

**BYE-LAW OF A NON-PROFIT COMPANY  
INCORPORATED UNDER THE COMPANIES ACT 1996**

**HEWANORRA MUSICAL SOCIETY (HMS) INCORPORATED**

**No. 006 of 2001**

*A Bye-law relating to the conduct of –*

The Eastern Caribbean Collective Organisation for Music Rights (ECCO) Inc. (formerly The Hewannora Music Society (HMS) Inc.)

BE IT ENACTED as the general Bye-Laws of the ECCO Inc. (formerly the HMS Inc.)

**1. INTERPRETATION:**

1.1 In this Bye-Law and all other Bye-Laws of the Company, unless the context otherwise requires: -

- (a) “Act” means the Companies Act 1996 as from time to time amended and every statute substituted therefore and, in the case of such substitution, any references in the bye-laws of the Company to provisions of the Act shall be read as references to the substituted provisions therefore in the new statute or statutes.
- (b) “Affiliated society” means any of the societies in other countries, having objects similar to those of the Company, with which the Company is for the time being affiliated.
- (c) All terms contained in the bye-laws and defined in the Act or the Regulations shall have the meanings given to such terms in the Act or the Regulations.
- (d) “Audio-visual production” has the same meaning as the expression has for the purposes of the law relating to copyright and neighbouring rights.
- (e) “Author” includes an author, adapter or translator of any words which are or maybe associated with any music.
- (f) “Ballet” means choreographic work having a story, plot or abstract idea; devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, or tap dancing, or precision dancing sequences.
- (g) “Board” means the Board of Directors for the time being of the Company as constituted and authorised to act pursuant to these bye-laws.
- (h) “A broadcast” has the same meaning as the expression has for the purposes of the law relating to copyright and neighboring rights.
- (i) “Bye-laws” means any bye-law of the Company from time to time in force.

- (j) “Composer” means any person who has created a musical work or who has made such contribution to the creation of a musical work as would entitle him to be treated for the purposes of copyright law as the composer or joint composer of that work.
- (k) “Copyright Act” means the Copyright Act 1995 of St. Lucia as amended from time to time.
- (l) “Director” means Director of a Board of Directors.
- (m) “Distribution” means any distribution pursuant to the Rules which may be made among the Members and affiliated societies out of the monies received by the Company in respect of the exercise of the rights, licence or authority granted by them to the Company and “distributed” and “distributable” have corresponding meanings.
- (n) “Member Territories” means the states of Antigua and Barbuda, Commonwealth of Dominica, Grenada, Saint Lucia, St. Kitts & Nevis and St. Vincent and the Grenadines.
- (o) “Musical Works” without prejudice to the generality of the expressions includes: -
  - (i) any part of a musical work
  - (ii) any music incorporated in the sound track of any audio-visual production or of a broadcast.
  - (iii) any musical accompaniment to a non-musical play.
  - (iv) any words or music of a monologue having a musical introduction or accompaniment;
  - (v) any other words which are associated with a musical work (even if the musical work itself is not in copyright or even if none of the rights in the musical work are administered by the Company);
  - (vi) any arrangement of an existing non-copyright musical work provided the arrangement contains sufficient originality to entitle it to be treated as a work protected by copyright law separate and distinct from the existing work.
- (p) “OECS” means the Organisation of Eastern Caribbean States.
- (q) “Officer of the Society” means any Director or Consultant Directors, Chief Executive Officer, General Manager and the Secretary for the time being of the Society.
- (r) “Performance” includes, unless otherwise stated, any mode of acoustic presentation by means of a sound recording, film, broadcast or cable programme, or by any other means, and references to “perform” and “performing” shall be construed accordingly.
- (s) “Performer” means any singer or musician who has made, either singly or jointly with

our singers or musicians, a sound recording which has been contained in a phonogram or audio-visual work has been released to the public and would entitle him to be treated as a person having performer's rights pursuant to the Copyright Act;

- (t) "Performing right" means, in respect of any work:
  - (a) the right to perform the work in public;
  - (b) the right to broadcast the work or include it in a cable programme service;
  - (c) all rights in the nature of the rights under (a) and (b) rights which by virtue of any present or future enactment exist or may exist;
  - (d) such corresponding rights as exist under the laws relating to copyright in all other countries in the world as in force from time to time;
  - (e) all accrued causes of action in respect of each of the rights mentioned in Article 1 (xix) (a) to (e) inclusive;
  - (f) and all parts and/or shares of or interest in each of the rights mentioned in Article 1 (xix) (a) to (d) inclusive.
  
- (u) "Producer" means any person, corporation or firm by whom the arrangements necessary for making a sound recording, whether to be embodied in a phonogram, film or audio-visual work, are undertaken, and who, under contract with a performer, is entitled to be treated as having recording rights in a recording pursuant to the Copyright Act;
  
- (v) "Proprietor" means a person, other than a writer, publisher or successor, who owns any right or interest in any music or words which may be administered by the Company.
  
- (w) "PRS" means the Performing Right Society Limited, incorporated (under legislation) in the United Kingdom on the 6<sup>th</sup> day of March 1914.
  
- (x) "Publisher" means a person who publishes any or musical work.
  
- (y) "Regulations" means any Regulations made under the Act and every regulation substituted therefore and, in the case of such substitution, any references in the bye-laws of the Company to provisions of the Regulations shall be read as references to the substituted provisions therefore in the new Regulations.
  
- (z) "Secretary" means any person appointed to perform the duties of the Secretary of the Company.
  
- (aa) "Successor" means any person eligible for membership under paragraph 4.
  
- (ab) The singular includes the plural and the plural includes the singular, the masculine gender includes the feminine and neuter genders; the word "person" includes bodies corporate, companies, partnerships, syndicates, trusts and any association of persons; and

the word “individual” means a natural person.

(ac) “Writer” means any author or composer.

In these articles expressions referring to writing shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

## **2. REGISTERED OFFICE**

**2.1** Julian Charles Road, Sans Soucis, P.O. Box CP 5380, Castries, St Lucia.

## **3. SEAL**

### **Method of fixing Seal**

The Seal of the Society shall not be affixed to any instrument except by the authority of a resolution of the board, or (if authorized by the board for that purpose) or of any committee of the board, in the presence of at least two Directors or the Secretary or such other person as the board may appoint for the purpose; and such two Directors and Secretary or other person as aforesaid shall sign every instrument to which the Seal of the Society is so fixed in their presence.

## **4. MEMBERS**

**4.1** For the purpose of registration of the Company the number of Members is declared to be unlimited.

**4.2 The Members of the Company are:**

(a) any person who is admitted to membership pursuant to paragraph 4.4

**4.3 Eligibility for membership-**

The following persons shall be eligible for admission to membership of the Company:-

(a) any writer, publisher, performer, producer or proprietor.

(b) any widow, child or other relative, next of kin, beneficiary under the will, or personal representative of a writer, publisher, performer, producer or proprietor shall be eligible for admission as a successor member.

**4.4 Admission of Members -**

4.4.1 (a) Any person who is eligible may apply to the Company for admission to membership. Such applications shall be made in writing, signed by the applicant,

and shall be in such form as the Board shall from time to time prescribe. The Board may require an applicant to supply such evidence of eligibility as it considers reasonably necessary.

- (b) Each application shall be considered by the Board or in such other manner as the Board may from time to time direct. The Board shall have full and unrestricted power to refuse any application without assigning any reason for such refusal.
- (c) Any person who is eligible for membership may be admitted to membership either by the Board itself, or in accordance with such procedure as the Board may from time to time prescribe.
- (d) There shall be six categories of members, namely: -
  - (i) writer member,
  - (ii) publisher member,
  - (iii) performer member,
  - (iv) producer member,
  - (v) proprietor member, and
  - (vi) successor member,
- (e) No person may be admitted by the Board as member of any category unless he has fulfilled the qualifying criteria prescribed for that category.
- (f) The qualifying criteria for each category of member shall be fixed from time to time by the Board.

4.4.2 Any person who has been admitted to membership shall be issued a membership certificate as to his membership, in such form and signed by such officer of the Company as the Board shall from time to time designate.

#### **4.5 Rights and duties of membership -**

- (a) Save as hereinafter provided a proprietor member and a successor member shall have the same rights and privileges and be subject to the same obligations as writer, publisher, performer and producer members.
- (b) A proprietor member and a successor member shall be entitled to receive notice of, and attend, general meetings but shall not be entitled to vote.

#### **4.6 Assignment of rights -**

- (a) The Company shall require every member, on admission or at any time thereafter, to assign or caused to be assigned to the Company all rights to be administered on the member's behalf by the Company

- (b) Every assignment to the Company pursuant to this paragraph shall be in such form as the board may from time to time prescribe and shall operate for and during the period of the assignor's membership, subject to the provisions of paragraphs 5 and 7.
- (c) The rights to be administered by the Company on behalf of a member shall be such rights as the board shall, in its discretion, after consulting the member, accept for administering on his behalf, and shall be set out in writing in a statement signed by the member and by such officer of the Company as the board shall from time to time designate.
- (d) Pending the assignments of rights to the Company pursuant to this article, every member shall grant to the Company for and during the period of membership, in the member's name or in that of the Company but at the Company's sole charge and expense, the sole power and authority:
  - (i) to authorise or permit or forbid the exercise of the rights to be administered by the Company on behalf of the member;
  - (ii) to grant licences on his behalf for the exercise of such rights pursuant to any regulations which may be prescribed;
  - (iii) to collect fees, subscriptions or monies whether for the authorised use of any of the member's works, or by way of damages or compensation for the unauthorised use of such works;
  - (iv) to institute and prosecute proceedings against all persons infringing the said rights and if the Company in its discretion thinks fit, to defend or oppose any proceedings taken against any member in respect of such rights, and to compound, compromise, refer to arbitration or submit to judgment in any such proceedings, and generally to represent the member in all matters concerning the said rights;
  - (v) to protect generally the said rights in the member's works; and
  - (vi) to delegate authority to do any acts as aforesaid to any affiliated society or representative in territories overseas for the purpose of exercising the said rights in such territory.
- (e) The Company may exercise and enforce-
  - (i) The rights of the members of any affiliated society,
  - (ii) The rights of any person who is not a member of the Company, provided the board is satisfied that the administration of such rights by the Company would not be in any way contrary to the interests of members of the Company.
- (f) The administration by the Company of rights pursuant to paragraph (e) of this article

shall be governed by contractual arrangements entered into between the Company and the affiliated society or other person as the case may be.

#### **4.7 Membership not transferable -**

No member shall enter into any contract under which he or she may be required, whether for valuable consideration or not, to write, compose, perform or produce any work for any person whether as employer or otherwise, without inserting in such contract an express provision reserving to such member the rights to be administered by the Company on behalf of the member.

### **5. CESSATION OF MEMBERSHIP**

#### **5.1 By death**

On the death of the member his or her membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Company by the member, or controlled by the Company by virtue of his or her membership, shall, subject to Article 22, remain so vested or controlled:-

- (i) for a period ending either on the 31<sup>st</sup> day of December in the seventh year following the year in which the member's death took place unless within that period an election as mentioned in the following paragraphs (ii) and (iii) takes place, or
- (ii) if a successor shall be admitted to membership during such period, then for so long as such successor remains a member, or
- (iii) if a person is admitted during such period to membership of an affiliated society in respect of the rights of the deceased member, then up to the date of such admission;

Any distribution to which the member would, if living, have been entitled in accordance with the Rules in respect of any period prior to the admission of such successor shall be made to the member's personal representative until a successor is admitted or until the end of such seventh year as aforesaid, whichever is the earlier date. Upon the admission to membership of any successor as aforesaid, any payment to which the member would, if living have been entitled in accordance with the Rules in respect of any period subsequent to such admission shall be made to such successor.

#### **5.2 by liquidation –**

In the case of a member, being a corporation or a firm, its membership shall cease, in the case of a corporation, in the event of and upon the liquidation of such corporation (other than voluntary liquidation for the purpose of reconstruction), and, in the case of a firm, in the event of and upon such firm ceasing to carry on business. Upon such liquidation or cessation of business, the rights (if any) already vested in the Company by such corporation or firm, or controlled by the

Company by virtue of the membership of such corporation or firm, shall, subject to No. 22, remain so vested or controlled for a period ending on the 31<sup>st</sup> day of December in the third year following the year which the liquidation or cessation of business occurred. Any payment to which the corporation or firm would, if it had remained a member, have been entitled in respect of such period shall be made to the person entitled for the time being to receive debts due to the corporation or firm.

**5.3 by expiry of copyright –**

The membership of any member shall ipso facto cease upon the expiration of the longest period for which copyright subsists by virtue of statute in any country which is either a member of the Berne Union or a party to the Universal Copyright Convention in any of the works in respect of which such member is entitled to participate in distributions, or

**5.4 by disposal of interest –**

In the case of any member being an executor or administrator, upon his having disposed of all interest in all rights which may have vested in the member as such executor or administrator.

**5.5 by the board –**

Any member may be given notice by the Board determining his or her membership at the expiration of fourteen days from the date of such notice, and the membership shall cease accordingly.

**5.6 by the member –**

Any member may, by giving three months' notice in writing to the Secretary, terminate his membership: -

- (i) three years after his first admission to membership at the end of the month in that third year corresponding to the month in which he was first elected to membership, and
- (ii) thereafter, any member may by giving not less than three months' prior written notice to the Secretary terminate his membership.

**6. Cessation of membership – termination of rights, privileges, etc. –**

**6.1** Subject to the provisions of articles 9 and 10, all rights, privileges and obligations of membership shall cease on the date of cessation of membership. In particular, but without prejudice to the generality of the foregoing, the member concerned shall cease to have any claim upon the assets of the Company and shall not be entitled to participate in any further distributions, save as to any payment to which he may be entitled in respect of any period prior to cesser of membership.



## **7. Pending proceeding – continuation of control of rights**

**7.1** If any proceedings have been instituted by or against the Company in respect of a member's works, either in the name of the Company or of the member, and such member ceases to be a member during the pendency of the proceedings, any rights the subject of such proceedings which have been vested in the Company by such member, or are controlled by the Company by virtue of his membership, shall remain so vested or controlled until such proceedings are finally disposed of.

## **8. ANNUAL GENERAL MEETINGS –**

**8.1** The Company shall in each year hold a General Meeting as its Annual General Meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and the next. The Annual General Meeting shall be held at such time and place as the board shall appoint.

### **8.2 Extraordinary General Meetings –**

All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.

### **8.3 Right of board to convene Extraordinary General Meetings –**

The Board may, whenever it thinks fit convene an Extraordinary General Meeting, and Extraordinary General Meetings shall also be convened on such requisition, or in default, may be convened by such requisitionists as the Act provides. If at any time there are not within the member territories sufficient Directors capable of acting to form a quorum, any two Directors or any four members may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.

## **9. NOTICE OF GENERAL MEETING –**

**9.1** An Annual General Meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the Company other than an Annual General Meeting or a meeting for the passing of a Special Resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given in manner hereinafter mentioned or in such other manner if any, as may be prescribed by the Company in General Meeting, to such members as are, under these articles, entitled to receive such notices from the Company.

### **9.2 Accidental omission of notice –**

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting

by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

### **9.3 Method of giving notice-**

A notice may be given by the Company to any member either personally or by post or electronic mail to an address provided by the member for the receipt of notices

### **9.4 Service by post**

Where a notice to a member is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

### **9.5 Notice of General Meeting-**

Notice of every General Meeting shall be given to: -

- (i) every nominated member of the board,
- (ii) every honorary director,
- (iii) every consultant director,
- (iv) every member except those who have failed to provide the Company with an address for the receipt of notices
- (v) the Auditors for the time being of the Company.

No other persons shall be entitled to receive notices of General Meetings.

## **10. PROCEEDINGS AT GENERAL MEETINGS**

### **10.1 Business at General Meetings –**

All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts and balance sheets, the reports of the board and auditors, the appointment of Directors in the place of those retiring, and the appointment, and fixing of the remuneration, of the Auditors.

### **10.2 Quorum –**

No business shall be transacted at any General Meeting unless a quorum of members entitled to vote is present at the time when the meeting proceeds to business. Save as herein otherwise provided, eight persons present in person shall be a quorum.

### **10.3 Adjournment for lack of quorum –**

If, within half an hour after the time appointed for the meeting, a quorum is not present, the

meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and such other time and place as the board may determine, and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members entitled to vote who are present shall be a quorum.

#### **10.4 Chairman at General Meetings –**

The Chairman of the Board shall preside as chairman at every General Meeting of the Company, failing whom the Deputy-Chairman. If none of them is present within fifteen minutes after the time appointed for holding the meeting, or none of them is willing to act as chairman, the Directors shall choose one of their number to be chairman of the meeting.

#### **10.5 Choice of Chairman by Members –**

If at any meeting no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

#### **10.6 Adjournment of Meeting –**

The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **10.7 Method of voting –**

10.7.1 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded: -

- (i) by the Chairman of the meeting; or
- (ii) by at least three members entitled to vote present in person or by proxy; or
- (iii) by any member or members entitled to vote that are present in person or by proxy and representing not less than one-tenth of the total voting rights of all members having the right to vote at the meeting.

10.7.2 Unless a poll be so demanded, a declaration by the Chairman of the meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Company shall be conclusive evidence of the fact, without proof of

the number or proportion of the votes recorded in favour of, or against, such resolution.

10.7.3 The demand for a poll may be withdrawn.

#### **10.8 Poll –**

Except as provided in paragraph 10.10, if a poll is duly demanded it shall be taken in such manner as the Chairman of the meeting directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

#### **10.9 Chairman – Casting Vote –**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

#### **10.10 Time for taking poll –**

A poll demanded on the election of a Chairman of a meeting, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs; and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

### **11. VOTES OF MEMBERS**

#### **11.1 Voting rights –**

On a show of hands or on a poll every member shall have one vote. No member shall be entitled to vote on a show of hands unless he is present in person or, in the case of a corporation, the duly authorised representative is present in person.

#### **11.2 Members of unsound mind –**

A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver, or curator bonis appointed by the Court, and any such committee, receiver, curator bonis, or other person may, on a poll, vote by proxy.

#### **11.3 Votes on a poll –**

On a poll votes may be given either personally or by proxy.

#### **11.4 Proxy instrument –**

The instrument appointing a proxy shall be in writing under the hand of the appointer or of the appointer's attorney duly authorised in writing; or, if the appointer is a corporation, either

under the common seal or the hand of an officer thereof duly authorised; or, if the appointer is a firm, under the hand of a partner in the firm or their attorney duly authorised. No person shall act as a proxy unless the person is entitled on his or her own behalf to be present and vote at the meeting at which he or she acts as proxy.

#### **11.5 Deposit of proxy –**

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company or at such other place within St. Lucia as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of poll, not less than twenty-four hours before the time appointed for taking the poll; and, in default, the instrument of proxy shall not be treated as valid.

#### **11.6 Form of proxy –**

An instrument appointing a proxy may be in the usual form, or in such form as the board may approve, and shall be deemed to confer authority to demand or join in demanding a poll.

#### **11.7 Revocation etc. of proxy –**

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### **11.8 Corporation's representatives –**

Any corporation which is a publisher member of the Company may, by resolution of its directors or other governing body, authorise any person being either a director, officer or manager in the employment of such corporation to act as its representative at any General Meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual publisher member of the Company.

### **12. BOARD OF DIRECTORS**

#### **12.1 Composition of the Board –**

12.1.1 Board of Directors shall consist of fourteen Directors selected as follows:-

- (i) Six Directors elected by the writer members at a General Meeting (the writer Directors)

- (ii) Two Directors elected by the publisher members at a General Meeting (the publisher directors);
- (iii) One director each nominated by the Copyright Steering Committees established in the four member territories;
- (iv) One Director nominated by the Secretariat of the OECS, and
- (v) One Director nominated by PRS

12.1.2 A person shall only be eligible for election as a Director under paragraphs 12.1. (i), (ii) and (iii) if the person is either a member himself or herself or, in the case of a publishing director, has been nominated in writing by, and as the representative or, a publishing company or firm which is itself a member.

12.1.3 The nomination of a Director by the OECS or by the PRS pursuant to paragraphs 12.1.1 (iv) and (v) shall be in writing and shall be made after consultation with the elected directors, and shall be for a period not exceeding two years; but any nominated director shall be eligible for renomination for further periods of two years

12.1.4 The nomination of a director pursuant to paragraphs 12.1.1 (iv) and (v) may be revoked by the OECS or the PRS, as the case may be, at any time by an instrument in writing, whereupon the person nominated shall cease to be a director.

12.1.5 Subject to the provisions of this paragraph, each elected director shall be elected for a period of two years, but shall be eligible for re-election for two further consecutive periods of two years each, at the termination of which the Director shall not be eligible for re-election until another period of two years has expired.

## **12.2 Casual Vacancy –**

The Board may, in the event of any casual vacancy occurring among the elected directors fill such vacancy by appointing any person eligible for such appointment and any Director so appointed shall hold office until the next Annual General Meeting following such appointment whereupon he or she shall retire but shall be eligible for re-election.

## **12.3 Honorary Directors - Appointment**

- (a) The board may appoint a person who has made a distinguished contribution to the cultural life of St. Lucia as an honorary director.
- (b) There shall not be more than two honorary directors at any one time.

## **12.4 Honorary Director – Terms of Appointment**

- (a) The appointment of an honorary director shall be for such term not exceeding six years as the Board shall determine; but an honorary director may be appointed for further successive terms.
- (b) The appointment of an honorary director may be terminated by the board, at any time without giving any reason therefore.
- (c) An honorary director shall be entitled to receive notices of, attend, and participate in all General Meetings of the Company and of the Board, but shall not be entitled to vote at General Meetings or at meetings of the Board.

#### **12.5 Consultant Directors –**

- (a) The Board may appoint consultant directors on such terms and for such periods as it shall deem expedient.
- (b) A Consultant Director shall be entitled to receive notice of, attend, and participate in, all General Meetings of the Company and of the Board, but shall not be entitled to vote at General Meetings or at meetings of the Board.

#### **12.6 Chairman –**

The Board shall appoint a Chairman and a Deputy Chairman from persons who are members of the Board.

- (a) The Chairman and Deputy Chairman shall each be appointed for a term not exceeding two years, but shall be eligible for re-appointment.
- (b) The Chairman and Deputy Chairman shall each cease to hold office if either ceases to be a member of the Board or if either are removed by ordinary resolution voted by a majority of members of the Board subject to provisions in the Companies Act.

#### **12.7 Nomination of Candidates for Election as Director**

No person, not being a retiring Director shall unless recommended by the board for appointment, be eligible for election to the office of Director at any General Meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting, there should have been left at the registered office of the Company a notice in writing signed by a writer or publisher member, of his intention to propose such person for election, also notice in writing signed by that person of his willingness to be elected.

#### **12.8 Director's Remuneration and Expenses –**

- (a) Each elected Director shall be entitled to receive, for each meeting of the Board or of any Committee of the Board of Directors which the Director attends, a fee of \$50.00 or of such other sum as the Company may determine in General Meeting;
- (b) The Board may remunerate in such manner as it thinks fit any Director who shall be called upon to render any special services and which the Director may agree to render to the Company, or who shall have rendered any special services to the Company;
- (c) Each Director shall be paid all travelling, hotel and other expenses properly incurred by the Director in attending and returning from meetings of the Board or any committee of the Board or general meetings of the Company or in connection with the Company's business

### **13. POWERS AND DUTIES OF THE BOARD**

#### **13.1 General powers vested in the board –**

The business and operations of the Company shall be conducted and managed by the Board, who may exercise all such powers of the Company, as are not, by the Companies Act or by these Articles required to be exercised by the Company in General Meeting, subject, nevertheless, to the provisions of the Companies Act or of these Articles.

#### **13.2 Certain specific power –**

Without prejudice to the general powers conferred by the last preceding paragraph, and the other powers conferred by these articles, it is hereby expressly declared that the board shall have the following powers, that is to say power: -

- (a) from time to time to appoint any person as CEO and other officers of the Company for such term and at such remuneration as they may think fit and, subject to any contract entered into between the Company and such CEO and other officers, from time to time to remove them and appoint some other person as CEO and other officers in their place;
- (b) to delegate to a CEO or other officer all such of its administrative powers as aforesaid as they may deem necessary for the full and proper administration of the affairs of the Company;
- (c) to borrow money and to mortgage or charge the under-taking and property of the Company or any part thereof and to issue debentures, as security for any debt, liability or obligation of the Company, or any third party;
- (d) to determine who shall be entitled to sign on the Company's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts and documents;
- (e) to provide for the establishment and conduct of any branch office in any part of the world for the transaction and management of the business of the Company;
- (f) from time to time to appoint any Company, firm, person or body of persons to be the attorneys of the Company in any part of the world for such purposes and with such powers, authorities and discretions and subject to such conditions as may be thought fit.



- (g) to establish rules, processes and mechanisms to facilitate the handling of complaints by and the resolution of disputes between members and between members and the Company.

## **14. MINUTES**

### **14.1 How to be kept-**

- (a) The board shall cause minutes to be duly entered in the books provided for purposes:-
  - (iv) of all appointments of officers made by the board;
  - (v) of the names of the Directors present at each meeting of the board or of any committee thereof;
  - (iii) of all orders made by the board or a committee thereof;
  - (iv) of all resolutions and proceedings of General Meetings and of meetings of the board and committees thereof.
- (b) Any such minutes of any meetings of the Directors, or any committee of the Company, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.
- (c) The books containing the minutes of the General meetings of the Company shall be kept at the office and shall be open to the inspection of members between the hours of 8.00 am and 12.00 noon on each business day.

## **15. ALLOCATIONS OF MONIES**

### **15.1 Order of application of receipts –**

- (a) All monies received by the Company in respect of the rights, licences or authorities granted by members and affiliated societies shall be applied first to payment of all expenses of and incidental to the conduct management and operation of the Company, and then, subject to paragraph 15.4, shall be allocated and distributed amongst the members and affiliated societies in accordance with Distribution Rules to be made from time to time by the board in accordance with paragraph 15.2.
- (b) The board shall fix the times for the distribution of monies allocated to members and affiliated societies.
- (c) The declaration of the board supported by the certificate of the Auditors as to the amount of the monies received by the Company shall be conclusive.

### **15.2 Distribution Rules –**

- 15.2.1 The board shall, subject to this paragraph, make, and may from time to time amend, rules regulating the payment to members and to affiliated societies, by way of allocation, distribution or in any other way, of the monies received by the Company resulting from its administration of the rights entrusted to it.
- 15.2.2. Any distribution rule made by the board shall be consistent with the terms and conditions of any agreement in force from time to time between the Company and any member or affiliated society.
- 15.2.3 Subject to 15.2.4 or this paragraph no rules made pursuant to this bye-law shall have effect until they have been approved by the Company in General Meeting.
- 15.2.4 Any rules made by the board pursuant to this article prior to the first General Meeting of the Company shall have effect in relation to any distribution, allocation or other payment made before the General Meeting, but thereafter shall only have effect if approved by the Company in General Meeting.

### **15.3 Interim allocation and/or distributions-**

- 15.3.1 The Board may from time to time make to the Members and affiliated societies such interim allocations and distributions as in their judgment the financial position of the Company justifies.
- 15.3.2 Allocations and distributions when made by the board shall be final and binding except that the board shall be at liberty to consider and if thought fit to admit any claims made by any interested persons within two years of the date of the allocation or distribution concerned.
- 15.3.3 For the purposes of this paragraph 15.2 only the word “Member” shall be deemed to extend to and include a past member in respect only of such portion of his rights as are still vested in or controlled by the Company pursuant to paragraph 5 and 7.

### **15.4 Special provisions –**

The board may before making any allocation and distribution among the Members and affiliated societies

- 15.4.1 apply out of the receipts such sums as it thinks proper or has agreed to contribute towards.

#### **Superannuation fund etc. –**

any superannuation, benevolent, pension or similar fund which has been or may be established for the benefit of employees or ex-employees of the Company, or the wives, widows, children or other dependents of such persons;

#### **Foundation for St. Lucia music-**

any foundation, trust, or similar fund which has been established for the purpose of promoting the use and recognition of music performed in St. Lucia.

- 15.4.2 Reserve Fund –

set aside, out of the receipts of the Company, such sums not exceeding five per centum of the receipts of the Company for the preceding financial year as they think proper as a reserve fund to meet contingencies, or for special allocations or for repairing, improving and maintaining any of the property of the Company, or for such other purposes as the board shall in its absolute discretion think conducive to the interests of the Company, and to invest the several sums so set aside upon such investments as they may think fit, and from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company and to divide the reserve fund into such special funds as they think fit with full power to employ the assets constituting the reserve fund in the business of the Company and that without being bound to keep the same separate from the other assets.

## **16. DISQUALIFICATION OF DIRECTORS**

### **Vacation of office of Director –**

The office of an elected Director shall be vacated: -

- (i) if the Director ceases to be a member, or, in the case of a Director elected as the nominee of a corporation, or firm, if such Company or firm ceases to be a member;
- (ii) if, in the case of a Director elected as the nominee of a corporation, or firm, the Director ceases to hold the qualifications required for such nominee pursuant to paragraph 12;
- (ii) if the Director becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (iv) if the Director becomes prohibited from being a Director by reason of any order made under section 66/67 of the Companies Act;
- (v) if the Director becomes of unsound mind;
- (vi) if the Director resigns, by notice in writing to the Board;
- (vii) if the Director without special leave of absence from the Board absents himself from the meetings of the Board, either during a period of four successive calendar months or during a period covered by three consecutive meetings, whichever is the longer, attendances at meetings of committees of the Board to count as attendances at meetings of the Board; or
- (viii) if the Director, or if a corporation or firm of which the Director is the nominee pursuant to Article 12 or of which he or she is a member, is directly or indirectly interested in any contract with the Company or participates in the profits of any contract with the Company, other than a contract in respect of any musical, literary or dramatic works in the copyright of which such Director, corporation or firm is interested. Provided, however, that a Director shall not vacate the office by reason of the Director being the nominee or a member of any corporation or firm which has entered into contracts with or done any work for the Company, if the Director shall

have declared the nature of his or her interest or the nature of the interest of such corporation or firm in the manner required by the Companies Act but the Director shall not vote in respect of any such contract or work or any matter arising there from; and if the Director does so vote his or her vote shall not be counted. Provided also that no Director shall vacate his or her office by reason of the Director being remunerated pursuant to paragraph 12.8.

- (ix) if the members of the Company by ordinary resolution at a special meeting, remove any director from office.

## **17. PROCEEDINGS OF THE BOARD AND COMMITTEES**

### **17.1 Meetings and Voting**

The board may meet together for the dispatch of business, adjourn or otherwise regulate its meetings, as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman of the meeting shall have a second or casting vote. A Director or the CEO may, and the Secretary on the requisition of a Director or of the CEO shall, at any time summon a meeting of the Board or of any Committee of the Board.

### **17.2 Quorum**

The Board may fix the quorum necessary for the transaction of the business of the Board or of a committee of the Board and, unless so fixed, a quorum for the transaction of the business of the Board shall be five.

### **17.3 Power to act even without quorum**

The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this by-law as the necessary quorum of the board, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a General Meeting of the Company but for no other purpose.

### **17.4 Chairman -**

The Chairman of the board, and, in his absence, the Deputy Chairman, shall preside at all meetings of the board. If at any meeting of the board, neither the Chairman nor the Deputy Chairman is present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

### **17.5 Committees-**

The board may delegate any of their respective powers to committees consisting of such Director or Directors as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the board.

### **17.6 Chairman of Committees –**

Any committee appointed by the board may elect a chairman of its meetings. If no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number

to be Chairman of the meeting.

#### **17.7 Committees – meeting and voting –**

Any committee appointed by the board may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Directors present, and in case of equality of votes the Chairman of the meeting shall have a second or casting vote.

#### **17.8 Validation of appointment of Director –**

All acts done by any meeting of the board or of a committee of the board, or by any person acting as a Director, shall, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any such Director or persons acting as aforesaid, and that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

#### **17.9 Resolution in writing –**

A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the board or of any committee of the board shall be as valid and effectual as if it had been passed at such a meeting duly convened and held.

### **18. THE SECRETARY**

#### **Appointment of Secretary**

The Secretary shall be appointed by the board for such term, at such remuneration, and upon such conditions, as it may think fit, and any Secretary so appointed may be removed by the board.

### **19. ACCOUNTS**

#### **19.1 Accounts to be kept-**

The board shall cause proper books of account to be kept with respect to: -

- (i) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place; and
- (ii) the assets and liabilities of the Company.

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

#### **19.2 Books of accounts-**

The books of account shall be kept at the registered office of the Company or at such other place or places in St. Lucia as the board thinks fit and shall be open to the inspection of the Directors.

#### **19.3 Inspection of books of accounts-**

The Board shall from time to time determine whether, and to what extent, and at what times and

places, and under what conditions and regulations, the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company, except as conferred by the Companies Act, or authorised by the board, or by the Company in General Meeting.

#### **19.4 Accounts, balance sheets and reports-**

The Board shall from time to time, in accordance with the Companies Act cause to be prepared, and to be laid before the Company in General Meeting, such accounts, balance sheets and report as are required by the said Act.

#### **19.5 Copies of balance sheet and report**

A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the Auditor's report, shall, not less than twenty-one days before the date of the meeting, be sent to all such members as are entitled to receive notice of General Meetings of the Company. Provided that this By-law shall not require a copy of these documents to be sent to any person of whose address the Company is not aware.

**19.6** All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such manner as the directors may from time to time designate by resolution.

### **20. AUDIT**

#### **Auditors to be appointed-**

Auditors shall be appointed, and their duties regulated, in accordance with the Companies Act.

### **21. INDEMNITY**

#### **Directors and officers entitled to indemnity**

Directors, CEO, Auditors, Secretary and other officers for the time being of the Company and other trustees (if any) for the time being acting in relation to any of the affairs of the Company, and every one of them, and every one of their heirs, executors and CEO, shall be indemnified and secured harmless out of the assets and property of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or, any of their heirs, executors or CEO, 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, in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own willful neglect or default respectively, and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them, or for joining in any receipts for the sake of confirmity or for any bankers or other persons with whom any monies 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 monies of or belonging to the Company shall be placed out 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, unless the same shall happen by or through their own willful neglect or default respectively.

## 22. WINDING UP

### **Procedure on Winding up –**

In the event of and upon the winding up of the Company, whether voluntary or otherwise, at any time, the assets of the Company (other than the rights vested in or controlled by the Company pursuant to these articles and any sums distributable in accordance with the Rules) shall, in so far as they are available for the purpose, be given or transferred to some other institution or institutions having objects similar to the objects of the Company to be determined by the members of the Company at or before the time of dissolution.

Signed by Chairman of the Board

Date

Signed by Company Secretary

Date

Bye-laws of the Hewanorra Musical Society (HMS) Incorporated