b) by transfer for any charity or charities for purposes similar to the Objects of the Charity; or
- (c) to any charity or charities for use for particular purposes that fall within the Objects.

35.4 In no circumstances shall the net assets of the Charity be paid to or distributed among the Members of the Charity under this Section 35 (except to a Member that is itself an institution chosen to benefit under this Section 35).

35.5 If no resolution is passed in accordance with Section 35.3, the net assets of the Charity shall be applied for charitable purposes as directed by the Court or the Commission.