

Turnaround Management Association-Montreal/ Association De Redressement D'Entreprises-Montreal

GENERAL BY-LAW NUMBER 2014- 1

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1 INTERPRETATION

1.01 Meaning of Words

In this By-Law and all other By-Laws, resolutions and Board Regulations of the Corporation, unless otherwise defined:

- (a) “Act” means the *Canada Not-for-profit Corporations Act*, S.C. 2009, c.23, including the Government Regulations made pursuant to the *Act*, and any statute or regulations that may be substituted, as amended from time to time;
- (b) “Annual Business” shall include: consideration of the financial statements; consideration of the audit engagement or review engagement report, if any; election of Directors; appointment of (and, as applicable, reappointment of the incumbent) Public Accountant and fixing or authorizing the Board to fix their remuneration;
- (c) “Annual Meeting” means an annual meeting of Members, as provided in section 6.01;
- (d) “Articles” means any document or instrument that incorporates the Corporation or modifies its incorporating document or instrument, including articles of incorporation, restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, articles of revival, letters patent, supplementary letters patent or a special act;
- (e) “Board” means the Directors of the Corporation from time to time;
- (f) “Board Regulation” means a regulation passed by the Board in accordance with Article 7;
- (g) “By-Law” means this by-law and any other by-law of the Corporation that may be in force;
- (h) “Corporation” means ***Turnaround Management Association-Montreal/ Association De Redressement D'Entreprises-Montreal***;
- (i) “Director” means a member of the Board;
- (j) “Government Regulations” means the regulations made under the *Act* as amended, restated or in effect from time to time;
- (k) “Member” means a person who has become a Member in accordance with section 2.01;
- (l) “Officer” means an officer elected or appointed pursuant to Article 8 or by Board Regulation;
- (m) “Ordinary Resolution” means a resolution passed by Written Resolution or by a majority of the votes cast on that resolution;
- (n) “Protected Person” means: (1) each person acting or having previously acted in the capacity of a Director or Officer; (2) any other person acting or having

previously acted in that capacity at the express prior request of the Corporation; and (3) the respective heirs, executors and administrators, estate, successors and assigns of a person, who:

- (i) is a Director of the Corporation;
 - (ii) is an Officer of the Corporation;
 - (iii) is a member of a committee of the Corporation; or
 - (iv) has undertaken at the express direction of the Corporation, or, with the express direction of the Corporation is about to undertake, any liability on behalf of the Corporation or any body corporate controlled by the Corporation, whether in the person's personal capacity or as a Director, Officer, employee or volunteer of the Corporation or such body corporate;
- (o) "Public Accountant" means the public accountant of the Corporation appointed pursuant to Article 15;
- (p) "Special Business" means (1) all business transacted at a Special Meeting, and (2) all business transacted at an Annual Meeting other than Annual Business;
- (q) "Special Meeting" means any duly convened meeting of Members that is not an Annual Meeting;
- (r) "Special Resolution" means a resolution passed by Written Resolution or by a majority of not less than two-thirds (2/3rds) of the votes cast at a meeting of the Members on the resolution;
- (s) "TMA" means the Turnaround Management Association, an international non-profit association with headquarters in Chicago, Illinois; and
- (t) "Written Resolution" means a resolution in writing signed by all the Directors or Members entitled to vote on that resolution at a meeting of the Board or the Members, as the case may be, and which is valid as if it had been passed at a meeting of the Board or Members.

2 MEMBERSHIP

2.01 Composition

Subject to the Articles, there shall be one (1) class of Members in the Corporation. Membership in the Corporation shall be available only to natural persons:

- (a) interested in furthering the Corporation's purposes;
- (b) who are and remain members in good standing of the TMA; and
- (c) who pay the annual membership fees prescribed by the TMA from time to time.

2.02 Members' Rights

Each Member shall be entitled to receive notice of, attend and vote at all meetings of the Members of the Corporation.

2.03 Termination of Membership

Membership in the Corporation automatically terminates upon the occurrence of any of the following events:

- (a) the resignation in writing of a Member of the Corporation;
- (b) if the Member ceases to be a member in good standing of the TMA;
- (c) the death, insolvency or dissolution, as applicable, of a Member;
- (d) the expiration of a Member's term of membership;
- (e) the expulsion of a Member from the Corporation in accordance with section 2.05;
- (f) the liquidation or dissolution of the Corporation under the *Act*, or
- (g) the cessation of membership for failure to pay membership dues as provided in section 2.04.

2.04 Membership Dues

- (a) In addition to any fees prescribed by and payable to TMA, the Board may set membership dues payable to the Corporation from time to time.
- (b) Members shall be notified in writing of the membership dues at any time payable by them to the Corporation and, if any are not paid within two (2) calendar months of the membership renewal date, the Members in default shall automatically cease to be Members of the Corporation.
- (c) Notwithstanding termination of membership, a former Member remains liable for any membership dues payable to the Corporation under the authority of this section 2.04 prior to termination of the membership.

2.05 Discipline of Members

- (a) The Board shall have authority to suspend or expel any Member from the Corporation for any one (1) or more of the following grounds:
 - (i) violating any provision of the Articles, By-Laws, or written policies of the Corporation or of the TMA Code of Ethics, as amended from time to time;
 - (ii) carrying out any conduct which may be detrimental to the Corporation or to the TMA, as determined by the Board in its sole discretion; or
 - (iii) for any other reason that the Board, in its sole and absolute discretion, considers to be reasonable, having regard to the purposes of the Corporation.
- (b) In the event the Board determines that a Member should be expelled or suspended from membership in the Corporation, the President, or such other Officer as may be designated by the Board, shall provide twenty (20) days' notice of suspension or expulsion to the Member and shall provide reasons for the proposed suspension or expulsion. The Member may make written submissions to the President, or such other Officer as may be designated by the Board before the end of the twenty (20) day period.
- (c) In the event that no written submissions are received, the President, or such other Officer as may be designated by the Board, may proceed to notify the Member that the Member is suspended or expelled from membership in the Corporation. If written submissions are received in accordance with this section 2.05, the Board will consider such submissions in arriving at a final decision and shall notify the Member concerning such final decision within a further twenty (20) days from the date of receipt of the submissions. The Board's decision shall be final and binding on the Member, without any further right of appeal.

2.06 No Compensation for Members

A Member shall not be entitled to any compensation upon termination of membership.

3 BOARD OF DIRECTORS

3.01 Board

Immediately following confirmation of this By-Law by the Members, the number of Directors shall be fixed at thirteen (13) Directors. The Members thereafter delegate to the Board the right to fix the number of Directors from time to time.

3.02 Qualifications

Each Director shall:

- (a) be an individual who is at least eighteen (18) years of age;
- (b) not have the status of a bankrupt;
- (c) be a member in good standing of the Corporation;
- (d) not be a person who has been found under applicable law to be incapable of managing property; and
- (e) not be a person who has been declared incapable by a court in Canada or elsewhere.

If a person ceases to be qualified as provided in this section 3.02, the person thereupon ceases to be a Director and the vacancy so created may be filled in the manner prescribed by section 3.04.

3.03 Removal of Directors

- (a) The Members may by Ordinary Resolution remove a Director from office at a Special Meeting called for that purpose before expiration of the Director's term of office and may elect a person to replace the removed Director for the remainder of the term of office.
- (b) Where the Members do not fill the vacancy created by the removal of a Director, the vacancy may be filled in accordance with section 3.04.

3.04 Vacancies

- (a) Except as provided in the *Act*, so long as a quorum of the Directors remains in office, a vacancy on the Board may be filled by Ordinary Resolution of the Directors of the Corporation. If no quorum of Directors exists, the remaining Directors shall call a Special Meeting to fill a vacancy on the Board.
- (b) The Directors may not fill a vacancy resulting from an increase in the number or the minimum or maximum number of Directors provided for in the Articles or a failure to elect the number or minimum number of Directors provided for in the Articles.

3.05 Remuneration of Directors

The Directors of the Corporation shall serve as such without remuneration. Directors shall, however, be entitled to receive reimbursement for reasonable expenses incurred in carrying out their duties on behalf of the Corporation.

3.06 Past Presidents

Past presidents of the Corporation may participate in all meetings of the Board, but may not vote thereat unless they are also Directors.

4 ELECTION OF THE BOARD

4.01 Election of Directors

Subject to the provisions of the *Act* and Articles, Directors shall be elected by the Members from the candidates duly nominated pursuant to section 4.05. In order to be elected, a candidate must receive the vote of at least seven (7) Members at the applicable Annual Meeting.

In the event that there are a greater number of candidates than the maximum number of permitted Directors, then:

- (a) the candidate(s) with the least number of votes shall be deemed to not be elected and
- (b) in the event of a tie in the number of votes for the candidates for the last available position(s) on the Board, there shall be a run-off vote, at the same Annual Meeting, involving such candidates (only) to determine which candidate(s) shall occupy such the last available position(s).

4.02 Term of Office

The term of office of a Director shall be one year, to expire at the next Annual Meeting following election, or, if no successor is elected at the Annual Meeting, to expire when a successor is elected.

4.03 Re-Election

A Director shall be eligible to serve for a total of seven (7) consecutive one-year terms. As a transitional measure and for the purposes of determining such seven-year period, a Director's service on the Board prior to his or her appointment or re-election at the Annual Meeting to be held on or around mid-December 2014 shall not be considered.

4.04 Elections

At each Annual Meeting, the Directors shall be elected.

4.05 Nominations

Candidates for the office of Director shall comprise:

- (a) the slate of candidates for office proposed by the Board's nominating committee, or if there is no nominating committee, by the Board; and

- (b) the non-incumbent candidates whose written nominations are signed by,
 - (i) at least three Directors; or
 - (ii) one Director and twenty Members

and submitted to the Secretary at any time before the close of business thirty five (35) days prior to the date of the Annual Meeting of the Members.

4.06 Forms

The Board may prescribe the form of nomination paper and the form of a ballot.

5 MEETING OF DIRECTORS

5.01 Calling Meetings

Meetings of the Board may be called by the President, Vice-President, the Secretary or any two (2) Directors and shall be held at the place specified in the notice.

5.02 Meeting following Annual Meeting

The Board shall hold a meeting as soon as reasonably possible following the Annual Meeting of the Corporation for the purpose of organization, the election and appointment of Officers and the transaction of any other business, and no notice shall be required for this meeting as long as this meeting is held on the same day as the Annual Meeting of the Corporation.

5.03 Regular Meetings

The Board may appoint one (1) or more days in each year for regular meetings of the Board at a set place and time. A copy of any resolution of the Board fixing the place and time of such regular meetings of the Board shall be sent to each Director as soon as possible after being passed, but no other notice shall be required for any such regular meeting except as may be required pursuant to the *Act*.

5.04 Those Entitled To Be Present

The only persons entitled to be present at a meeting of Directors shall be the Directors and any other person invited by the chair of the Meeting, except as provided in section 3.06 hereof.

5.05 Notice of Meetings

Subject to the provisions of sections 5.02 and 5.03, notice of the time, place and date of any meeting of the Directors and the nature of the business to be conducted shall be given to each Director:

- (a) by courier, personal delivery, fax, e-mail or other electronic method at least two (2) days before the meeting is to take place, excluding the date on which notice is given; or
- (b) by mail at least fourteen (14) days before the meeting is to take place, excluding the date on which notice is given.

5.06 Meetings by Electronic Conference

- (a) A Director may participate in a meeting of the Board by means of an electronic or other communication device that permits all participants to communicate adequately with each other during the meeting. Any person participating by electronic conference is deemed to be present at that meeting. Any security, confidentiality or other considerations with respect to the conduct of such a meeting shall be as determined by the Board from time to time.
- (b) The President, Vice-President, the Secretary or the Secretary-Treasurer may call a meeting of the Board and provide that the meeting be held entirely by telephone or electronic means that permits all participants to communicate adequately with each other during the meeting.

5.07 Quorum

A quorum for the transaction of business at meetings of the Board shall be at least a majority of the Directors.

5.08 Voting

The method of voting at any meeting of the Board shall be determined by the chair of the meeting prior to any vote being taken. Each Director shall have one (1) vote on each question raised at any meeting of the Board, and all questions shall be determined by a majority of the votes cast. In the case of an equality of votes, the vote shall be deemed to have been lost.

5.09 Written Resolutions

A Written Resolution, signed by all the Directors entitled to vote on that resolution at a meeting of Directors, is valid.

5.10 Adjournments

Any meeting of Directors may be adjourned to any time. Any business that might have been transacted at the original meeting from which the adjournment took place may be transacted upon the resumption of the adjourned meeting. No notice is required for the resumption of any adjourned meeting if the time and place of the adjourned meeting is announced at the original meeting.

6 MEETINGS OF THE MEMBERS

6.01 Annual Meeting

- (a) An Annual Meeting shall be held within Canada, unless a place outside Canada is specified in the Articles or if all Members entitled to vote at the meeting consent to holding the Annual Meeting at a place outside Canada, at a place and date and time determined by the Board, for the purpose of conducting the Annual Business and any Special Business.
- (b) The Annual Meeting shall be held not later than fifteen (15) months following the last Annual Meeting provided that any Annual Meeting shall be held within six (6) months of the financial year end of the Corporation.

6.02 Meetings by Electronic Conference

- (a) A Member may participate in a meeting of Members by means of an electronic or other communication device that permits all participants to communicate adequately with each other during the meeting. Any person participating by electronic conference is deemed to be present at that meeting. Any security, confidentiality or other considerations with respect to the conduct of such a meeting shall be as determined by the Board from time to time.
- (b) The Board, President or Vice-President may call a meeting of the Members and provide that the meeting be held entirely by telephone or electronic means that permits all participants to communicate adequately with each other during the meeting.

6.03 Special Meeting

The Board may at any time call a Special Meeting for the transaction of any business specified in the notice calling the meeting. A Special Meeting may be held separately from or together with an Annual Meeting. Members with at least 5% of the voting rights may requisition a meeting by submitting a written requisition of the Members to the Board.

6.04 Fixing a Record Date

The Directors may fix a record date for each meeting to determine which Members are entitled to receive notice of the meeting and entitled to vote at the meeting. The day shall be between twenty-one (21) days and sixty (60) days before the day on which the meeting is to be held. If the Directors do not fix a record date for which Members are entitled to receive notice of the meeting, then the day shall be at the close of business on the day immediately preceding the day on which notice is given or if no notice is given, the day of the meeting. If the Directors do not fix a record date for which Members are entitled to vote at the meeting, then the day shall be ten (10) days after the record date for Members entitled to notice, or if no such date is fixed, then at the close of business on the day immediately preceding the day on which notice is given or if no notice is given, the day of the meeting.

6.05 Notice of Meetings

Notice of the time, place and date of an Annual Meeting or Special Meeting and sufficient information for a Member to make a reasoned judgment on the business to be considered, including the information on any Special Resolution to be submitted to the meeting, shall be given to each Member entitled to vote at the meeting, to each Director and to the Public Accountant of the Corporation by:

- (a) mail, courier or personal delivery, during a period of twenty-one (21) to sixty (60) days before the day on which the meeting is to be held;
- (b) electronic means, during a period of twenty-one (21) to thirty-five (35) days before the day on which the meeting is to be held. If a Member requests that notice of a meeting be given by non-electronic means, the notice will be sent by mail, courier or personal delivery as provided in section (a);
- (c) posting the notice on a notice board including the Corporation's website where such information is regularly posted and that is located in a place frequented by the Members, at least thirty (30) days before the day on which the meeting is to be held;

Whenever the number of Members exceeds two hundred and fifty (250), by publication:

- (d) in one (1) or more newspapers circulated in the municipalities in which the majority of the Members reside at the addresses recorded in the register of Members, at least once in each of the three (3) weeks immediately before the day on which the meeting is to be held; or
- (e) in a publication of the Corporation sent to all Members at least once during a period of twenty-one (21) days to sixty (60) days before the day on which the meeting is to be held.

6.06 Those Entitled To Be Present

The only persons entitled to be present at a meeting of Members shall be:

- (a) those entitled to vote at the meeting, including Members and proxy holders;
- (b) the Directors and the Public Accountant of the Corporation, and
- (c) such other persons who are entitled or required under any provision of the *Act*, the Articles or By-Laws of the Corporation to be present at the meeting.

Any other person may be admitted only on the invitation of the chair of the meeting or by Ordinary Resolution of the Members.

6.07 Quorum

- (a) A quorum for the transaction of business at meetings of the Members shall be at least ten (10) Members of the Corporation entitled to vote, and present in person or represented by proxy.
- (b) Provided however that where:
 - (i) less than a quorum, but two (2) or more, persons are present in person one-half hour after the commencement time specified in the notice calling the meeting of Members; and
 - (ii) the business transacted is limited to the selection of a chair and a secretary for the meeting, the recording of the names of those present, and the passing of a motion to adjourn the meeting with or without specifying a date, time and place for the resumption of the meeting, then two (2) persons present in person constitute a quorum.
- (c) No business shall be transacted at any meeting of the Members unless the necessary quorum is present at the commencement of such meeting.
- (d) If a quorum is not present at the opening of a meeting of Members, the Members present may adjourn the meeting to a fixed time and place but may not transact any other business.

6.08 Chair

The President shall serve as chair at any meeting of Members, or, in the event of the absence or inability to act of the President, the Vice-President shall serve as chair. In the absence of the President and the Vice-President, the Members present and entitled to vote and present at any meeting of Members shall choose another Director as chair. If no Director is present or if all the Directors present decline to act as chair, the Members present and entitled to vote shall choose a Member to be chair.

6.09 Voting by Members

- (a) The method of voting at any meeting of the Members shall be determined by the chair of the meeting prior to any vote being taken. Each Member shall have one (1) vote on each question raised at any meeting of the Members, and all questions shall be determined by Ordinary Resolution, unless otherwise specified. In the case of an equality of votes, the vote shall be deemed to have been lost.
- (b) At all meetings of Members, every question shall be decided by a show of hands unless otherwise required by a By-Law of the Corporation or the *Act* or unless a ballot is required by the chair of the meeting or requested by any three (3) Members acting together. Whenever a vote by show of hands has been taken upon a question, unless a ballot is requested, a declaration by the chair of the meeting that a resolution has been carried or lost by a particular majority and an entry to that effect in the minutes of the Corporation is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

6.10 Electronic, Mail or Telephone Voting

The Directors may provide for Members to vote by mail, telephone or electronic means instead of proxy voting. Such alternative means of voting must:

- (a) allow for verification that the votes are made by the Members entitled to vote; and
- (b) not allow the Corporation to identify how each Member voted.

6.11 Proxies

- (a) Unless the Directors allow for electronic voting in accordance with section 6.10, every Member entitled to vote at meetings of Members may, by means of a proxy, appoint a person to attend the meeting on the Member's behalf to act in the manner, to the extent and with the power conferred by the proxy and the Government Regulations. A proxy shall be in writing. The proxyholder need not be a Member.
- (b) A proxy shall be executed by:
 - (i) the Member entitled to vote;
 - (ii) the attorney of the Member entitled to vote authorized in writing under a valid power of attorney; or
 - (iii) if the Member is a body corporate, under its corporate seal, if any, or by an Officer or attorney duly authorized by the body corporate.
- (c) A proxy is valid only at the meeting in respect of which it is given or at a continuation of that meeting after an adjournment.
- (d) Subject to the Government Regulations, a proxy may be in such form as the Board prescribes or in such other form as the chair of the meeting may accept as sufficient. However, where the proxy has been created by a person other than the Member executing the proxy, the proxy shall contain the information set out in Appendix A to the By-Laws.
- (e) A proxy shall be deposited with the secretary of the meeting before any vote is called under its authority, or at such earlier time and in such manner as the Board may prescribe. The Board may set a deadline to deposit proxies, which shall not

exceed forty-eight (48) hours prior to the meeting excluding Saturdays and holidays.

6.12 Ballot

A Member can demand a ballot during the meeting either before or after any vote by show of hands. If at any meeting a vote by ballot is requested on the election of a chair, it must be taken forthwith without adjournment. If a vote by ballot is requested on any other question, it shall be taken in the manner and time as the chair of the meeting directs. The result of a vote by ballot shall be deemed to be the resolution of the meeting at which it was requested. A request for a vote by ballot may be withdrawn at any time prior to the taking of the ballot.

6.13 Adjournments

Any meeting of Members may be adjourned to any time by the chair of the meeting. Any business that might have been transacted at the original meeting from which the adjournment took place may be transacted upon the resumption of the adjourned meeting. No notice is required for the resumption of any adjourned meeting where the resumption of the meeting occurs less than thirty (30) days from the date of the original meeting, other than an announcement at a meeting that is adjourned.

6.14 Written Resolutions

A Written Resolution signed by all the Members entitled to vote on that resolution at a meeting of Members, including an Annual Meeting, is valid as if it had been passed at an Annual Meeting or Special Meeting, provided that the following matters may not be dealt with by Written Resolution:

- (a) the resignation, removal or replacement of a Director, where a written statement has been submitted by the Director giving reasons for resigning or opposing his or her removal or replacement; and
- (b) the resignation, removal or replacement of the Public Accountant, where a written statement has been submitted by the Public Accountant giving reasons for resigning or opposing his or her removal or replacement.

7 BOARD REGULATIONS

7.01 Board Regulations

The Board may make Board Regulations with regard to any matter not inconsistent with the *Act* and the By-Laws.

8 OFFICERS

8.01 Officers

There may be a President and such other Officers that may be elected or appointed by Board Regulation from time to time. Subject to the *Act*, the Articles and the By-Laws, the terms and duties of such Officers shall be defined in the Board Regulations passed by the Board from time to time.

8.02 President May Attend All Meetings

The President, if any, shall have the right to receive notice of, to attend and to speak at but not to vote (unless otherwise also a Director) at all meetings of the Board, any committee of the Board, including the Executive Committee, and any meeting of the Members, except those meetings where the terms of employment, compensation or performance of the President are discussed.

8.03 Remuneration of Officers or Employees

Any Officer who is a Director shall not be entitled to remuneration for acting as such, but shall be entitled to reimbursement for reasonable expenses incurred in carrying out their duties. The Board shall fix the remuneration of any other Officers or employees, or may delegate such responsibility to the President.

9 COMMITTEES

9.01 Committees

Subject to the *Act* and the By-Laws, the Board may by Board Regulation appoint such committees as it deems appropriate from time to time and set the rules governing such committees.

9.02 Executive Committee

The Board may appoint from among the Directors of the Corporation an Executive Committee and delegate to the Executive Committee any of the powers of the Directors except those powers listed in section 9.03.

9.03 Limits on Authority of Committees

No committee, including the Executive Committee, has authority to:

- (a) submit to the Members any question or matter requiring approval of the Members;
- (b) fill a vacancy among the Directors or in the office of Public Accountant or appoint additional Directors;
- (c) incur obligations, including issuing debt obligations, except as authorized by the Board;
- (d) approve any financial statements;
- (e) adopt, amend or repeal any By-Law; or
- (f) establish contributions to be made, or dues to be paid, by Members.

10 CONFLICT OF INTEREST

10.01 Conflict of Interest

In accordance with the *Act* and any Board Regulations, Directors and Officers shall disclose any interests, whether direct, indirect or imputed, in any matter as required by the *Act* and comply with all other requirements in the *Act* in respect of such conflict of interest.

11 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

11.01 Insurance

- (a) The Corporation shall purchase and maintain appropriate liability insurance for the benefit of the Corporation and each person acting or having previously acted in the capacity of a Director, Officer or any other capacity at the express prior request of the Corporation. The insurance shall address coverage limits in amounts per occurrence with an aggregate maximum limit as deemed appropriate by the Board and shall include:
 - (i) property and public liability insurance;
 - (ii) Directors' and Officers' insurance; and
 - (iii) may include such other insurance as the Board sees fit.
- (b) The Corporation shall ensure that each Director, Officer or other person contemplated by subsection (a) is added as a named insured (or would qualify as part of a category of persons that are insured) to any policy of Directors' and Officers' insurance maintained by the Corporation.
- (c) No coverage shall be provided for any liability relating to a failure to act honestly and in good faith with a view to the best interests of the Corporation.
- (d) It shall be the obligation of any person seeking insurance coverage or indemnity from the Corporation to co-operate fully with the Corporation in the defence of any demand, claim or suit made against such person, and to make no admission of responsibility or liability to any third party without the prior agreement of the Corporation.

11.02 Directors and Officers Liability Exclusion

Absent the failure to act honestly and in good faith in the performance of the duties of office, and save as may be otherwise provided in any legislation or law, no present or past Director or Officer of the Corporation shall be personally liable for any loss or damage or expense to the Corporation arising out of the acts (including wilful, negligent or accidental conduct), receipts, neglects, omissions or defaults of such Director or Officer or of any other Director or Officer or employee, servant, agent, volunteer or independent contractor arising from any of the following:

- (a) insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation;
- (b) insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Corporation shall be placed out or invested;
- (c) loss or damage arising from the bankruptcy or insolvency of any person, firm or corporation including any person, firm or corporation with whom or which any monies, securities or effects shall be lodged or deposited;
- (d) loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with monies, securities or other assets belonging to the Corporation; and
- (e) loss, damage or misfortune whatever which may occur in the execution of the duties of the Director's or Officer's respective office or trust or in relation thereto;
- (f) loss or damage arising from any wilful act, assault, act of negligence, breach of fiduciary or other duty or failure to render aid of any sort.

11.03 Pre-Indemnity Considerations

Before giving approval to the indemnities provided in section 11.04, or purchasing insurance provided in section 11.01, the Board shall consider:

- (a) the degree of risk to which the Director or Officer is or may be exposed;
- (b) whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance;
- (c) whether the amount or cost of the insurance is reasonable in relation to the risk;
- (d) whether the cost of the insurance is reasonable in relation to the revenue available; and
- (e) whether it advances the administration and management of the property to give the indemnity or purchase the insurance.

11.04 Indemnification of Directors, Officers and Others

- (a) Every Protected Person shall be indemnified and saved harmless, including the right to receive the first dollar payout, and without deduction or any co-payment requirement to a maximum limit per claim made as established by the Board from and against all costs, charges and expenses which such Protected Person sustains or incurs:
 - (i) in or in relation to any demand, action, suit or proceeding which is brought, commenced or prosecuted against such person in respect of any act, deed, matter or thing whatsoever, made, done or permitted or not permitted by such person, in or in relation to the execution of the duties of such office or in respect of any such liability; or
 - (ii) in relation to the affairs of the Corporation generally;
save and except such costs, charges or expenses as are occasioned by the failure of such person to act honestly and in good faith in the performance of the duties of office.
- (b) Such indemnity will only be effective:
 - (i) upon the exhaustion of all available and collectible insurance provided to the Protected Person by the Corporation inclusive of whatever valid and collectible insurance has been collected; and
 - (ii) provided that the Protected Person has carried out all duties assigned to such person which are subject of the claim in complete good faith so as to comply with the conditions of the insurance policy concerning entitlement to coverage.
- (c) The Corporation shall also indemnify any Protected Person in such circumstances designated by law, upon approval by the Board.
- (d) Nothing in this By-Law shall limit the legal right of any person, firm or corporation entitled to indemnity to claim indemnity apart from the provisions of this By-Law.

12 EXECUTION OF DOCUMENTS

12.01 Execution of Documents

The Board may by Board Regulation prescribe the person(s) authorized to execute classes of documents on behalf of the Corporation. All documents executed in accordance with the Board Regulations are binding on the Corporation without further action or formality.

13 BORROWING BY THE CORPORATION

13.01 General Borrowing Authority

The Board may, without authorization of the Members:

- (a) borrow money on the credit of the Corporation;
- (b) issue, reissue, sell, pledge or hypothecate debt obligations of the Corporation;
- (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

The Board may delegate these powers to a committee of Directors.

14 FINANCIAL YEAR

14.01 Financial Year Determined

The financial year of the Corporation shall terminate on the last day of December in each year or on such other date as the Board may determine.

15 PUBLIC ACCOUNTANT

15.01 Board May Make Initial Appointment

The Board may, following incorporation, appoint a Public Accountant to hold office until the first Annual Meeting. The Public Accountant must meet the requirements in the *Act*.¹

15.02 Annual Appointment

Subject to the *Act* and its Government Regulations, the Members of the Corporation at each Annual Meeting shall appoint one (1) or more Public Accountants. The Public Accountant shall hold office until the close of the next Annual Meeting and if an appointment is not made, the incumbent Public Accountant continues in office until a successor is appointed.

¹For indicative purposes, Section 180(1) of the Act (as of June, 2014) provides that a Public Accountant must:

- (a) be a member in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province;
- (b) meet any qualification under an enactment of a province for performing any duty a person is required to perform under sections 188 to 191 of the Act (review engagement, audit engagement, report on financial statements);
- (c) unless the Public Accountant is the subject of a relieving order under section 180(6), be independent of the Corporation, its affiliates, or the Directors or officers of the Corporation or its affiliates.

15.03 Removal of Public Accountant

The Members may, by Ordinary Resolution passed at a Special Meeting, remove any Public Accountant before the expiration of the term of office in accordance with the *Act*.

15.04 Vacancy in the Office of Public Accountant

The Board shall fill any vacancy in the office of Public Accountant but, while the vacancy continues, any remaining Public Accountant may act.

15.05 Remuneration of Public Accountant

The remuneration of a Public Accountant appointed by the Members may be fixed by the Members by Ordinary Resolution, or shall be fixed by the Board if the Members do not do so.

16 NOTICE

16.01 When notice deemed given

When notice is given under the By-Laws by the following means, that notice is deemed to have been given at the following time:

- (a) if given by mail to the last address shown on the Corporation's records, notice is deemed given on the third day after mailing;
- (b) if given in writing by courier or personal delivery, notice is deemed given when delivered;
- (c) if given by e-mail, notice is deemed given when sent;
- (d) if posted on a notice board pursuant to section 6.05(c), notice is deemed given on the date of posting;
- (e) if published pursuant to sections 6.05(d) or 6.05(e), notice is deemed given on the date of publication; and
- (f) if provided by other electronic means, notice is deemed given when transmitted.

In the event that more than one permitted means of notice is given in respect of any given communication, then notice is deemed to have been given as of the shortest of the deemed delays resulting from among such means of notice actually used.

16.02 Declaration of Notice

At any meeting, the declaration of the Secretary or chair of the meeting that notice has been given pursuant to this By-Law shall be sufficient and conclusive evidence of the giving of such notice. No formal notice of a meeting is necessary if all those entitled to notice are present or if those absent have signified their consent to the meeting being held without notice and in their absence.

16.03 Computation of Time

In computing the date when notice must be given under any provision in the By-Laws requiring a specified number of days' notice of any meeting or other event, a period of days is deemed to commence on the day following the event that began the period and is deemed to terminate at

midnight of the last day of the period, except that if the last day of the period falls on a holiday, the period terminates at midnight of the next day that is not a holiday.

16.04 Omissions and Errors

Any resolution passed or proceeding taken at a meeting of the Board, a committee of the Board or Members shall not be invalidated by:

- (a) an error in notice that does not affect its substance;
- (b) the accidental omission to give notice; or
- (c) the accidental non-receipt of notice by any Director, Member or Public Accountant.

Any Director, Member or Public Accountant may at any time waive notice of, and ratify and approve any proceeding taken at any meeting.

16.05 Waiver

Where a notice or document is required to be sent pursuant to the By-Laws or the *Act*, the person entitled to receive the notice or document may consent in writing to waive either the sending of the notice or document or the time within which the notice or document must be sent.

17 BY-LAWS AND EFFECTIVE DATE

17.01 Effective Date of this By-Law

This By-Law shall only be effective upon the issuance of the Corporation's Certificate of Continuance under the *Act* by Industry Canada.

17.02 Amendments requiring Special Resolution

Amendments to the following sections of this By-Law shall only be effective upon approval of the Members by Special Resolution:

- (a) Member Composition, section 2.01;
- (b) Members' Rights, section 2.01(b);
- (c) Number of Directors, section 3.01;
- (d) Notice of Meetings, section 6.05;
- (e) Proxies, section 6.11;
- (f) Amendments requiring Special Resolution, section 17.02; and
- (g) any section that adds, changes, or removes a provision that is contained in the Corporation's Articles.

17.03 By-Laws and Effective Date

- (a) Subject to the Articles and section 17.02, the Board of Directors may make, amend or repeal any By-Law that regulates the activities or affairs of the Corporation. Subject to section 17.02, any such By-Law, amendment or repeal shall be effective from the date of the resolution of Directors until the next meeting

of Members where it may be confirmed, rejected or amended by Ordinary Resolution of the Members.

- (b) If the By-Law amendment or repeal is confirmed or confirmed as amended by the Members, it remains effective in the form in which it was confirmed. The By-Law amendment or repeal ceases to have effect if it is not submitted to the Members at the next meeting of Members or if it is rejected by the Members at the meeting.

18 REPEAL OF PRIOR BY-LAWS

18.01 Repeal

Subject to the provisions of section 18.02 hereof, all prior By-Laws, resolutions and other enactments of the Corporation inconsistent in either form or content with the provisions of this By-Law are repealed.

18.02 Prior Acts

The repeal of prior By-Laws, resolutions and other enactments shall not impair in any way the validity of any act or thing done pursuant to, or ratified further to, any such repealed By-Laws, resolution or other enactment.

ENACTED by the Directors as a By-Law of *Turnaround Management Association-Montreal/ Association De Redressement D'Entreprises-Montreal* this _____ day of _____, 2014.

President

Secretary

CONFIRMED by the Members in accordance with the *Canada Not-for-profit Corporations Act* on the _____ day of _____, 2014.

President

Secretary

Certificate of Continuance issued by Industry Canada on the _____ day of _____, 2014, and thus is the date upon which this By-Law becomes effective pursuant to section 17.01.

Copy of the signed and fully approved By-Laws provided to the Ministry of Industry on the _____ day of _____, 20__. (required to be deposited within one year of approval).

APPENDIX A

FORM OF PROXY

Where a proxy has been created by a person other than the Member executing the proxy, the form of proxy must meet the following requirements;

- (a) it must indicate, in bold-face type:
 - (i) the meeting at which it is to be used;
 - (ii) that the Member may appoint a proxy holder, other than a person designated in the form of proxy, to attend and act on the Member's behalf at the meeting; and
 - (iii) instructions on the manner in which the Member may appoint the proxy holder;
- (b) contain a designated blank space for the date of the signature;
- (c) provide a means for the Member to designate some other person as proxy holder, if the form of proxy designates a person as proxy holder;
- (d) provide a means for the Member to specify that the membership registered in the Member's name is to be voted for or against each matter, or group of related matters, identified in the notice of meeting, other than the appointment of a Public Accountant and the election of Directors;
- (e) provide a means for the Member to specify that the membership registered in the Member's name is to be voted or withheld from voting in respect of the appointment of a Public Accountant or the election of Directors; and
- (f) state that the membership represented by the proxy is to be voted or withheld from voting, in accordance with the instructions of the Member, on any ballot that may be called for and that, if the Member specifies a choice under subparagraph (iv) or (v) with respect to any matter to be acted on, the membership is to be voted accordingly.