

**Company Number: C21/69**

**THE COMPANIES ACT, 2015**

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**PUBLIC COMPANY LIMITED BY SHARES**

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**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**of**

**BRITISH AMERICAN TOBACCO KENYA PLC**

**THE COMPANIES ACT, 2015**

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**PUBLIC COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

**of**

**BRITISH AMERICAN TOBACCO KENYA plc\***

- 1** The name of the Company is **“BRITISH AMERICAN TOBACCO KENYA plc.**

**EXCLUSION OF OTHER REGULATIONS**

- 2** Neither the regulations contained in Table A in the First Schedule to the Companies Act (Chapter 486) (repealed) nor the regulations contained in the Companies Act (General) Regulations 2015 (Model Articles for Public Companies Limited by Shares) shall apply to the Company except insofar as they are repeated or contained in these Articles.

**INTERPRETATION**

- 3** In these Articles, if not inconsistent with the subject or context:
- (a) **“Act”** shall mean the Companies Act 2015 as may be amended from time to time;
  - (b) **“Articles”** shall mean these Articles of Association as now framed or as from time to time altered by special resolution;
  - (c) **“Board”** shall mean the Board of Directors of the Company, or the Directors present at a duly convened meeting of the Directors, or any duly authorised committee at which a quorum is present;
  - (d) **“Company”** shall mean British American Tobacco Kenya plc.;
  - (e) **“debenture”** shall include debenture stock;
  - (f) **“Director”** means a director for the time being of the Company and shall include an alternate director;
  - (g) **“dividend”** shall include bonus shares;

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*\* The name of the Company was on the 20<sup>th</sup> April 1998 changed from B.A.T. Kenya Limited to British American Tobacco Kenya Limited and was on 10<sup>th</sup> June 2016 changed to British American Tobacco Kenya plc.*

- (h) **“Executive Directors”** shall mean a member of the Board who also serves as a manager of the Company;
- (i) **“holder”** shall mean in relation to shares, the member whose name is entered in the register of members as the holder of the shares;
- (j) **“Kenya”** shall mean the Republic of Kenya;
- (k) **“Managing Director”** shall mean any Director who has day to day responsibility for managing the affairs of the Company, irrespective of the title by which the Director is known;
- (l) **“member”** shall mean a shareholder in the Company;
- (m) **“month”** shall mean a calendar month;
- (n) **“Non-executive Directors”** shall mean a member of the Board who does not form part of the management team and who is not an employee of the Company or affiliated with it in any other way but can own shares in the Company;
- (o) **“notice”** shall mean notice in writing or any substitute for writing as further described in **Article 1732172**;
- (p) **“office”** shall mean the registered office of the Company;
- (q) **“officer of the Company”** shall mean any Director, manager or Secretary of the Company;
- (r) **“paid up”** shall mean paid up or credited as paid up;
- (s) **“Register”** shall mean the register of members of the Company;
- (t) **“seal”** shall mean the common seal of the Company;
- (u) **“Secretary”** shall include a temporary or assistant Secretary and any person appointed by the Board to perform any of the duties of the secretary;
- (v) **“shares”** shall mean any shares (howsoever classified) in the share capital of the Company from time to time;
- (w) **“Shillings”** and **“Shs.”** shall mean Kenya shillings, the lawful currency of the Kenya;
- (x) **“Statutes”** shall mean the Act and every other statute or subordinate legislation for the time being in force concerning companies and affecting the Company (including The Capital Markets Act (Chapter 485A of the Laws of Kenya), The Central Depositories Act, No. 4 of 2000 and The Unclaimed Financial Assets Act, No. 40 of 2011) including every amendment or re-enactment (with or without amendment) thereof for the time being in force;

- (y) reference to ‘a pandemic or a national disaster’ in these Articles includes a pandemic or a national disaster or other circumstances declared by the Government or its agencies;
- (z) the expression “in writing” includes references to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form, whether sent or supplied in electronic form or made available on a website or otherwise;
- (aa) words signifying the singular number only shall include the plural number and vice versa;
- (bb) words signifying the masculine gender only shall include the feminine gender;
- (cc) words importing persons shall include any legal or natural person, partnership, association, trust, company, joint venture, agency, governmental authority or other body, entity or organization (whether corporate or unincorporate) and that person's personal representatives, heirs or successors (as the case may be) or permitted assigns unless expressly stated to the contrary; **and**
- (dd) reference to any section or provision of any statute, unless the context otherwise requires, includes any corresponding or substituted section or provision of any amending, consolidating or replacement statute;

**4** Subject to Article **32**, any words or expressions defined in the Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

## **BUSINESS**

**5** The ~~Head~~-head office and registered office of the Company shall be situate in Nairobi or in such other place in Kenya as the Directors may from time to time determine and the business of the Company shall be carried on and its affairs governed, directed, managed and controlled by ~~a~~-the Board ~~sitting in Kenya~~.

**6** ~~Save as limited by applicable laws or these Articles, the business of the Company is unrestricted.~~ Any branch or kind of business which by ~~the Memorandum of Association of the Company or~~ these Articles is either expressly or by implication authorised to be undertaken by the Company, may be undertaken by the Directors at such time or times as they shall think fit.

**7** The Company shall not give any financial assistance in connection with a purchase or subscription made or to be made by any person of or for any shares in the Company, nor shall the Company make a loan for any purpose whatsoever, on the security of its shares, but nothing in this Article shall prohibit transactions mentioned in the proviso to **Section 442(2) of the Act**.

**8** The Company may exercise the powers of paying commissions conferred by **Section 331 of the Act**, provided that the rate per cent or the amount of the commission paid or agreed to be

paid and the number of shares for which persons have agreed for a commission to subscribe absolutely shall be disclosed in the manner required by that section and that such commission shall not exceed ten per cent (10%) of the price at which the shares in respect whereof the same is paid are issued or an amount equal to ten per cent (10%) of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The Company may also, on any issue of shares, pay such brokerage as may be lawful.

## SHARE CAPITAL

- 9** The share capital of the Company comprises ordinary shares with a par value of Shillings ~~At the date of adoption of these Articles the share capital of the Company is one billion Shillings (Shs.1,000,000,000) divided into one hundred million (100,000,000)<sup>1</sup> ordinary shares of ten (Shs.10) each<sup>2</sup>.~~
- 10** Without prejudice to any special rights previously conferred on the holders of any shares or class of shares, any share in the Company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company by ordinary resolution determines.

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- (i) <sup>2</sup> \* The original share capital of the Company was Shillings Four million (Shs.4,000,000/-) divided into Two hundred thousand (200,000) shares of Shillings Twenty (Shs.20/-) each.
- (ii) By an Ordinary Resolution passed on the 30<sup>th</sup> day of January 1965, the share capital was increased to Shillings Sixty million (Shs.60,000,000/-) by the creation of Two million eight hundred (2,800,000) new shares of Shillings Twenty (Shs.20/-) each.
- (iii) By an Ordinary Resolution passed on the 22<sup>nd</sup> day of January 1976, the share capital was increased to Shillings Seventy-five million (Shs. 75,000,000/-) by the creation of One million five hundred thousand (1,500,000/-) new shares of Shillings Ten (Shs. 10/-) each.
- (iv) By an Ordinary Resolution passed on the 4<sup>th</sup> day of November. 1980, the share capital was increased to Shillings One hundred and fifty million (Shs.150,000,000/-) by the creation of an additional Seven million five hundred thousand (7,500,000) new shares of Shillings Ten (Shs.10/-) each.
- (v) By an Ordinary Resolution passed on the 4<sup>th</sup> day of May 1983 the share capital was increased to Shillings Two hundred and fifty million (Shs.250,000,000/-) by the creation of an additional Ten million (10,000,000) new shares of Shillings Ten (Shs.10/-) each.
- (vi) By an Ordinary Resolution passed on 27<sup>th</sup> day of May 1987 the share capital was increased to Shillings Three hundred and seventy-five million (Shs.375,000,000/-) by the creation of an additional Twelve million five hundred thousand (12,500,000) new shares of Shillings Ten (Shs.10/-) each.
- (vii) By an Ordinary Resolution passed on 21 April 1994 the share capital was increased to Shillings Seven hundred and fifty million (Shs.750,000,000/-) by the creation of an additional Thirty-seven million five hundred thousand (37,500,000) new shares of (Shs. 10/-) each.
- (viii) By an Ordinary Resolution passed on 13th April 2000 the share capital was increased to Shillings one billion (1,000,000,000/-) by the creation of an additional Twenty-five million (25,000,000) new shares of (Shs.10/-) each.

## VARIATION OF RIGHTS

- 11** Subject to the provisions of **Part XX of the Act**, any preference shares may, with the sanction of a special resolution, be issued upon the terms that they are to be redeemed, or are liable, to be redeemed at the option of the Company **or the holder** of shares on the terms and in the manner as the Directors may by special resolution determine before the issue of the shares.
- 12** If at any time, the share capital is divided into different classes of shares, any of the rights for the time being attached to any share or class of shares may, subject to the provisions of the Act and notwithstanding that the Company may be or is about to be in liquidation, be altered, abrogated or varied in such manner (if any) as may be provided in such rights, or, in the absence of any such provision, either with the consent in writing of the holders of not less than three quarters (3/4) of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of shares of that class duly convened and held in accordance with **Article 13** (but not otherwise).
- 13** To every such separate general meeting of the holders of any class of shares, the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, so far as applicable apply, subject to the following provisions, namely:
- (a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be two (2) persons holding or representing by proxy at least one-third (1/3) of the issued shares of the class. If at any adjourned meeting of such holders such quorum as aforesaid is not present, those of such holders or proxies who are present shall be a quorum;
  - (b) any holder of shares of the class present in person or by proxy may demand a poll;  
[and](#)
  - (c) every holder of the class in question present in person or by proxy shall be entitled on a poll to one (1) vote for every share of that class held by him.
- 14** The rights or privileges attached to any shares shall not, unless otherwise expressly provided by the conditions of issue of such shares, be deemed to be altered, abrogated or varied by the creation or issue of any new shares ranking *pari passu* in all respects (save as to the date from which such new shares shall rank for dividend) with or subsequent to those already issued or by the reduction of capital paid up on such shares.

## ALLOTMENT OF SHARES

- 15** Subject to the provisions of the Statutes and of these Articles, the shares in the capital of the Company shall be at the disposal of the Board which may allot, grant options over, offer or otherwise deal with or dispose of them to such persons, for such consideration, on such terms and conditions and at such times as it may determine provided that no shares shall be issued at a discount. [Subject to the provisions of the Statutes and with the exception of an employee share scheme, the Company shall not allot a share except where at least one-quarter \(1/4\) of its nominal value and the whole of any premium is paid up.](#)

- 16** The Directors may not exercise any power conferred on them to allot shares in the Company without the prior authorisation of the Company by ordinary resolution in accordance with **Section 329 of the Act**.
- 17** Unless otherwise determined by ordinary resolution of the Company in a general meeting pursuant to **Article 15**, and except in the case of the issue of shares pursuant to any rights previously conferred by or in accordance with these Articles, whenever the Board proposes to issue any shares it shall offer them in the first instance to existing members in a rights issue made in proportion as nearly as may be to the number of existing shares held by them, as at the date of the offer, but subject to such exclusions or other arrangements as the Board considers to be necessary or expedient in relation to fractional entitlements or legal, regulatory or practical problems under laws or regulations of an overseas territory or the requirements of a regulatory body or ~~stock~~ securities exchange. Such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time or (as prescribed by the Statutes but in any event of not less than one (1) month) within which the offer, if not accepted, will be deemed to be declined and, after the expiration of that time (if the offer is not accepted) or on the earlier receipt of an intimation from the member to whom the offer is made that he declines to accept the shares offered, the Board may allot or otherwise dispose of those shares to such persons and upon such terms as may be decided by it. The Board may likewise so dispose of any shares which, by reason of the ratio which the number of shares offered bears to the total number of existing issued shares, cannot in the opinion of the Board be conveniently offered under this Article.
- 18** The ordinary resolution referred to in **Article 15** may generally authorise the Board to allot shares up to an aggregate nominal amount specified in the resolution on specified terms and/or for a specified period otherwise in connection with a rights issue to members. Such authorisation may include the power to allot shares for cash or in exchange for non-cash consideration or other assets to be acquired by the Company or any of its subsidiaries. The Board may, during any period prescribed by the ordinary resolution referred to in **Article 15**, make offers or agreements which require or might require shares to be allotted after the prescribed period expires and they may allot shares in accordance with the offers of agreements as if the prescribed period had not expired.

Provided that the allotment of shares for non-cash consideration shall be done in accordance with **Section 368 of the Act**.

#### **TRUSTS NOT RECOGNISED**

- 19** Except as required by applicable laws, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or compelled in any way to recognise, even when having notice thereof, any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or, except only as by these Articles or by law otherwise required or provided, any right in respect of any share other than an absolute right to the entirety thereof in the registered holder.

## **CERTIFICATES**

- 20** Every certificate shall be issued within two (2) months after allotment or lodgement of the instrument of transfer, shall be under the seal, and shall contain such specification as required pursuant to **Section 495** of the Act. Subject to the Statutes, every person whose name is entered as a member in the Register shall be entitled, without payment, to one (1) certificate for all his shares of each class and, when part only of the shares comprised in a certificate is sold or transferred, to a new certificate for the remainder of the shares so comprised. If a member shall require additional certificates he shall pay such sum as the Board may from time to time determine having regard to prevailing market conditions and regulatory requirements for each additional certificate. In the case of shares held jointly by up to three (3) persons, the Company shall not be bound to issue more than one (1) certificate therefor and delivery of a certificate to one (1) of the joint holders shall be sufficient delivery to all.
- 21** If a share certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, as the Board may from time to time determine having regard to prevailing market conditions and regulatory requirements and, in the case of loss or destruction, on such terms, if any, as to evidence and indemnity and payment of the reasonable expenses of the Company of investigating such evidence, as the Board may think fit and, in case of defacement, on delivery of the old certificate to the Company.

## **CENTRAL DEPOSITORIES ACT, 2000**

- 22** The provisions of the Central Depositories Act, No. 4 of 2000 (the “**CD Act**”) as amended or modified from time to time shall apply to the Company to the extent that any securities (as such term is defined in section 2(1) of the CD Act) of the Company are in part or in whole immobilised or dematerialised or are required by the regulations or rules issued under the CD Act to be immobilised or dematerialised in part or in whole, as the case may be. Any provisions of these Articles that are inconsistent with the CD Act or any rules or regulations issued or made pursuant thereto shall be deemed to be modified to the extent of such inconsistencies in their application to such securities. For the purposes of these Articles, immobilisation and dematerialisation shall be construed in the same way as they are construed in the CD Act.
- 23** Where any securities of the Company are forfeited pursuant to these Articles after being immobilised or dematerialised, the Company shall be entitled to transfer such securities to a securities account designated by the Board for this purpose.

## **LIEN**

- 24** The Company shall have a first and paramount lien on every share (other than a fully paid share) registered in the name of a member, whether solely or jointly with others, for all monies, whether presently payable or not, due by such member or his estate, either alone or jointly with any other person, to the Company. The Board may at any time waive any lien which has arisen and may declare any share to be wholly or in part exempt from the provisions of this Article. The Company’s lien on a share shall extend to any amount payable in respect of it.



- 25** The Company may sell, in such manner as the Board may determine, any share on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor before the expiration of fourteen (14) days after an enforcement notice in writing, specifying the shares concerned, stating and demanding payment of the sum presently payable and giving notice of the intention to sell in default, has been given to the holder of the share or to the person entitled by reason of his death or bankruptcy to the share.
- 26** To give effect to any such sale, in the case of a share in certificated form, the Board may authorise any person to execute an instrument of transfer of the share sold to the purchaser thereof. The purchaser shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 27** To give effect to any such sale, in the case of a share in uncertificated form, the Board may require the operator of a relevant system to convert the share into certificated form and after such conversion, authorise any person to execute an instrument of transfer and/or take such other steps (including giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer.
- 28** The net proceeds of any such sale, after payment of the cost thereof, shall be applied in or towards payment or satisfaction of such part of the amount in respect of which the lien exists as is presently payable and any residue shall (subject to a like lien for sums not presently payable as existed upon the share prior to the sale) be paid to the person entitled to the share at the time of the sale.
- 29** A statutory declaration by a Director or the Secretary that a share has been sold to satisfy the Company's lien on a specified date is conclusive of the facts stated in it as against all persons claiming to be entitled to the share and constitutes good title to the share.

#### **CALLS ON SHARES**

- 30** Subject to the terms of allotment of shares, the Board may, from time to time, make calls upon the members as it thinks fit in respect of any monies unpaid on their shares (whether in respect of the nominal value of the shares or by way of premium) and each member shall, subject to the Company giving to him at least fourteen (14) days' notice (the **Call Notice**) specifying the time or times and place of payment (including the ability to make payments in instalments), pay to the Company at the time or times and place so specified, the amount (and no more than) called on his shares. Before the Company has received any call due under a Call Notice, the call may be amended, revoked or postponed to a later time for payment than is specified in the Call Notice, as the Board may determine. A person on whom a call is made will remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.
- 31** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

- 32** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 33** If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay all costs, charges and expenses that the Company may have incurred by reason of such non-payment together with interest on the unpaid amount from the day appointed for payment thereof to the time of actual payment at an interest rate determined by the Board from time to time having regard to prevailing market conditions and regulatory requirements but such interest rate shall not in any case exceed ten per cent (10%) per annum. The Board may in its discretion waive payment of such costs, charges, expenses or interest wholly or in part.
- 34** Any sum which, by the terms of issue of a share, becomes payable on allotment or on any fixed date, whether on account of the nominal amount of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which, by the terms of issue, it becomes payable. In the case of non-payment, all the relevant provisions of these Articles as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become due and payable by virtue of a call duly made and notified.
- 35** The Board may, if it thinks fit, receive from any member willing to advance it, all or any part of the monies uncalled and unpaid on any shares (whether in respect of the nominal value of the shares or the premium) held by him and may pay on all or any of the monies so advanced (until the same would, but for such advance, become presently payable) interest at a rate determined by the Board from time to time having regard to prevailing market conditions and the Statutes, and as may be agreed upon between the Board and the member paying such sum in advance.

#### **TRANSFER OF SHARES**

- 36** Subject to the Statutes, where any class of shares is, for the time being, a participating security, title to shares of the class which are recorded on an operator's register of members as being held in uncertificated form may be transferred by means of the relevant system concerned.
- 37** Subject to the Statutes, the transfer of any share in the Company shall be in writing in any usual or common form and shall be signed by or on behalf of the transferor and the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. All instruments of transfer which are registered shall be retained by the Company, subject to **Article 184**.
- 38** Subject to the Statutes, the registration of transfers may be suspended at such time and for such periods as the Board may from time to time determine, provided always that such registration shall not be suspended for more than thirty (30) days in any year.
- 39** The Company shall not charge a fee for registering any instrument of transfer or other instrument or document relating to or affecting the title to any share. The Company shall be

entitled to charge a fee of such amount, not exceeding such sum as the Board may from time to time prescribe having regard to prevailing market conditions and regulatory requirements, on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney or other instrument relating to or affecting the title to any share.

- 40** The Board may, in its absolute discretion, refuse to register a transfer of a share if it is not in respect of a share which is fully paid up, if it is not in respect of only one (1) class of share, and if it does not relate to a share on which the Company has a lien or which is to a person of whom the Board does not approve. Subject as required by the Statutes, the Board may also refuse to register a transfer if it is not accompanied by the certificate for the shares to which it relates (if any certificate has been issued) and/or such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer and the due execution of the transfer by him or, if the transfer is executed by some other person on his behalf, the authority of that person to do so.
- 41** The Board may also decline to recognise any instrument of transfer, unless the instrument of transfer is deposited at the office or such other place as the Board may appoint, accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer or evidence of the right of someone other than the Transferor to make the transfer on the transferor's behalf or the instrument of transfer is in respect of more than one (1) class of share.
- 42** If the Board declines to register a transfer or to recognise any instrument of transfer, they shall within two (2) months after the date on which the transfer was lodged with the Company send to the transferee, notice of the refusal. Any instrument of transfer which the Board refuses to register shall (except in the case of fraud) be returned to the person lodging it when notice of refusal is given. The transferor or transferee may request a statement of the reasons for the refusal. If such a request is made the Board shall, within twenty-eight (28) days after receiving the request send the transferor or transferee who made the request a statement of the reasons for the refusal or register the transfer.
- 43** Nothing in these Articles shall preclude the Board from recognising a renunciation of the allotment of any share by the allottee in favour of some other person.

#### **UNCLAIMED ASSETS**

- 44** The Company shall, as required by the Unclaimed Financial Assets Act No. 40 of 2011 [or other applicable laws](#), deliver or pay to the Unclaimed Financial Assets Authority [or any other regulator prescribed by applicable law](#) any unclaimed assets including but not limited to shares and dividends in the Company presumed to be abandoned or unclaimed in law and any dividends remaining unclaimed beyond prescribed statutory periods and the Board may perform such acts as may be necessary to effect such delivery or payment. Upon such delivery or payment, the unclaimed assets shall cease to remain owing by the Company and the Company shall no longer be responsible to the Member or his or her estate, for the relevant unclaimed assets.

## **TRANSMISSION OF SHARES**

**45** If a member dies, his survivors or survivor, where he was a joint holder, and his personal representatives where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to his shares provided that nothing herein contained shall release the estate of a deceased member from any liability in respect of any share solely or jointly held by him. The Board have the same right to refuse or suspend the registration as they would have had if the member had transferred the share before the transmission.

**46** Any person who is entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence as to his title being produced as may from time to time be required by the Board, elect either to be registered as the holder of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made. The Board shall, in either case, have the same right to refuse or suspend registration as it would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy. If the Board refuse registration, the person becoming entitled may request a statement of the reasons for the refusal. If such a request is made, the Board shall, within twenty-eight (28) days after receiving the request send such person a statement of the reasons for the refusal or register such a person as the holder of the share.

A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as the holder of the share, be entitled in respect of it to exercise any right conferred by membership in relation to general meetings of the Company. The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within three (3) months, the Board may withhold payment of all dividends and other monies payable in respect of the share until compliance with the notice has been effected.

**47** If a person elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of a member had not occurred and the notice or transfer were a transfer signed by ~~him~~ that member.

## **FORFEITURE OF SHARES**

**48** If a member fails to pay any call or instalment of a call on the day appointed for payment thereof the Board may, at any time thereafter while any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

- 49** The notice shall specify a date, not more than fourteen (14) days from the date of service of the notice, on or before which and the place where the payment required by the notice is to be made and how payment is to be made and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made or instalment is payable will be liable to be forfeited. The Board may accept the surrender of any shares liable to be forfeited hereunder and, in such case, references herein to forfeiture shall include surrender.
- 50** If the requirements of any such notice are not complied with, any shares in respect of which such notice has been given may, at any time before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Forfeiture shall be deemed to occur at the time of the passing of such resolution by the Board. Unless the Board decides otherwise, no holder of forfeited shares is entitled to receive any dividend or be present or vote (whether in person or by representative or proxy) at any meeting, on a show of hands or on a poll, or to demand a poll or exercise any other privilege as a member. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 51** When any shares have been forfeited, notice of the forfeiture shall forthwith be given to the person who was before forfeiture the holder of the shares or, as the case may be, to the person entitled to the shares by reason of the death or bankruptcy of the holder, but no forfeiture shall be invalidated by any omission or neglect to give such notice as aforesaid. An entry of the forfeiture or surrender shall be made in the Register.
- 52** Forfeited shares shall be deemed to be the property of the Company and may be sold, re-allotted or otherwise disposed of as the Board may think fit but, at any time before a sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the Board may determine. The Board may, if necessary, authorise some person to transfer a forfeited share to any other person as aforesaid.
- 53** A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares and shall surrender to the Company for cancellation the certificate for the shares forfeited. The holder shall, notwithstanding the forfeiture, remain liable to pay to the Company all monies which, at the date of forfeiture, were then payable by him to the Company in respect of the shares together with interest thereon, from and including the date of forfeiture to and including the date of payment, at a rate determined by the Board from time to time having regard to prevailing market conditions and the Statutes but such interest rate shall not in any case exceed ten per cent (10%) per annum. The Company may enforce payment without being under any obligation to make allowance for the value of the shares forfeited or for any consideration received on their disposal.
- 54** At the time of forfeiture all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the holder whose share is forfeited and the Company shall be extinguished, except in respect of those rights and liabilities which are expressly saved by these Articles, or which are given or imposed by the Act on past members.

- 55** If the Company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the Company the proceeds of the sale, net of any commission, and excluding any amount that was, or would have become payable and had not, when the share was forfeited, been paid by that person in respect of the share. Notwithstanding non-payment on the forfeited share, interest is not payable to such a person in respect of the proceeds and the Company is not required to account for any money earned on them.
- 56** A statutory declaration that the declarant is a Director or the Secretary of the Company and that shares have been duly forfeited or surrendered or sold to satisfy a lien of the Company on a date stated in the declaration shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares. Such declaration and the receipt of the Company for the consideration, if any, given on the sale, re-allotment or disposition of the shares and the share certificate delivered to a purchaser or allottee thereof shall (subject to the execution of a transfer if the same be required) constitute a good title to the shares and the person to whom the shares are sold, re-allotted or otherwise disposed of shall be registered as the holder thereof and shall not be bound to see to the application of the consideration (if any) nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, surrender, sale, re-allotment or other disposition of the shares. Where a forfeited share is to be transferred to any person for its disposal the Board may appoint some person to execute an instrument of transfer thereof.

#### **INCREASE OF CAPITAL**

- 57** The Company may from time to time, by ordinary resolution, increase its share capital by such sum to be divided into shares of such amounts as the resolution shall prescribe.

#### **ALTERATION OF CAPITAL**

- 58** The Company may, from time to time, by ordinary resolution:
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (b) sub-divide its shares or any of them into shares of smaller amount than is fixed by these ~~Articles Memorandum of Association~~ (subject, nevertheless, to the provisions of **Section 405 of the Act**); and
  - (c) cancel any shares which, at the date of the passing of the resolution, have not been issued or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

The resolutions whereby any share is sub-divided may determine that as between the holder of shares resulting from such sub-division one (1) or more of such shares may have some preference or special privilege or advantage as to dividend, capital, voting or otherwise, over or may have such deferred rights or may be subject to such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares.

## REDUCTION OF CAPITAL

- 59 The Company may from time to time, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with and subject to any incident authorised and consent required by law in accordance with **Sections 407 – 418 of the Act.**

## ACQUISITION BY THE COMPANY OF ITS OWN SHARES

- 60 The Company may acquire its own shares in accordance with **Sections 423- 439 of the Act.**

## ADJUSTMENTS ON CONSOLIDATION

- 61 Whenever, as a result of a consolidation of shares, any members would become entitled to fractions of a share, the Board may, in its absolute discretion, settle any difficulty relating thereto. In particular, the Board may determine which shares are consolidated into each consolidated share and may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable (or at any other price approved by the Company) to any person. The Board may distribute the net proceeds of sale (subject to the retention by the Company of small amounts the cost of distribution of which would be disproportionate to the amounts involved) in due proportion among those members, and may authorise some person to execute an instrument of transfer of the shares to, or in accordance with, the directions of the purchaser of the shares. The purchaser is not bound to see to the application of the purchase money nor is his title to the shares affected by any irregularity in, or invalidity of, the proceedings in reference to the sale.

## GENERAL MEETINGS

- 62 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 notices calling it. ~~Not more than fifteen (15) months shall elapse between the date of one (1) annual general meeting of the Company and that of the next.~~ The Company shall hold annual general meetings and other general meetings as follows~~shall be held~~:
- (a) a physical meeting at such times and places as the Board shall appoint;
  - (b) a virtual meeting using electronic means (such as video-conferencing and tele-conferencing) and at such time as the Board shall appoint; or
  - (c) a hybrid meeting comprising a partly physical meeting and a partly virtual meeting as set out in paragraphs (a) and (b) above.

Save for physical general meetings under paragraph (a), attendance by a member via electronic means shall be sufficient for all intents and purposes of the relevant general meeting.

## NOTICE OF GENERAL MEETINGS

- 63** Every annual general meeting shall be called by at least twenty-one (21) days' notice in writing (exclusive of the day on which it is served or deemed to be served and of the day for which it is given). The notice shall specify the place, **whether the meeting is physical, virtual or a hybrid of both**, the date and the time of such general meeting and, in case of special business, the nature of that business and shall be given, in the manner hereinafter mentioned or any such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under these Articles, entitled to receive such notices from the Company including the auditors for the time being of the Company; provided that a meeting may be called by shorter notice than that specified in this Article if so agreed by the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent (95%) in nominal value of the shares giving that right.
- 64** The Board may call for a general meeting other than an annual general meeting by at least fourteen (14) days' notice in writing (exclusive of the day on which it is served or deemed to be served and of the day for which it is given). The notice shall specify the place, **whether the meeting is physical, virtual or a hybrid of both**, the date and the time of such general meeting and, in case of special business, the nature of that business and shall be given, in the manner hereinafter mentioned or any such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under these Articles, entitled to receive such notices from the Company.
- 65** In every notice calling a meeting there shall appear, with reasonable prominence, a statement that a member entitled to attend and vote thereat is entitled to appoint one (1) or more proxies to attend and vote instead of him and that a proxy need not be a member.
- 66** It shall be the duty of the Company to give to members entitled to receive notice of the next annual general meeting or general meeting notice of any resolution which may properly be moved, and is intended to be moved, at the meeting. A statement with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting may also be circulated, as appropriate, to members entitled to receive notice of an annual general meeting or general meeting.
- 67** The accidental omission to give notice of a meeting, or (where forms of proxy or other documents are sent out with notices) to send a form or proxy or other document relating to a meeting with a notice, to any person entitled to receive the same, or the non-receipt of a notice of meeting or form of proxy or other document by such person shall not invalidate the proceedings at that meeting.
- 68** Subject to **Article 67**, if the Board, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a general meeting (**physical meeting, virtual meeting or hybrid meeting**) on the date or at the time or place **or using the means** specified in the notice calling the general meeting; it may postpone the general meeting to another date, time **and or** place. When a meeting is so postponed, notice of the **means of attending**, date, time and place of the postponed meeting shall be placed in two (2) national newspapers in Kenya and on the



Company's website. Notice of the business to be transacted at the postponed meeting shall not be required unless it is postponed for thirty (30) days or more.

### **PROCEEDINGS AT GENERAL MEETINGS**

- 69** All business shall be deemed special that is transacted at an annual general meeting or general meeting and also all business that is transacted at an annual general meeting with the exception of the declaration of dividends, the consideration of the accounts and balance sheets, and any other documents accompanying or annexed thereto, the reports of the Directors and auditors, the election of Directors, the appointment of auditors and the fixing of the remuneration of the Directors and auditors.
- 70** Where by a provision contained in the Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the Company not less than twenty-eight (28) days (or such other shorter period as the Act permits) before the meeting at which it is moved, and the Company shall give to the members notice of any such resolution as required by and in accordance with the provisions of the Act.
- 71** No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. Save as otherwise provided by these Articles, three (3) members present (**physically or via electronic means**) in person or by proxy or, in the case of a corporation, represented in accordance with **Article 99** shall be a quorum, provided that one (1) member holding the proxy of one (1) or more other members or one (1) person holding the proxies of two (2) or more members shall not constitute a quorum.
- 72** If within thirty (30) minutes after the time appointed for the meeting a quorum is not present, the meeting, if convened on 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 at such other time and place as the Board may determine, and if at such adjourned meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the members present in person or proxy shall be a quorum and may transact the business for which the meeting was called.
- 73** The Chairman, if any, of the Board shall preside at every general meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen (15) minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall choose some Director present to be Chairman of the meeting, or if no Director is present or if all the Directors present decline to take the chair, the members present shall choose some member present to be Chairman.
- 74** The Chairman of any meeting at which a quorum is present may with the consent of the meeting and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place as the meeting determines but no business shall be transacted at any adjourned meeting except business left unfinished at the meeting from which the adjournment took place. Whenever a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given in the same manner 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.

75 In addition, the Chairman of any meeting may at any time, without the consent of the meeting, postpone or adjourn any meeting (whether or not it has commenced, or whether or not a quorum is present) ~~either~~ to such date, time and or place as he thinks fit and allowing for attendance using applicable means such as electronic means, where it appears to him that:

- (a) the members wishing to attend cannot be conveniently accommodated in the place appointed for the meeting; or
- (b) the conduct of persons present at the meeting prevents or is likely to prevent the orderly continuation of business; or
- (c) an adjournment is necessary to protect the safety of any person or persons attending the meeting; or
- (d) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted; or
- (e) in relation to virtual and hybrid meetings, members cannot reasonably participate at a general meeting using the electronic means provided.

#### **SECURITY ARRANGEMENTS AND ORDERLY CONDUCT**

76 The Board may direct that any person wishing to attend a physical, virtual or hybrid meeting should submit to such searches or other security arrangements (including age verification and member identification) or other restrictions or arrangements as the Board shall consider appropriate in the circumstances and shall be entitled in its absolute discretion (or to authorise other persons on its behalf) to refuse entry or access to, or eject from, any meeting any person who fails to submit to such searches or security arrangements or otherwise to comply with such security arrangements or restrictions or arrangements.

77 The Chairman of the meeting shall take such action as he reasonably thinks fit to promote the orderly conduct of the business of the meeting as laid down in the notice of the meeting and the Chairman's decision on matters of procedure or matters arising incidentally from the business of the meeting shall be final, as shall be his determination as to whether any matter is of such nature.

#### **DIRECTORS ENTITLED TO ATTEND AND SPEAK**

78 Directors may attend and speak at general meetings and at any separate meeting of the holders of any class of shares, whether or not they are members. The Chairman of the meeting may permit other persons who are not members of the Company or otherwise entitled to exercise the rights of members in relation to general meetings to attend and, at the Chairman of the meeting's discretion, speak at a general meeting or at any separate class meeting.

## ATTENDANCE BY ELECTRONIC MEANS

- 79** In the case of any general meeting, the Board may make arrangements for **simultaneous** attendance and participation by electronic means allowing persons not present together at the same place to attend, speak and vote at the meeting. ~~The arrangements for simultaneous attendance and participation at any place at which persons are participating, using electronic means may include arrangements for controlling or regulating the level of attendance at any particular venue provided that such arrangements shall operate so that all members and proxies wishing to attend the meeting are able to attend at one or other of the venues.~~ The members or proxies at the place or places at which persons are participating via electronic means shall be counted in the quorum for, and be entitled to vote at, the general meeting in question, and that meeting shall be duly constituted and its proceedings valid if the Chairman of the meeting is satisfied that adequate facilities are available throughout the meeting to ensure that the members or proxies attending at the place or places at which persons are participating via electronic means are able to:
- (a) participate in the business for which the meeting has been convened; and
  - (b) ~~see and~~ hear **and if possible, see** all persons who speak (whether through the use of microphones, loud speakers, audio-visual communication equipment or otherwise) in the place at which persons are participating and any other place at which persons are participating via electronic means.

## AMENDMENTS TO RESOLUTIONS

- 80** (1) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- (a) the Chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed;
  - (b) the amendment does not go beyond what is necessary to correct a clear error in the resolution; **and**
  - (c) the amendment does not contravene the Act.
- (2) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- (a) written notice of the terms of the proposed amendment and of the intention to move the amendment have been delivered to the registered office of the Company at least forty-eight (48) hours before the time for holding the meeting or the adjourned meeting at which the ordinary resolution in question is proposed and the proposed amendment does not, in the reasonable opinion of the Chairman of the meeting, materially alter the scope of the resolution;
- or

- (b) the Chairman of the meeting in his absolute discretion, decides that the proposed amendment may be considered or voted on.
- (3) With the consent of the Chairman of the meeting, an amendment may be withdrawn by its proposer before it is voted on. If an amendment proposed to any resolution under consideration is ruled out of order by the Chairman of the meeting, the proceedings on the resolution shall not be invalidated by any error in the ruling.

## POLLS

**81** At any general meeting convened in accordance with **Article 62**, a resolution put to the vote of the meeting shall be decided by voting on a show of hands, secret ballot or voting electronically, unless (before or on the declaration of the result of the ~~show of hands~~ vote or on withdrawal of any other demand for a poll) a poll is demanded:

- (a) by the Chairman of the meeting; or
- (b) by at least five (5) members present in person or by proxy and entitled to vote or, in the case of a corporation, represented in accordance with **Article 99**; or
- (c) by a member or members present in person or by proxy entitled to vote and holding or representing not less than five per cent (5%) of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members present in person or by proxy holding shares in the Company conferring a right to vote at the meeting on which an aggregate sum has been paid up equal to not less than one-tenth (1/10<sup>th</sup>) of the total sum paid up on all the shares conferring that right.

Provided that in any general meeting convened in accordance with **Article 62**, members shall be informed in advance of the vote whether the result of the vote on a resolution shall be based on a simple majority (one member = one vote) or by poll under the principle of one share = one vote, using such means as arranged by the Board.

**82** Unless a poll is duly demanded on a specific resolution and the demand is not withdrawn or where voting is premised on the number of shares held, a declaration by the Chairman of the meeting that a resolution has on a show of hands or via secret ballot or via electronic voting been carried, or carried unanimously, or by a particular majority, or not carried by a particular majority, or lost, and an entry to that effect in the minute book 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. The demand for a poll may be withdrawn.

**83** A poll demanded on the election of a Chairman or on a question of adjournment of any meeting shall be taken immediately. A poll demanded on any other question shall be taken in such manner (including by the use of ballot or voting papers or tickets, or electronic voting) and either forthwith or at such day, time and place as may be directed by the Chairman of the meeting, but in any case not more than thirty (30) days from the date of the meeting or the adjourned meeting at which the poll was demanded and any business other than that upon

which a poll has been demanded may be proceeded with pending the taking of the poll. No poll shall be capable of being demanded under the provisions of **Article 75**.

- 84** The Chairman may appoint scrutineers (who need not be members) and fix a day, time for and the manner of declaration of the result of the poll. The result of a duly demanded poll shall be deemed to be a resolution of the meeting at which the poll was demanded.
- 85** On a poll, votes may be given personally or by proxy or by attorney or by a representative of a corporation appointed in accordance with **Article 99**.
- 86** In the case of an equality of votes, ~~either on a show of hands or on a poll~~, the Chairman of the meeting shall be entitled to a second or casting vote in addition to any other vote he may have, unless the Chairman is not to be counted as participating in the decision-making process for quorum or voting purposes.

### VOTES OF MEMBERS

- 87** Subject to any special terms as to voting upon which any shares may be issued or may for the time being be held, on ~~a show of hands~~ voting by whatever means every member who is present in person or (being a corporation) is present by a representative appointed in accordance with **Article 99** shall have one (1) vote. On a poll every member present in person or by proxy or in attendance via electronic means, or present by a representative appointed in accordance with **Article 99**, shall have one (1) vote for each share of which he is the holder.
- 88** No member shall be entitled to be present at any general meeting or to vote on any question, either personally or by proxy or by a representative appointed in accordance with **Article 99**, at any general meeting or on a poll or to be reckoned in a quorum whilst any call or other sum shall be due and payable to the Company in respect of any of the shares held by him, whether alone or jointly with any other person.
- 89** In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names of the holders stand in the Register.
- 90** A member in respect of whom an order has been made by any court having jurisdiction in matters concerning mental disorder may vote, on a show of hands or on a poll, by any person authorised on his behalf by the Court and the person so authorised may exercise other rights in relation to general meetings, including appointing a proxy. Evidence to the satisfaction of the Board of the authority of the person claiming the right to vote shall be delivered to the registered office of the Company, or such other place as is specified in accordance with these Articles for the delivery of receipt of appointments of proxy, not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised, and in default the right to vote shall not be exercisable.
- 91** No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not

disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman whose decision shall be final and conclusive.

## **PROXIES AND CORPORATE REPRESENTATIVES**

**92** A member is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company. The appointment of a proxy shall be deemed also to confer authority to demand or join in demanding a poll. A proxy need not be a member of the Company. A member may appoint more than one (1) proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him. References in these Articles to an appointment of proxy include references to an appointment of multiple proxies.

**93** A proxy may be validly appointed only by a notice (the **Proxy Notice**) in writing that states the name and address of the member appointing the proxy and the general meeting in relation to which the person is appointed and is executed by the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its common seal or under the hand of an officer or duly authorised attorney of such corporation. No Proxy Notice shall be valid after the expiration of twelve (12) months from the date of its execution.

An appointment of a proxy and the power of attorney or other authority, if any, under which it is signed shall be deposited at the registered office of the Company or at such other place in Kenya as may be specified for that purpose in the notice convening the meeting not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, the time appointed for the taking of the poll and, in default, the instrument of proxy shall not be treated as valid.

[Subject to the provisions of the Act, the Board may accept the appointment of a proxy received by electronic means on such terms and subject to such conditions as it considers fit provided the above provisions on the appointment and timelines are adhered to.](#)

**94** The Board shall at the expense of the Company send or make available Proxy Notices or invitations to appoint a proxy to the members by post, [courier](#) or by electronic means or otherwise for use at any general meetings. The accidental omission, or failure due to circumstances beyond the Company's control, to send or make available such an appointment of proxy or give such an invitation to, or non-receipt thereof by, any member entitled to attend and vote at a meeting shall not invalidate the proceedings at the meeting.

**95** The Board may (and shall if and to the extent that the Company is required to do so by the Act) allow a Proxy Notice to be sent or supplied in electronic form subject to any conditions or limitations as the Board may specify. Where the Company has given an electronic address in any instrument of proxy or invitation to appoint a proxy, any document of information relating to proxies for the meeting (including any document necessary to show the validity of, or otherwise relating to the Proxy Notice, or notice of the termination of the authority of a proxy) may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting.

- 96** The Proxy Notice may, whether in hard copy or electronic form be:
- (a) received at the registered office of the Company or such other place in Kenya or at the electronic address specified in the notice convening the meeting, or in any instrument of proxy or any invitation to appoint a proxy sent out or made available to the Company in relation to the meeting as is specified in the notice convening the meeting, or in any appointment of proxy or any invitation to appoint a proxy sent out or made available to the Company in relation to the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting to which it relates; or
  - (b) in the case of a poll taken subsequently to the date of the meeting or adjourned meeting, be received as aforesaid not less than twenty-four (24) hours (or such shorter time as the Board may determine) before the time appointed for the taking of the poll.
- 97** A vote given in accordance with the terms of a Proxy Notice shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the office:
- (a) at least forty-eight (48) hours before the commencement of the meeting or adjourned meeting at which the proxy is used; or
  - (b) for a poll taken more than forty-eight (48) hours after it was demanded, at least twenty-four (24) hours before the time fixed for taking the poll.
- 98** A proxy's authority in relation to a resolution is to be regarded as revoked if the Member who appointed the proxy attends in person the general meeting at which the resolution is to be decided and exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- 99** Subject to the provisions of the Act, any corporation which is a member of the Company may, by resolution of its Directors authorise a person or persons to act as its representative or representatives at any meeting of the Company or at any separate meeting of the holders of any class of shares of the Company. The corporation shall for the purposes of these Articles be deemed to be present at any such meeting if a person or persons so authorised is present at it. The Company may require such person or persons to produce a certified copy of the resolution before permitting him to exercise his powers.

#### **APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 100** Unless and until otherwise determined by the Company by ordinary resolution the number of Directors (disregarding alternate Directors) shall be not less than two (2) and not more than twelve (12).
- 101** The Board shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a casual vacancy, or as an addition to the existing Directors, but so that

the total number of Directors shall not at any time exceed the number fixed by or in accordance with these Articles. Any Director so appointed shall hold office only until the next following Annual General Meeting and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at such meeting.

### **ROTATION OF DIRECTORS**

- 102** At the Annual General Meeting of the Company in every year one-third (1/3) of the Directors for the **time** being or, if their number is not three (3) or a multiple of three (3), then the number nearest one-third (1/3), shall retire from office. A Director retiring at a meeting shall retain office until the dissolution of that meeting.
- 103** Subject to the provisions of this Article, the Directors, if any, to retire by rotation under **Article 102** above shall be those other Directors who have been longest in office since their last appointment or reappointment, but, as between persons who became or were last reappointed Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 104** A retiring Director shall be eligible for re-election **as guided by applicable laws**.
- 105** At a general meeting a motion for the appointment of two (2) or more persons as Directors by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it. For the purposes of this Article a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.
- 106** No person other than a Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of Director at any General Meeting unless not less than three (3) nor more than twenty-one (21) days before the date appointed for the meeting there shall have been left at the office of the Company notice in writing, signed by a member duly qualified to attend and vote at the time meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

### **REMUNERATION OF DIRECTORS**

- 107** The Directors, other than those whose remuneration is determined by agreement between them and the Company, shall be entitled to such remuneration for their services as the Company may, from time to time, in general meeting determine. Such remuneration shall be divided among the Directors in such proportion and manner as they may determine or, failing such determination, equally, except that in such event any Director holding office for less than a year shall only rank in such division in proportion to the period during which he has held office during such year. The Directors shall also be entitled to be reimbursed by the Company in respect of their travelling, hotel and incidental expenses reasonably incurred while engaged on the business of the Company.



- 108** Any Director who, by request of the Board, performs special or extraordinary services or goes or resides abroad on behalf of the Company, may be paid such extra remuneration, whether by way of lump sum, salary, commission, percentage of profits or otherwise, as the Board may determine. Such Director shall not be entitled to vote at such a meeting determining his remuneration.

#### **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

- 109** In addition to any power of removal under the Act, the Company may, by special resolution, remove a Director before the expiration of his period of office and, subject to these Articles, may, by ordinary resolution, appoint another person who is willing to act as a Director, and is permitted by law to do so, to be a Director instead of him. A person so appointed shall be treated, for the purposes of determining the time at which he or any other Director is to retire, as if he had become a Director on the day on which the Director in whose place he is appointed was last appointed or reappointed a Director.

- 110** A person ceases to be a Director as soon as:

- (a) that person ceases to be a Director by virtue of any provision of the Act or is prohibited from being a Director by law; or
- (b) a bankruptcy order is made against that person; or
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts; or
- (d) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- (e) notification is received by the Company from that person that he is resigning or retiring from his office as Director, and such resignation or retirement has taken effect in accordance with its terms; or
- (f) in the case of a Director who holds any executive office, his appointment as such is terminated or expires and the Directors resolve that he should cease to be a Director; or
- (g) that person is absent without permission of the other Directors from meetings of the Directors for more than six (6) consecutive months and the other Directors resolve that he should cease to be a Director; or
- (h) ~~a notice in writing is served upon him personally, or at his residential address provided to the Company for the purposes~~ she/he is removed from office by an ordinary resolution of the Company passed in accordance with **Section 139 of the Act** signed by all the other Directors stating that that person shall cease to be a Director with immediate effect (and such notice may consist of several copies each signed by one (1) or more Directors, but a notice executed by an alternate Director

~~need not also be executed by his appointor and, if it is executed by a Director who has appointed an alternate Director, it need not also be executed by the alternate Director in that capacity).~~

### ALTERNATE DIRECTORS

- 111** Any Director may appoint another Director or any other person (other than a body corporate) who is approved by the Directors to be his alternate to act in his place at any meetings of the Board at which he is unable to be present. An alternate shall be entitled, in the absence of his appointor, to exercise all the rights and powers of a Director and to attend and vote at meetings of the Board at which his appointor is not personally present and, where he is a Director, to have a separate vote on behalf of his appointor in addition to his own vote, but he shall count as only one (1) for the purpose of determining whether a quorum is present. A Director may, at any time, revoke the appointment of an alternate appointed by him. The appointment of an alternate shall be revoked, *ipso facto*, if his appointor ceases for any reason to be a Director or on the happening of any event which, if he were a Director, would cause him to vacate such office. Every appointment and revocation under this Article shall (subject to any approval required) be effected by notice in writing under the hand of the appointor served on the Company and on such alternate.
- 112** An alternate Director shall not (unless the Company by ordinary resolution otherwise determines) be entitled to any fees for his services as an alternate Director, but shall be entitled to be paid such expenses as might properly have been paid to him if he had been a Director.
- 113** An alternate Director shall during his appointment be an officer of the Company and shall alone be responsible to the Company for his own acts and defaults, shall in addition to any restrictions, be subject to the same restrictions as his appointor and shall not be deemed to be an agent of his appointor.
- 114** An alternate whose appointor is a member of the Company shall, in the absence of a direction to the contrary in the instrument appointing him, be entitled to receive notice of and to vote at general meetings of the Company as if he had been appointed a proxy of his appointor under the provisions of these Articles.

### DIRECTORS' CONTRACTS

- 115** A Director may contract with and be interested in any way, whether directly or indirectly, in any actual or proposed contract or arrangement with the Company, either as vendor, purchaser or otherwise, and shall not be liable to account for any profit made by him by reason of any such contract or arrangement. The nature of the interest of the Director in such contract or arrangement shall be declared at the meeting of the Board at which the question is first taken into consideration in accordance with **Section 151 of the Act** and if his interest then exists or, in any other case, at the next meeting of the Board held after he became interested and it shall be the duty of the Director so to declare his interest. No Director or alternate shall vote as a Director in respect of any contract or arrangement in which he is interested and, if he does vote, his vote shall not be counted but he shall, nevertheless, be

counted in the quorum present at the meeting. These prohibitions may, at any time, be suspended or relaxed, to any extent, by the Company in general meeting and they shall not apply:

- (a) to any arrangement for giving a Director any security for advances or by way of indemnity or to any allotment to or any contract or arrangement for the underwriting or subscription by a Director of shares or securities of the Company or any of its subsidiaries; or
- (b) to any contract or dealing in which the Director is interested by reason only of his being a Director or other officer, employee or nominee of any government or corporation or company which, being a member of the Company or holding shares in a corporation or company which is a member of the Company, is interested in such contract or dealing whether directly or indirectly and this exception shall not cease to have effect merely by reason of the fact that the Director is also a shareholder or creditor of any such government, corporation or company or of any corporation or company in which it is interested.

For the purpose of this Article, a general notice given to the Board by a Director at any meeting of the Board to the effect that he is a member of a specified corporation, company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation, company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

- 116** A Director may hold office as a Director or manager of or be otherwise interested in any other company or any corporation in which the Company is in any way interested and shall not, unless otherwise agreed, be liable to account to the Company for any remuneration or other benefits receivable by him from such other company or such corporation.
- 117** A Director may hold any other office or place of profit under the Company, except that of auditor, in conjunction with his office of Director and on such terms as to remuneration and otherwise as the Board shall arrange. Such Director shall not vote at a meeting of the Board determining any such appointment and remuneration.
- 118** A Director may act by himself or through his firm in a professional capacity for the Company, except as auditor of the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director.

### **BORROWING POWERS**

- 119** The Board may exercise all the powers of the Company to borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present or future) and uncalled capital of the Company and to issue debentures, debenture stock and other securities provided that the amount for the time being remaining undischarged of monies borrowed or secured as aforesaid by the Company together with any monies borrowed by any of its subsidiaries and for the time being outstanding (excluding any amounts outstanding on inter-company accounts) after deducting an amount equal to:

- (a) all cash deposits and the balance on each account of the Company and its subsidiaries with banks; and
- (b) any assets which would be included in short term investments in the consolidated balance sheet of the Company and its subsidiaries prepared on the date of the relevant calculation in accordance with which the then latest published audited consolidated balance sheet of the Company and its subsidiaries was prepared,

shall not, without the previous authority of an ordinary resolution of the Company, exceed twice the aggregate of:

- (i) the amount paid up or credited as paid up on the issued share capital of the Company; and
- (ii) the amounts standing to the credit of the reserves of the Company and its subsidiaries; and
- (iii) in so far as not otherwise taken into account, the amount standing to the credit (or as the case may be by deducting the amount standing to the debit) of the profit and loss account,

all as shown in the latest audited consolidated balance sheet of the Company and its subsidiaries after making any necessary adjustment to take account of any variation since the date of such balance sheet in the amount paid up or credited as paid up on the issued share capital of the Company and in the reserves (other than retained earnings) of the Company and its subsidiaries.

**120** The Board shall exercise all voting and other rights or powers of control exercisable by the Company in relation to its subsidiaries (if any) to secure that the aggregate amount undischarged of monies borrowed by all subsidiaries of the Company (excluding amounts outstanding on inter-company accounts) when added to the amount (if any) for the time being remaining undischarged of monies borrowed by the Company will not exceed the limit imposed by **Article 119** without the previous authority provided for in that Article.

**121** The nominal amount of any share capital issued by any company and the principal amount of any monies borrowed otherwise than by the Company and any subsidiary (together in each case with any premium) the repayment whereof is guaranteed by the Company or any subsidiary company shall be taken in account as monies borrowed by the guarantor company for the purposes of **Article 119**.

**122** No person dealing with the Company or its subsidiaries shall be concerned to see or enquire whether the borrowing limit in **Article 119** is observed and no debt incurred or security given in excess of that limit shall be invalid or ineffective unless, at the time when the debt was incurred or security given, the lender or the recipient of the security had actual notice that the borrowing limit had been or was exceeded.

- 123** Monies borrowed for the purpose of repaying (with or without premium) the whole or any part of any outstanding indebtedness and applied to that purpose within four (4) months from the borrowing shall, pending such application, be deemed not to be borrowed monies.
- 124** Any debentures, debenture stock, bonds or other securities may be issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of or exchange into shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise and may be so framed that the monies so raised or secured shall be assignable free from any equities between the Company and the person to whom the same may be issued.

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

- 125** Subject to the provisions of the Statutes, the Memorandum of Association of the Company and these Articles, the business of the Company shall be managed by the Board, which may exercise all such powers of the Company, whether relating to the management of the business or not, as are not by the Statutes or by these Articles required to be exercised by the Company in general meeting and to such regulations, as may be prescribed by special resolution of the Company in general meeting. No such regulation made by the Company in a general meeting shall invalidate any prior act of the Board which would have been valid if such regulation had not been made. The general powers given by this Article shall not be limited or restricted by any special authority or power given to the Board by any other Article.
- 126** The Board may establish any committee for managing any of the affairs of the Company, either in Kenya or elsewhere, and may appoint any persons to be members of such a committee and may fix their remuneration and may delegate to them any of the powers, authorities and discretions vested in the Board, with power to sub-delegate (if the Board so specifies). Any such appointment or delegation may be made upon such terms and subject to such conditions as the Board may think fit and the Board may remove any person so appointed and may annul or vary any such delegation but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
- 127** The Board may exercise or cause to be exercised the voting power conferred by the shares in any subsidiary or an associated company or any power of appointment to be exercised by the Company, in such manner in all respects as it thinks fit (including the exercise of the voting power or power of appointment in favour of the appointment of any Director as a Director or other officer or employee of such company or in favour of the payment of remuneration to the Directors, officers or employees of such company).
- 128** The Board may, by power of attorney, appoint any company, firm, person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the attorney of the Company for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the Board under these Articles, and for such period and subject to such conditions as it may think fit. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers authorities and discretions vested in him.

- 129 The Company may exercise the powers conferred by **Section 42 37 of the Act** with regards to ~~having an official seal for use outside Kenya~~ execution of documents and appointment of persons that can execute documents on behalf of the Company and such powers shall be vested in the Board.
- 130 The Company may maintain a branch Register and the Board may make and vary such regulations as it may think fit regarding the keeping of any such branch Register.
- 131 All cheques, promissory notes, drafts, bills of exchange and other negotiable and transferable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board shall from time to time determine.
- 132 Pursuant to **Section 210 of the Act**, the Board shall cause minutes to be made in books provided for the purpose of recording, in respect of every meeting of the Company, of the Board and of committees formed by the Board, the names of all persons present and all resolutions and proceedings at such meetings ~~and the retention of such minutes for a period of ten (10) years from the date of the meeting~~ shall be in accordance with the law and the Company's policy on records management. The minutes of every such meeting, if purported to be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting shall be *prima facie* evidence of the matters stated therein.
- 133 The Board may grant pensions, annuities, gratuities or other allowances on death, sickness, disability or retirement to:
- (a) any person who is or has been employed by or in the service of the Company or of its holding company or any subsidiary of the Company; or
  - (b) to any person who is or has been a Director or other officer of the Company or of its holding company or any subsidiary of the Company; or
  - (c) to the widow/~~widower~~, family or dependants of any such person.

The Board may establish and maintain or concur with such holding or subsidiary company (if any) as aforesaid in establishing and maintaining any schemes or funds for providing such benefits as aforesaid and may pay out of the funds of the Company any premiums, contributions or sums payable by the Company under the provisions of any such scheme or fund.

#### PROCEEDINGS OF THE BOARD

- 134 The Directors may meet together for the despatch of business, adjourn and otherwise regulate meetings of the Board as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined by the Board, the quorum necessary for the transaction of the business of the Board shall be ~~two~~ three (23) Directors (one (1) Executive Director and two (2) Non-executive Directors) present either personally (at the physical meeting or attending via electronic means) or by alternate, provided that one (1)

person whether a Director or not, although a duly appointed alternate for any number of Directors, shall not constitute a quorum. Where it is impractical or reasonably impossible to achieve quorum owing to incapacitation of Directors e.g. incapacitation of a number of Directors arising from a health pandemic or a national disaster, the quorum necessary for the transaction of the business of the Board shall be two (2) Directors (i.e. one (1) Executive Director and one (1) Non-executive Director) present either personally (at the physical meeting and/or attending via electronic means) or by alternate.

- 135** In determining whether a quorum fixed by **Article 134** exists the following shall be counted in the quorum:
- (a) in the case of a resolution agreed by the Board in telephone communication or other electronic means pursuant to **Article 140**, all such Directors; and
  - (b) in the case of a meeting of the Board, in addition to the Directors present at the meeting any Director in telephone communication with the meeting or attending the meeting via other electronic means.
- 136** Questions arising at any meeting shall be determined by a majority of votes. In case of an equality of votes, the Chairman of the meeting shall have a second or casting vote.
- 137** A Director may at any time, and the Secretary, upon the request of a Director shall, convene a Board meeting. Notice of a Board meeting shall be deemed to be properly given to a Director if it is given to him personally or by word of mouth or sent in writing to him at his last known address, or to any other address given by him to the Company for this purpose. A Director may waive notice of any meeting either prospectively or retrospectively.
- 138** The Board may elect a Chairman of its meetings and determine the periods for which they, respectively, are to hold office. If no such Chairman is elected or if at any meeting the Chairman is not present within fifteen (15) minutes after the time appointed for holding the same, the Directors present may choose one (1) of their number to be Chairman of the meeting.
- 139** A meeting of the Board at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Board.
- 140** The Board, or a committee of the Board, may hold meetings by telephone, either by conference telephone connection(s) or by a series of telephone conversations, or by any communication equipment or other electronic means which allows all persons participating in the meeting to speak and hear each other and if possible, see each other. The views of the Board or a committee of the Board, as ascertained by such telephone conversations or other means and communicated to the Chairman shall be treated as votes in favour of or against a particular resolution. A resolution passed at any meeting held in this manner, and signed by the Chairman, shall be as valid and effectual as if it had been passed at a meeting of the Board (or, as the case may be, of that committee) duly convened and held.
- 141** The continuing Directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the minimum number fixed by or in accordance with

these Articles as the necessary quorum for Board meetings, the continuing Directors may act for the purposes of increasing the number of Directors to that number or of summoning a general meeting of the Company but not for any other purpose.

- 142** The Board may form committees of its members or consisting of one (1) or more of its members and others and may delegate any of its powers to any such committee. 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.
- 143** The meetings and proceedings of any committee consisting of two (2) ~~or~~ or more persons shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board under the last preceding Article.
- 144** A resolution in writing **circulated to all and** signed by **at least 75%** ~~all~~ of the Directors for the time being entitled to receive notice of a meeting of the Board or by all the members of a committee of the Board shall be as valid and effectual as a resolution passed at a meeting of the Board or, as the case may be, of such committee duly called and constituted. Such resolution may be contained in one (1) document or in several documents in like form each signed by one (1) or more of the Directors or members of the committee concerned. Such a resolution need not be signed by an alternate Director if it is signed by the Director who appointed him and a resolution signed by an alternate need not also be signed by his appointor.
- 145** All acts done by the Board, or any committee, or by any person acting as a Director, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid or that he or any Director or member of such committee had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Director or member of such committee and had been entitled to vote unless the Board determines in its discretion that the person purporting to have acted with the authority of the Board did not in fact have such authority by reason of having vacated office or not being entitled to vote as a result of termination or dismissal from his position in the Company.

#### **MANAGING DIRECTOR AND EXECUTIVE DIRECTORS**

- 146** The Board may from time to time appoint a Managing Director who shall have overall responsibility for managing the day to day affairs of the Company. The Board may also appoint one or more senior managers from the management body of the Company as Executive Directors. The Managing Director and Executive Directors shall be appointed for such period and upon such terms as the Board thinks fit and, subject to the provisions of any agreement entered into in any particular case, may revoke such appointment.
- 147** A Managing Director and or Executive Director(s) holding such office as aforesaid shall receive such remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and either in addition to or in lieu of remuneration as a Director.



- 148** The Board may entrust to and confer upon a Managing Director and or Executive Director(s) holding such office as aforesaid any of the powers exercisable by it, other than the powers to borrow money, charge the property and assets of the Company and pay dividends, upon such terms and conditions and with such restrictions as it thinks fit and either collaterally with or to the exclusion of its own powers and may from time to time, subject to the terms of any agreement entered into in any particular case, revoke, withdraw, alter or vary all or any of such powers.

#### **SECRETARY**

- 149** The Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit and the appointment of any Secretary may be terminated by the Board. The relevant provisions of **Part XII of the Act** shall be observed.

#### **THE SEAL AND EXECUTION OF DOCUMENTS**

- 150** The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or a committee authorised by the Board in that behalf and every instrument to which the seal shall be affixed shall be signed by a Director and by the Secretary or by a second Director or by some other person appointed by the Board for that purpose.
- 151** Company may have an official seal for use in any place outside Kenya, which may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorised by a decision of the Board.
- 151A** The Company shall execute documents in accordance with applicable laws including **Section 37 of the Act**.

#### **REGISTER OF DIRECTORS' SHARES AND DEBENTURE HOLDINGS**

- 152** The Register of Directors' shares and debenture holdings shall be kept at the Company's registered office and shall be open to the inspection of any member or holder of debentures of the Company or of any person acting on behalf of the Registrar of Companies between the hours of 10:00am and noon on each day during which the same is bound to be open for inspection pursuant to the provisions of the Act.

#### **DIVIDENDS AND RESERVES**

- 153** The Company may, in general meeting, declare dividends but without prejudice to the powers of the Company to pay interest on share capital, no dividend shall be payable except out of the profits of the Company in accordance with **Part XVII of the Act**, or in excess of the amount recommended by the Board. **Where a general meeting cannot be convened due to a pandemic or a national disaster or other circumstances permitted by the Government or its agencies, the Board may distribute dividends subject to shareholder ratification of the distribution in the next general meeting.**

- 154** The Board may, from time to time, declare or pay to the members, interim dividends as may appear to the Board to be justified by the profits of the Company.
- 155** Subject to the rights of any persons entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid up on the shares in respect whereof the dividends are declared but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this Article as paid up on the share. A dividend shall be apportioned and paid proportionately by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it but, if any share is issued on terms providing that it shall rank for dividend or be entitled to dividends declared as from a particular date, such share shall rank for or be entitled to dividend accordingly.
- 156** The Board may deduct from any dividend payable on a share any sums of money presently payable by the person to whom the dividend is payable, to the Company on account of calls on account of payment required under a valid enforcement notice or otherwise. The Board may retain any dividend or other money payable on or in respect of a share on which the Company has a lien and may apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists.
- 157** No dividend or other monies payable in respect of a share shall bear interest against the Company.
- 158** **Subject to Sections 492 and 493 of the Act**, with the sanction of a general meeting, any dividend may be paid wholly or in part by the distribution of specific assets and, in particular, of paid-up shares or debentures of any other company or in any one or more of such ways. Where any difficulty arises in regard to such distribution, the Board may settle the same as it deems expedient and, in particular, may issue fractional certificates and fix the value for distribution of such specific assets or any part of them and may determine that cash payments shall be made to any member upon the footing of the value fixed in order to adjust the rights of those entitled to participate in the dividend, and may vest any such specific assets in trustees upon trust for the members entitled to the dividend as may seem expedient to the Board.
- 159** Any dividend, interest or other sum payable in cash to the holder of shares may be paid:
- (a) by cheque or warrant sent through the post and addressed to such holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first on the Register in respect of the shares at his or their risk, or
  - (b) by direct bank transfer or other automated electronic system of funds transfer, or
  - (c) by a mobile telephone money transfer system.

In the case of transfers under **Article 160 158 (b) or (c)** the funds shall be transmitted to the bank account or mobile telephone number or account information provided by the member (or joint holders) to the Company. Payment of the cheque or warrant or confirmation of payment made by a transmitting entity to the transferee of an electronic transfer shall in each case be a good discharge to the Company.

Any one (1) of two (2) or more joint holders may give effectual receipts for any dividends or other monies payable in respect of the shares held by such joint holders.

- 160** The Board may, before recommending any dividend; set aside out of the profits of the Company and carry to reserve such sum as it thinks proper which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied. Pending such application such sums may, at the like discretion either be employed in the business of the Company or be invested in such investments (other than shares of the Company or its holding company, if any) as the Board may from time to time think fit. The Board may divide the reserve into such special funds as they think fit and may consolidate into one (1) fund any special funds or any parts of any special fund into which the reserve may have been divided. The Board may also, without placing the same to reserve, carry forward any profits which it may think prudent not to divide.
- 161** The Board may, with the authority of an ordinary resolution of the Company, offer any holders of ordinary shares the right to elect to receive ordinary shares, credited as fully paid, instead of cash in respect of the whole (or some part, to be determined by the Directors) of any dividend specified by the ordinary resolution (otherwise known as scrip dividends).
- 162** [Subject to Article 44](#), the payment of any unclaimed dividend, interest or other sum payable by the Company on or in respect of any shares into a separate account shall not constitute the Company a trustee in respect of it. If cheques, warrants or orders for dividends or other monies payable in respect of a share sent by the Company to the person entitled to it are returned to the Company or left uncashed on two (2) consecutive occasions, the Company shall not be obliged to send any further dividends or other monies payable in respect of that share due to that person until he notifies the Company of an address to be used for the purpose provided that in particular cases the Board may accommodate any member who applies for several dividend payments to be consolidated into a single payment.

#### **CAPITALISATION OF PROFITS**

- 163** The Company in a general meeting may, upon the recommendation of the Board, resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or of any share premium account or of the profit and loss account or otherwise available for distribution and, accordingly, that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions. The Board shall give effect to such resolution and such sum shall not be paid in cash but shall be applied on behalf of the members entitled thereto either:
- (a) in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively; or
  - (b) in paying up in full unissued shares, income notes or debentures of the Company of a nominal amount equal to those profits to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportions aforesaid; or

(c) partly in the one way and partly in the other;

provided that amounts standing to the credit of a share premium account or a capital redemption reserve fund may, for the purposes of this Article, only be applied in the paying up of unissued shares to be issued to members as fully paid bonus shares.

**164** The Board may with the sanction of an ordinary resolution of the Company, and upon such terms and conditions as it thinks fit, resolve to offer to all members the right to receive an allotment of additional fully paid shares in lieu of a cash dividend and, upon the election of a member to receive such scrip dividend, may appropriate the net cash dividend to which such member would otherwise be entitled and apply such sum in paying up in full unissued ordinary shares of the Company at such price as shall have been determined in accordance with the ordinary resolution sanctioning the scrip dividend and allot such shares credited as fully paid to those members who shall have elected to receive the dividend in scrip.

**165** Whenever a resolution in the terms of **Articles 163 162 or 164 163** shall have been passed the Board shall make all such appropriations and applications of the undivided profits, allotments and issues of fully paid shares, income notes or debentures as may be required thereby and shall do all acts and things required to give effect thereto, with full power to the Board to acquire fractions or to make such provisions by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any shares, income notes or debentures to which they may be entitled upon such capitalisation or, as the case may require, for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

## ACCOUNTS

**166** The Board shall cause proper books of account to be kept with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure takes place;
- (b) all sales and purchases of goods by the Company; and
- (c) 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 Company's affairs and to explain its transactions.

**167** The books of account shall be kept at the registered office of the Company or at such other place or places in Kenya as the Board deems fit and shall always be open to the inspection of the Directors.

- 168** The Board may, from time to time, determine whether and to what extent and at what times and places and under what conditions or 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 Statutes or authorised by the Directors or by the Company in general meeting.
- 169** The Directors shall from time to time, in accordance with **Section 635 of the Act**, ensure that such profit and loss accounts, balance sheets and reports as are referred to in those sections are prepared and laid before the Company in general meeting.
- 170** 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 (21) days before the date of the meeting, be sent to every member of and every holder of income notes or debentures of the Company. Provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Company is not aware or to more than one (1) of the joint holders of any shares or debentures.

#### AUDIT

- 171** Auditors shall be appointed and their duties shall be regulated in accordance with **Sections 721, 722, 723 and 724 of the Act**. [Where the term of an auditor has lapsed and a general meeting to re-appoint the retiring auditor or appoint a new auditor has not been held due to a pandemic or a national disaster or other unforeseen circumstances, the Board may appoint or re-appoint an auditor subject to ratification by members at the next general meeting.](#)

#### NOTICES

- 172** Any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of Directors) but including a notice of an Annual General Meeting or General Meeting of the Company shall be in writing and shall be sent in accordance with these Articles and the Statutes.
- 173** Subject to these Articles and the Statutes, the Company may give any notice, circular, information memorandum, annual report and accounts, share certificate or any other document or information issued by the Company or with the authority of the Board to any member:
- (a) by delivering it to him/her personally;
  - (b) by leaving it at or sending it by post in a prepaid envelope to such member at his registered address as appearing in the Register or the Company's other records;
  - (c) by sending it by electronic means to an address for the time being notified to the Company by the member; or,

- (d) by making it available for viewing and/or download on the Company's website for the time being notified to the member(s).

**174** Subject to these Articles and the Statutes, the Company may give any notice or send or supply any other document or information to any member by making it available on an official Company website or such other website as may be prescribed by the Board or pursuant to the Statutes for such purpose, where that member is notified in accordance with **Article 173 172** or **Article 183 182** of:

- (a) the fact that the document or information has been made available on the website;
- (b) the address of the website; and
- (c) the place on the website where the document or information may be accessed and how it may be accessed.

**175** The provisions of these Articles apply, subject to the provisions of the Statutes, in relation to any notice, document or information referred to in these Articles, including documents required by the Act to be laid before the Company in a general meeting, whether or not the provisions of the Article(s) in question use the words "give", "send" or "supply" or uses other words (such as "deliver" or "provide") to refer to the sending or supplying of a document, notice or information.

**176** Where a notice or other document or information is:

- (a) delivered to a member personally or left at his registered address in Kenya, it shall be deemed to have been received on the day it was so delivered or left;
- (b) sent by post to a registered address in Kenya, it shall be deemed to have been received at the expiration of twenty four (24) hours (where first class post is used) or forty eight (48) hours (where second class post is used) or to an address outside Kenya at the expiration of ninety six (96) hours after the time when the envelope containing the same is posted and, in proving such receipt, it shall be sufficient to prove that such envelope was properly addressed, prepaid and posted;
- (c) sent or supplied by electronic means, it shall be deemed to be received on the day that it was sent;
- (d) made available on a website, it is deemed to have been received when it was first made available on the website, or (if later) on the date on which the notification pursuant to **Article 174** is received or deemed to be received and in calculating when a notice or other document or information is deemed to be received, no account shall be taken of any day or part of a day that is not a working day in Kenya.

**177** If on three (3) consecutive occasions notices or other documents have been sent by post to any member at his registered address or his address for the service of notices but have been returned undelivered, such member shall not thereafter be entitled to receive notices or other documents or information from the Company until he shall have communicated with the

Company and supplied in writing a new registered address or a new postal address for the service of notices and other documents and information, as the case may be, or an address to which notices and other documents and information may be sent to him using electronic means.

- 178** Any notice, document or information given to that one (1) of the joint holders of a share whose name stands first in the Register in respect of the share shall be sufficient notice to all the joint holders in their capacity as such. For such purpose, a joint holder whose registered address is not within Kenya and who has not given the Company a postal address as his address for the service of notices and other documents and information or an address to which notices and other documents and information may be sent to him using electronic means shall be disregarded. The joint holder to whom, in accordance with this Article, notice may be given such that the notice is sufficient notice to all of the joint holders in their capacity as such shall be called the 'First Named Holder'.
- 179** In the case of joint holders of a share, the consent or deemed consent (generally or specifically) of the First Named Holder that any notice or other document or information may be sent by the Company to those joint holders in electronic form or by being made available on a website and/or the notification to the Company by such First Named Holder of an address for the purposes of receipt of any communications by electronic means shall be effective consent and/or notification (as the case may be) of all joint holders of such share. The First Named Holder may also effectively revoke any such consent and/or notification of an address.
- 180** In the case of the death or bankruptcy of a member or of any other event giving rise to a transmission of entitlement to a share by operation of law, the Company may serve or deliver a notice or document to the person entitled in consequence of such event as if he was the holder of a share by addressing it to him by name or by the title of representative of the deceased or trustee of the bankrupt member (or by any similar designation) at an address to which notices or other documents and information may be sent to him using electronic means supplied for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice or document may be served or delivered in any manner in which this might have been done if the death or bankruptcy had not occurred. Service or delivery in accordance with this Article shall be deemed to be sufficient notice to all other persons interested in such share.
- 181** Notice of every general meeting shall be given in some manner authorised above to every member, to the Directors of the Company, to the auditors for the time being of the Company and also to any other person or body required under the Statutes to be given notice. Any member present in person or by proxy at any general meeting of the Company or of the holders of any class of shares in the Company shall be deemed to have received due notice of the meeting and, where requisite, of the purpose for which it was called.
- 182** Every person who, by operation of law, transfer or by any other means, becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered

in the register of members, has been duly served on or delivered to a person from whom he derives his title.

- 183** The Board may where it is unable to give notice of a general meeting due to a suspension or curtailment of postal services in Kenya, give notice of a general meeting to the Directors; the Company's auditors; those members to whom notice to convene the general meeting can validly be sent by electronic means and those members to whom notification as to the availability of the notice of meeting on a website can validly be sent by electronic means and the Company may then give notice of the general meeting by notice published on the same date on its website and in at least two (2) leading national daily newspapers published in Kenya. Such notice shall be deemed to have been duly served on all members entitled to notice when first made available on the website or at noon on the day when the last such advertisement appears in such newspapers. The holder of a share warrant shall be entitled to receive notices or other documents or information only by advertisement in the manner provided for in this Article.

### **DISPOSAL OF DOCUMENTS**

- 184** [Subject to the Company's record management policy](#), the Company shall be entitled to destroy in such manner as the Board approves:

- (a) all instruments of transfer of shares and all other documents on the faith of which entries are made in the Register at any time after the expiry of ten (10) years from the date of registration;
- (b) all dividend mandates and notifications of change of name or address at any time after the expiry of ten (10) years from the date of recording;
- (c) all share certificates which have been cancelled at any time after the expiry of ten (10) years from the date of cancellation; and
- (d) any other document on the basis of which an entry in the Register is made at any time after the expiry of ten (10) years from the date an entry in the Register was first made in respect of it.

- 185** If the Company destroys a document in good faith and without notice of any claim (regardless of the parties to it) to which the document might be relevant, it shall conclusively be presumed in favour of the Company that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered, every share certificate so destroyed was a valid and effective document duly and properly cancelled and every other document mentioned above so destroyed was a valid and effective document in accordance with the recorded particulars in the books or records of the Company. The provisions of this Article shall only apply to the destruction of a document in good faith and without express notice to the Company that the preservation of such document was relevant to a claim and nothing in these Articles shall be construed as imposing on the Company any liability in respect of the destruction of any such document at an earlier date other than that provided above or if the



condition as to good faith and absence of notice is not met. References in this Article to the destruction of any document include references to its disposal in any manner.

#### **WINDING UP**

- 186** If the Company shall be wound up (including if the Company is liquidated and surplus remains after payment of debts proved in the winding up), the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide amongst the members, in specie or in kind, the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit but so that no member shall be compelled to accept any shares or other securities whereupon there is any liability. [The relevant insolvency provisions outlined under the Insolvency Act 2015 and the Insolvency Regulations Legal Notice number 47 of 2016 as amended from time to time shall apply.](#)

#### **INDEMNITY**

- 187** Subject to the provisions of the Act, any officer of the Company may be indemnified out of the assets of the Company against any liability incurred by the officer to a person other than the Company or an associated company in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or associated company.

This Article applies only if the indemnity does not cover:

- (a) any liability of the officer to pay a fine imposed in criminal proceedings; or a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
- (b) any liability incurred by the officer:
  - (i) in defending criminal proceedings in which the officer is convicted;
  - (ii) in defending civil proceeding brought by the Company, or an associated company of the Company, in which judgment is given against the officer;
  - (iii) in defending civil proceedings brought on behalf of the Company by a member of the Company or of an associated company of the Company, in which judgement is given against the officer;
  - (iv) in defending civil proceedings brought on behalf of an associated company of the Company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the officer; or

- (v) in connection with an application for relief made under **Sections 763 or 1005 of the Act.**

### **INSURANCE FOR DIRECTORS**

- 188** The Company may purchase and maintain insurance for any person who is or was a Director of the Company, or a Director of an associated company, against any liability to any person attaching to the Director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the Company or associated company; or any liability incurred by the Director in defending any proceedings (whether civil or criminal) taken against the Director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the Company or associated company.