

PROPOSED AMENDED ARTICLES OF ASSOCIATION

**THE COMPANIES ACT, 2015**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**NSE GROUP PLC~~AIROBI SECURITIES~~  
EXCHANGE PLC**

(Amended Articles of Association adopted by Special Resolution passed on ~~31 May 2017~~ 3<sup>rd</sup> June 2022)

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**PRELIMINARY**

1. In these Articles, unless the context otherwise requires, expressions defined in the Companies Act, 2015 or any statutory modification thereof in force at the date at which these Articles become binding on the Company, shall have the meanings so defined and the words standing in the first column of the table next hereinafter contained shall bear the meanings set opposite to them respectively in the second column thereof, namely:

<b>Words</b>	<b>Meanings</b>
The Act	The Companies Act, 2015;
These Articles	These Articles of Association as now framed or as from time to time altered by special resolution;
The Board	The Directors or a quorum of them acting as the Board of the Company;
The Capital Markets Act	The Capital Markets Act (Cap. 485A) and the Regulations, Rules and Guidelines enacted thereunder and any amendment or re-enactments thereto in force from time to time;
Central Depository	A Central Depository as defined in the Central Depositories Act;
Central Depositories Act	The Central Depositories Act, Act No. 4 of 2000 and the Rules and Regulations enacted thereunder and any amendment or re-enactments thereto in force from time to time;
CMA	The Capital Markets Authority established under the Capital Markets Act;
The Company	<u>NSE Group</u> <del>airobi Securities Exchange</del> PLC;

The Directors	The Directors of the Company or the Directors present at a duly convened meeting of Directors at which a quorum is present and shall include an alternate Director;
Day	calendar day;
Dividend	Dividend or bonus.
Executive Director	A Director who is appointed to be the holder of a full-time office of the Company pursuant to a contract of service with the Company, such office being one that entails involvement in the day to day management of the Company;
Independent Non-Executive Director	A Non-Executive Director who: (i) has not been employed by the Company in an executive capacity in the 5 years immediately preceding his appointment as a director of the Company; (ii) has not been a director of a Trading Participant in the five years immediately preceding his appointment as a director of the Company; (iii) has not been employed by a Trading Participant in an executive capacity in the 5 years immediately preceding his appointment as a director of the Company; (iv) has no personal service contract(s) with a Trading Participant or with a person who is in the senior management of a Trading Participant; is not a director or a member of the senior management of a company listed on the <a href="#">Nairobi Securities Exchange Company's securities exchange</a> ; or (v) does not own or hold shares in a Trading Participant.
Member	Member of the Company;
Month	Calendar month;
Non-Executive	Director means a Director who is not an Executive Director;
The Office	The Registered Office for the time being of the Company;
Paid Up	Paid up or credited as paid up;
The Seal	The Common Seal of the Company;

The Register	The Register of Members of the Company;
Rights to Trade	means the rights of access to and the use of trading related facilities provided and maintained by a securities exchange which a securities exchange may grant a licensee of the CMA, subject to the rules of the securities exchange on admission of trading participants;
<del>Securities Exchange</del>	<del>means any stock or securities exchange on which the Company's shares are listed or will be listed;</del>
Trading Participant	a licensee of the CMA with Rights to Trade at the Nairobi Securities Exchange;
Year	Year from the 1 <sup>st</sup> January to the 31 <sup>st</sup> December inclusive;

In these Articles:

- a) unless the context otherwise requires, words importing the singular number only shall include the plural number and vice versa;
- b) words importing the masculine gender only shall include the feminine gender or other gender and vice versa;
- c) words importing persons shall include corporations;
- d) the expression "in writing" or "written" shall include words written, printed, lithographed or represented or reproduced in any other mode in a visible form;
- e) the expressions "debenture" and "debenture holder" shall include debenture stock and debenture stockholder;
- f) the expression "Secretary" shall include a temporary or assistant Secretary and any person appointed by the Directors to perform any of the duties of the Secretary;
- g) A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts;
- h) Subject to Article 1, any words or expressions defined in the Act, the Capital Markets Act and the Central Depositories Act and the Regulations thereunder shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

### **EXCLUSION OF THIRD SCHEDULE REGULATIONS**

2. The Regulations in the Third Schedule (Model Articles for Public Companies limited by shares) in the Company (General) Regulations, 2015 shall not apply to the Company except so far as same are repeated or contained in these Articles.

### **BUSINESS**

3. Any branch or kind of business which the Company is either expressly or by implication authorized to undertake may be undertaken by the Directors at such time or times as they shall

deem fit and, further, may be permitted by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not so long as the Directors may deem it expedient not to commence or proceed with the same.

#### **THE OFFICE**

4. The registered office of the Company shall be at such place in Kenya as the Directors shall from time to time appoint. Subject to the provisions of [paragraph 39 of the Sixth Schedule of the Act](#), the Company may cause to be kept in any part of the Commonwealth outside Kenya a branch register of Members resident in that part of the Commonwealth.

#### **UNDERWRITING**

5. The Company may exercise the powers of paying commissions conferred by Section 331 of the Act; provided that the commission paid or agreed to be paid shall not exceed ten per cent (10%) of the price at which the shares in respect of which the commission is paid, are issued and shall be disclosed in the manner required by the Act. 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 another. The Company may also on any issue of shares pay such brokerage as may be lawful.

#### **SHARE CAPITAL**

6. The share capital of the Company is Kenya Shillings One Billion, Five Hundred Million (KShs. 1,500,000,000/=) divided into Three Hundred and Seventy Five Million (375,000,000) ordinary shares of Kenya Shillings Four (Kshs. 4/=) each.<sup>2</sup>

#### **SHARES**

7. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be 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 provided) any other rights in respect of any shares except an absolute right to the entirety thereof in the registered holder.
8. Without prejudice to any special rights previously conferred on the holders of any existing 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 may from time to time by ordinary resolution determine.

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<sup>2</sup> By a special resolution dated 25th April 2014, the share capital of the Company was increased from KShs. 25,000,000/= divided into 25,000,000 ordinary shares of Kshs 1/= each to Kshs 850,000,000/= by the creation of 825,000,000 new ordinary shares of Kshs 1/= each.

By a special resolution dated 25th April 2014, each of the 850,000,000 ordinary shares of Kenya Shillings Kshs. 1/= in the capital of the Company, both issued and unissued, were consolidated into 212,500,000 ordinary shares of Kenya Shillings Kshs. 4/= each.

By a special resolution dated 2<sup>nd</sup> June 2016, the share capital of the Company was increased from Kshs. 850,000,000/= divided into 212,500,000 ordinary shares of Kshs 4/= each to Kshs 1,500,000,000/= by the creation of 162,500,000 new ordinary shares of Kshs 4/= each.

9. The Company may by special resolution create and sanction the issue of Preference shares which are, or at the option of the Company are to be, liable to be redeemed, subject to and in accordance with the provisions of Section 520 of the Act. The special resolution sanctioning any such issue shall also specify by way of an addition to these Articles the terms in which and the manner in which any such Preference shares shall be redeemed.
10. If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed after a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be Two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy, or in the case of a corporation by a representative appointed in accordance with Article 91 may demand a poll.
11. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.
12. If any shares in the capital of the Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long time, the Company may, subject to any of the conditions and restrictions of the Act, pay interest on so much of such share capital as is for the time being paid up and may charge the same to capital as part of the cost of construction of the works or buildings or the provision of plant as the case may be.
13. (a) Unless otherwise authorised by the Members by way of an ordinary resolution in a General Meeting whenever the Directors propose to issue any Shares which have not been allotted they shall be offered to such persons as at the date of the offer are entitled to receive notices from the Company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may dispose of the same in such manner as they think most beneficial to the Company. The Directors may likewise so dispose of any new shares which, by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares, cannot, in the opinion of the Directors, be conveniently offered under this Article PROVIDED THAT this Article shall not apply to the issue of unallotted shares by the Company for the purposes of acquisition of another company's shares or business for which the Directors shall have the general authority to issue unallotted shares for that purpose, except where such issue of shares would result in a shareholder (as a result of being issued shares for the acquisition) controlling or exercising the control of not less than 25% of the votes attached to the ordinary shares of the Company in which case such issue will require the approval by the Members by way of a special resolution of a general meeting.

- (b) Members shall only be entitled to receive, pursuant to the foregoing provision, shares of the same class as the class of shares then held by them immediately before such offer.

### **CERTIFICATES**

14. Subject to the provisions of Section 35 to 42 of these Articles, every person whose name is entered as a Member in the Register shall be entitled without payment to receive within sixty days after allotment or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate in respect of each class of shares held by him, or, upon payment of such sum (if any) not exceeding Kenya Shillings 1000/= for every certificate after the first as the Directors shall from time to time determine, to several certificates, each for one or more of his shares, except that shares of different classes may not be included with the same certificate. Every certificate shall be under the Seal and shall specify the shares to which it relates and the amount paid up thereon: PROVIDED that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
15. Where a Member has sold some of the shares registered in his name, he shall be entitled to a certificate for the balance without charge.
16. If a share certificate is worn out, defaced, lost, or destroyed it may be renewed on payment of such fee, if any, not exceeding Kenya Shillings 1000/= and on such terms, if any, as to evidence and indemnity as the Directors think fit.
17. The Company may issue share warrants to bearer in respect of any fully-paid shares of the Company stating that the bearer of the warrant is entitled to the shares therein specified. Such warrants shall be issued upon such terms and subject to such conditions as may be resolved upon by the Directors.

### **PURCHASE OF SHARES**

18. The Company may acquire its own shares in accordance with Part XVI of the Act.

### **LIEN ON SHARES**

19. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares (including fully paid shares) standing registered in the name of any person for all moneys presently payable by him or his estate to the Company; but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien, if any, on a share shall extend to all dividends payable thereon.
20. The Company may sell, in such manner as the Directors think fit, any shares 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 until the expiration of Fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.
21. To give effect to any such sale the Directors may authorise some person to transfer the shares sold

to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

22. The proceeds of the sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

### **CALLS ON SHARES**

23. The Directors may from time to time make calls upon the Members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and each Member shall (subject to receiving at least Fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on his shares. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid in instalments. A call may be revoked or postponed as the Directors may determine.
24. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
25. 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 interest upon the sum at the rate of fifteen per cent (15%) per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of such interest wholly or in part.
26. The provisions of these Articles as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.
27. The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
28. The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) fifteen per cent (15%) per annum, as may be agreed upon between the Directors and the Member paying such sum in advance.

### **TRANSFER OF SHARES**

29. Subject to the provisions hereinafter contained, shares in the Company shall be transferable by written instrument in any common form executed by or, on behalf of the transferor and the transferee; provided that the Directors may dispense with execution by the transferee in any case in which they think fit to do so. 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.

30. The Directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they do not approve, and they may also decline to register the transfer of a share on which the Company has a lien.
31. The Directors may also refuse to register any instrument of transfer of shares, if:-
- (a) the registration fee of Kenya Shillings 1000/- (or such lesser fee (if any) as the Directors may from time to time prescribe as the registration fee) is not paid to the Company in respect thereof; or
  - (b) it is not accompanied by the certificate for the shares to which it relates, and such other evidence as the Directors may reasonably require to show the rights of the transferor to make the transfer; or
  - (c) it is of shares of more than one class; or
  - (d) the transferee named therein is:-
    - i) an infant person; or
    - ii) a person incapable by reason of mental disorder of managing and administering his property and affairs; or
    - iii) a partnership in its partnership name.
  - (e) in the case of a transfer to joint holders, they exceed Four in number.
32. If the Directors refuse to register a transfer they shall within Two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.
33. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine, provided always that such registration shall not be suspended for more than Thirty days in any year.
34. The Company shall be entitled to charge a fee not exceeding Kenya Shillings 1000/- on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

### **IMMOBILIZATION OF SHARES**

35. Pursuant to and subject to the Central Depositories Act 2000, title to immobilised and dematerialised shares will be evidenced otherwise than by a certificate and title to such shares shall be transferred by means of a book-entry transfer in accordance with the provisions of the Central Depositories Act 2000.
36. No provision of these Articles shall apply or have effect in relation to any shares which have been immobilised or dematerialised under the Central Depositories Act 2000 to the extent that it is inconsistent in any respect with:
- i. the holding of such shares in uncertified form;
  - ii. the transfer of title to such shares by means of a book-entry transfer; and
  - iii. any provision of the Central Depositories Act 2000.



37. Transfers of securities which have been immobilised or dematerialised under the Central Depositories Act 2000 shall be effected in the manner prescribed thereunder.
38. Where the Company refuses to register transfers of Securities required to be registered under Section 14 and 15 of the Central Depositories Act 2000, it ~~ea~~ shall serve the transferor and transferee with written notice of the reasons for such refusal in accordance with Section 14(5) of the Central Depositories Act 2000.
39. An instrument of transfer lodged with the Company pursuant to Section 14(1) of the Central Depositories Act 2000 shall be capable of registration in the name of a central depository or its nominee company if such instrument has been certified by a central depository agent instead of being executed by the central depository or its nominee company.
40. With effect from the Dematerialization Date, any reference to a transfer of shares or debentures shall be a reference to a book entry transfer performed by the central depository in accordance with Section 27(1) (b) of the Central Depositories Act 2000.
41. Any provisions in the Articles inconsistent with the requirements of the Capital Markets Act, Central Depositories Act 2000 or as prescribed under regulations issued under the Capital Markets Act and the Central Depositories Act in respect of registration, transfer, immobilization or dematerialization of securities shall be deemed to be modified to the extent of such inconsistency in their application to securities which are in part or in whole immobilized or dematerialized or are required to be immobilized or dematerialized in part or whole as the case may be.
42. Subject to Article 92, where any securities of the Company are forfeited pursuant to these Articles after being immobilised or dematerialized, the Company shall be entitled to transfer such securities to a securities account designated by the Board for this purpose.

#### **TRANSMISSION OF SHARES**

43. In case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased Member from any liability in respect of any share solely or which had been jointly held by him with other persons.
44. Subject to the provisions of these Articles, any person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, upon such evidence being produced as may from time to time properly be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that Member before his death or bankruptcy, as the case may be.
45. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the 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 the Member had not occurred and the notice or transfer were a transfer signed by that Member.

46. 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 a Member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company, Provided always that the Directors 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 Ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

### **FORFEITURE OF SHARES**

47. If a Member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the 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.
48. The notice shall name a further day (not earlier than the expiration of Fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
49. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.
50. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.
51. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of forfeiture, were 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 such rate, not exceeding fifteen per cent (15%) per annum, as the Directors may determine, but his liability shall cease if and when the Company shall have received payment in full of all such moneys in respect of the shares.
52. A statutory declaration in writing that the declarant is a Director or the Secretary of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute or authorise any person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of and the transferee named therein shall thereupon be registered as the holder of the share, and he shall not be bound to see to the

application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

53. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### **SURRENDER OF SHARES**

54. A member may surrender any share:-

- (a) in respect of which the directors may serve a notice of intended forfeiture under article 47;
- (b) that the directors may forfeit under article 49;
- (c) that has otherwise been forfeited.

The directors may accept the surrender of such shares.

55. The effect of surrender of a share is the same as the effect of forfeiture of that share. A share that has been surrendered may be dealt with in the same way as a share that has been forfeited.

#### **ALTERATION OF CAPITAL**

56. The Company may, from time to time by ordinary resolution, increase the share capital by such sum to be divided into shares of such amount, as the resolution shall direct.

57. Any new shares may be offered at par, at a premium or (subject to the provisions of the Act) at a discount as the Directors may decide.

58. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

59. The Company may, 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 existing shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association subject, nevertheless, to the provisions of the Act;
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any persons;

and may, by special resolution:

- (d) Reduce its share capital, any capital redemption reserve fund and any share premium account in any manner and with, and subject to, any incident authorised and consent required, by law.

60. Whenever as a result of a consolidation of shares any Members would become entitled to fractions

of a share, the Directors may, on behalf of those Members, sell the shares representing the fractions for the best price reasonably obtainable to any person and distribute the net proceeds of sale in due proportion among those Members, and the Directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

### **GENERAL MEETINGS**

61. Subject to Division 5 of Part XIII of the Act, the Company shall, in respect of each financial year, hold a general meeting as its annual general meeting within six months of its accounting reference date (which shall be taken to include the day following immediately thereafter), whether or not it holds other meetings during that period, and shall specify the matter as such in the notices calling it. Annual and extraordinary general meetings shall be held at such times and places within Kenya as the Directors shall, from time to time, appoint .
62. All general meetings other than annual general meetings shall be called extraordinary general meetings.
63. The Directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Sections 277 to 279 of the Act. If at any time there are not within Kenya sufficient Directors capable of acting to form a quorum, any Director or any ten Members of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

### **NOTICE OF GENERAL MEETINGS**

64. Every general meeting shall be called by Twenty-one days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company.

Provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article be deemed to have been duly called if it is so agreed:

- (a) in the case of a meeting called as the annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other meeting, by a majority in number of 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.

Provided always that if the Company shall then be listed on any Securities Exchange a copy of such notice be sent to such Securities Exchange at the same time as notices are sent to the shareholders.

65. In every notice calling a meeting of the Company there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote in his stead and that a proxy need not be a Member.
66. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

67. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all business that is transacted at an annual general meeting shall be deemed special, with the exception of declaring and sanctioning of dividends, the consideration of the accounts, balance sheet and the reports of the Directors and Auditors, the election of Directors in the place of those retiring (if any), and the appointment and the fixing of the remuneration of the Auditors.
68. 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, five Members present in person or by proxy or by attorney or, in the case of a corporation, represented in accordance with Article 91 shall be a quorum, provided that one Member holding the proxy of one or more other members or one person holding the proxies of two or more Members shall not constitute a quorum.
69. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall form a quorum.
70. The Chairman, if any, or in his absence, the Vice-Chairman, if any of the Board of Directors shall preside at every general meeting of the Company.
71. If there is no Chairman (or Vice-Chairman) or if at any meeting neither is present within Fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as a Chairman, the Directors present shall choose someone of their number to be Chairman. If no Director is willing to act as Chairman or no Director is present within Fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their Members to be Chairman of the meeting.
72. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for Thirty days or more, notice of the adjourned meeting shall be given as in the 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.
73. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded

by

- (a) the chairman of the Meeting; or
- (b) by any Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or
- (c) by not less than five Members having the right to vote at the meeting present in person or by proxy.

Unless a poll is so demanded, a declaration by the chairman of the Meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn at any time.

- 74. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 75. 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 91.
- 76. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
- 77. If any vote shall be counted which ought not to have been counted or might have been rejected, the error shall not vitiate the resolution unless it is pointed out at the same meeting and not, in that case, unless it shall, in the opinion of the chairman of the meeting, be of sufficient magnitude to vitiate the resolution.
- 78. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the Chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
- 79. Subject to the provisions of the Act and these Articles, a general meeting may be held by means of audio or audio and visual communication by which all Members constituting the quorum, can hear each other throughout the meeting.

#### **VOTES OF MEMBERS**

- 80. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every Member present in person shall have one vote, and on a poll every Member present in person or by proxy or being a corporation, by a representative appointed in accordance with Article 91, shall have one vote for each share of which he is the holder.
- 81. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this

purpose seniority shall be determined by the order in which the names stand in the Register.

- 82. A Member incapable by reason of mental disorder of managing and administering his property and affairs may vote, whether on a show of hands or on a poll, by his receiver, or other person authorised by any Court of competent jurisdiction to act on his behalf, and such person may on a poll vote by proxy.
- 83. 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 91, 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.
- 84. No objection shall be raised to the qualification of any vote 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 of the meeting, whose decision shall be final and conclusive.
- 85. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a Corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a Member of the Company.
- 86. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Office or at such other place within Kenya as is specified for that purpose in the notice convening the meeting, not less than Forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than Twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- 87. An instrument appointing a proxy shall be in the following form, or in any other form of which the Directors shall approve:-

**NSE GROUPAIROBI SECURITIES EXCHANGE**  
**PLC**

I/We,....., of ....., being a Member/Members of the above-named Company, hereby appoint ....., of ....., or failing him ....., of ....., as my/our proxy to vote for me/us on my/our behalf at the Annual (or Extraordinary, as the case may be) General Meeting of the Company to be held on the .....day of ....., 20 ....., and at any adjournment thereof.

As witness my/our hand this .....day of ....., 20.....

This Form is to be used \*in favour of / against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

*\*Strike out whichever is not desired.*

- 88. The instrument appointing a proxy shall be deemed to confer authority to demand or join in

demanding a poll.

89. A proxy's authority in relation to a resolution is to be regarded as revoked if the Member who has 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.
90. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or incapacity of the principal, 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, incapacity, revocation or transfer as aforesaid shall have been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **CORPORATIONS**

91. Any Corporation which is a Member of the Company may, by resolution of its Directors or other governing body, or by notification in writing under the hand of some officer of such corporation duly authorised in that behalf, appoint such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members of the Company. The production at a meeting of a copy of a resolution certified by one Director (other than the appointee if he himself shall be a Director) and the Secretary, if any, of such Corporation to be a true copy of the resolution, shall be accepted by the Company as sufficient evidence of the validity of his appointment. The person so appointed shall be entitled to exercise the same powers on behalf of such Corporation as it could exercise if it were an individual Member of the Company.

### **UNCLAIMED ASSETS**

92. The Company may, if required by law, deliver or pay to any prescribed regulatory authority any unclaimed assets including, but not limited to shares in the Company presumed to be abandoned or unclaimed in law and any dividends or interest thereon remaining unclaimed beyond prescribed statutory periods. 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 owner or holder or his or her estate, for the relevant unclaimed assets.

### **DIRECTORS**

93. Unless and until otherwise from time to time determined by an ordinary resolution of the Company, but always subject to the provisions of the Act and the Capital Markets Act, the number of Directors (including the Chief Executive and excluding alternates) shall not be less than Seven (7) and not more than Eleven (11) in number and shall be elected in accordance with the Act, the Capital Markets Act and these Articles. A maximum of two Directors shall be elected by the members from among ~~and/or~~ to represent the Trading Participants. A further two Directors shall be elected by the members from among nominees of companies listed on the Nairobi Securities Exchange to represent the said listed companies. Any other directors shall be elected by the members in accordance with the Companies Act provided that at all times at least one third of the Directors must be Independent Non-executive Directors. If at any time the number of Directors falls below the minimum number fixed by or in accordance with these Articles, the remaining Directors may act for the purpose of convening a general meeting or for the purpose of bringing the number of Directors to such minimum, and for no other purpose.



94. At every Annual General Meeting of the Company one third of the Directors other than the Chief Executive and any other Director being at the time in the employment of the Company or any of its Subsidiaries for the time being, or, if their number is not three or a multiple of three, then the number nearest to, but not exceeding one third shall retire from office. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless otherwise agreed amongst themselves) be determined by lot.
95. Notwithstanding the provisions of Article 94 above, any Director who retires from office shall be eligible for re-election.
96. No person, other than a Director retiring at a meeting, shall be eligible for appointment as a Director at any General Meeting, unless not less than seven nor more than twenty one days before the day appointed for the meeting, there shall have been delivered to the Secretary of the Company notice in writing signed by a Shareholder, duly qualified to attend and vote at the meeting for which the notice has been given, of his intention to propose such person for election and notice in writing, signed by the person to be proposed of his willingness to be elected.
97. The Directors shall cause to be kept a Register of the Directors' holdings of shares and debentures of the Company and of its subsidiaries or holding Company (if any) required by the Act, and shall cause the same to be available for inspection during the period and by the persons prescribed, and shall produce the same at every annual general meeting as required by the Act.
98. The Directors shall be paid out of the funds of the Company by way of remuneration for their services such sums as the Company may from time to time by ordinary resolution determine and such remuneration shall be divided among them in such proportion and manner as the Directors may determine and, in default of such determination within a reasonable period, equally. Subject as aforesaid, a Director holding office for part only of a year shall be entitled to a proportionate part of a full year's remuneration. The Directors shall also be entitled to be repaid by the Company all such reasonable travelling (including hotel and incidental) expenses as they may incur in attending meetings of the Board, or of committees of the Board, or general meeting, or which they may otherwise properly incur in or about the business of the Company.
99. A Director who by request performs special services or goes or resides abroad for any purposes of the Company may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the Directors may determine, provided that such a Director shall not be an Independent Non-Executive Director.
100. Directors shall not be required to hold any share qualification but shall be entitled to receive notice of and to attend and speak at all General Meetings of the Company or at any separate meeting of the holders of any class of Shares of the Company.

#### **ALTERNATE DIRECTORS**

101. Any Director may appoint any person who is approved by the Board to be an Alternate Director of the Company, and may at any time remove any Alternate Director so appointed by him from office. An Alternate Director so appointed shall not be entitled to appoint an alternate to himself. Every person acting as an Alternate Director shall be an officer of the Company, and he shall not be deemed to be the agent of the Director by whom he was appointed.

102. Each substantive director, whether a body corporate or natural person shall have only one alternate director.
103. A body corporate shall not be nominated as an Alternate Director.
104. Alternate Directors shall not be appointed as members of the Audit Committee.
105. An Alternate Director shall be entitled to receive notices of all meetings of the Board and to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present, and generally to perform all the functions of his appointor as a Director in his absence, including that of being counted as part of a quorum at any such meeting.
106. An alternate Director shall ipso facto cease to be an Alternate Director if his appointor ceases for any reason to be a Director or if of his own volition he resigns.
107. Every appointment and removal of an Alternate Director shall be effected by notice in writing to the Company under the hand of the Director making or revoking such appointment.
108. A Director or any other person duly appointed as an Alternate Director may act to represent more than One Director, and a Director appointed as an Alternate Director shall be entitled at Board meetings to One vote for every Director whom he represents in addition to his own vote (if any) as a Director. The remuneration of an Alternate Director shall be payable out of the remuneration if any of his appointor and shall be such proportion thereof as shall be agreed between them.

#### **POWERS AND DUTIES OF DIRECTORS**

109. The business of the Company shall be managed by the Directors who may pay all expenses incurred in promoting the Company, and may exercise all such powers of the Company as are not, by the Act or by these Articles, required to be exercised by the Company in general meeting, and the exercise of the said powers shall be subject also to the control and regulation of any general meeting of the Company, but no resolution of the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such resolution had not been passed.
110. The Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock, legal and equitable mortgages and charges and other securities whether outright or as security (principal or collateral) for any debt, liability or obligation of the Company or of any third party.
111. The Directors shall duly comply with the provisions of the Act, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the Company, or created by it, and to keeping a register of the Directors and Secretaries, and to sending to the Registrar of Companies an annual list of Members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of Directors and notification of any change therein.
112. The Directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be

the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

113. The Company may exercise the powers conferred by the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.
114. (a) A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors in accordance with Section 151 of the Act.
- (b) A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director shall be disqualified by his office from contracting with the Company either as vendor, purchaser, or otherwise, or from being interested whether directly or indirectly in any contract or arrangement proposed to be entered into or in fact entered into by or on behalf of the Company; nor shall any such contract or arrangement in which any Director shall be so interested be avoided, nor shall any Director so contracting, or being interested, be liable to account to the Company for any profit realised by him from such contract or arrangement in which he shall be so interested by reason of such Director holding that office or the fiduciary relation thereby established.
- (c) A Director shall not vote as a Director in respect of any contract or arrangement in which he is directly interested (and if he shall do so his vote shall not be counted) and he shall not be counted for the purpose of any resolution regarding the same in the quorum present at the meeting.
- (d) A Director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.
- (e) A Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as Auditor to the Company, and provided further that the Director gives a general notice of his interest to the Board of Directors and the engagement is approved by the Board, and subject to that Director not being an Independent Non-Executive Director.
- (f) A general notice given to the Directors by any Director to the effect that he is a Member of any specified Company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made but no such notice shall be of effect unless either it is given at a meeting of the Directors or the Director takes reasonable steps to secure that it is brought up and read at the next meeting of the Directors after it is given.

115. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.
116. The Directors shall cause minutes to be made in books provided for the purpose:
- (a) of all appointments of officers made by the Directors;
  - (b) of all resolutions and proceedings at all meetings of the Company, and of the Directors, and of committees of Directors.
117. The Directors may grant retirement pensions or annuities or other gratuities or allowances, including allowances on death, to any person or to the widow or dependants of any person in respect of services rendered by him to the Company whether as Chief Executive or in any other office or employment under the Company or indirectly as an officer or employee of any subsidiary company of the Company, notwithstanding that he may be or may have been a Director of the Company and may make payments towards insurances or trusts for such purposes in respect of such persons and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person.

#### **DISQUALIFICATION OF DIRECTORS**

118. The office of Director shall be vacated if the Director:
- (a) ceases to be or is prohibited from being a Director by virtue of any provision of the Act or the Capital Markets Act or the Regulations issued thereunder; or
  - (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (c) becomes incapable by reason of mental disorder of exercising his functions as Director; or
  - (d) resigns his office by notice in writing to the Company; or
  - (e) is called upon, in writing, to resign by all the remaining Directors; or
  - (f) is absent either in person or by his alternate, without the previous sanction of the Board of Directors, for a period of more than Six months from meetings of the Directors held during such period; or
  - (g) is absent either in person or by his alternate for three consecutive meetings of the Directors; or
  - (h) is requested to vacate his office as a Director by a unanimous vote of the Directors (other than the Director being requested to so vacate) on account of conduct which in the opinion of the Directors is inconsistent with the values of the Company.
119. The Directors shall have power at any time, and from time to time, to appoint a person as an additional Director either to fill a casual vacancy or as an addition to the existing Directors but

any person so appointed shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the Company at that meeting as a Director but shall not be taken into account in determining the Directors who are to retire by rotation at such meeting.

120. The Company may from time to time by ordinary resolution increase or reduce the number of Directors.
121. The Company may by ordinary resolution at a General Meeting, remove any Director before the expiration of his period of office, and, without prejudice to the powers of the Directors under Article 118 hereof, may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director. Such power of removal may be exercised notwithstanding anything in these Articles or in any agreement between the Company and such Director but without prejudice to any claim such Director may have for damages for breach of contract of service between him and the Company.

### **PROCEEDINGS OF DIRECTORS**

122. Unless otherwise agreed by the Directors all meetings of the Board shall take place in Nairobi. Subject to the foregoing the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their Meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes and the Chairman shall have a second and casting vote in the event of any deadlock. The Secretary, on the instructions of a Director, shall at any time summon a Board meeting. At least seven clear days' notice (excluding of the date of service and the date of meeting) of all Board meetings shall, unless waived by all Directors, be given in the manner hereinafter mentioned to all Directors and Alternates. All such notices shall give reasonable particulars of the matters to be discussed and shall enclose copies of the relevant papers for discussion.
123. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be three Directors present either personally or by Alternate PROVIDED THAT one person whether a Director or not, although a duly appointed Alternate for any number of Directors, shall not constitute a quorum.
124. The continuing Directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors, the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
125. The Directors may elect a Chairman for their meetings from those among their body who are Independent Non-executive Directors. The Directors may elect a Vice-Chairman for their meetings from those among their body who are Non-Executive Directors. If at any meeting neither the Chairman nor the Vice-Chairman is present within thirty minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.
126. Without prejudice to any provision of these Articles providing for the rotation, disqualification or removal of Directors, the Chairman shall hold office for a maximum of two consecutive terms of three years each or such other periods as may be provided under the Capital Markets Act or any other written law<sup>1</sup>

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<sup>1</sup> This was approved by Shareholders at the 67th AGM. This is however subject to amendment of Regulation 6(3) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002, by the Capital Markets Authority.

127. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any such committee shall conform to any regulation that may be imposed on it by the Directors provided that the Chairman of the Board and the Chief Executive shall be ex officio members of any Committees created thereby. The ex officio members shall have no voting rights.
128. A committee shall elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within thirty minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting.
129. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.
130. All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
131. A resolution in writing signed by all of the Directors, or of all the members of a committee, shall be as valid and effectual as if it had been passed at a meeting of the Directors or of the committee (as the case may be) duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed or approved by all the Directors or all the members of the committee concerned. A facsimile transmission of a director's signed resolution shall be acceptable evidence that such resolution has been signed by the director whose signature appears on the facsimile transmission.
132. Notwithstanding the foregoing, the Directors, and any Committee of the Directors, shall be deemed to meet together if, being in separate locations, they are nonetheless linked by telephone conference or other audio or audio and visual communication equipment which allows those participating to hear and speak to each other and a quorum for such meetings shall nonetheless be in accordance with Article 123. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or if there is no such a group, where the Chairman of the meeting then is.

### **EXECUTIVE DIRECTORS**

133. Without prejudice to the power of the Board to appoint Executive Directors on such terms as they may think fit and subject to the provisions of the Capital Markets Act, the Board may from time to time appoint One (1) person of their body to the office of Chief Executive for such period and upon such terms as it thinks fit and, subject to the provisions of any agreement entered into in any particular case, may revoke such appointment. The appointment of a Director holding the office of Chief Executive or the executive office shall (without prejudice to any claim he may have for damages for breach of contract of service between him and the Company) ipso facto determine if he ceases from any cause to be a Director.
134. The Chief Executive must be qualified to hold such office as determined by the provisions of the Capital Markets Act.

135. Without prejudice to any provision of these Articles providing for the disqualification or removal of Directors, the Chief Executive shall hold office for such a term as may be determined by the Board. ~~of four years renewable once.~~
136. The Chief Executive and other Executive Directors 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 their remuneration as a Director.
137. The Board may entrust to and confer upon a Chief Executive and other Executive Directors 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 object to the terms of any agreement entered into in any particular case revoke, withdraw, alter or vary all or any of such powers.
138. When the office of Chief Executive or other Executive Director falls vacant, the Board may appoint a temporary replacement pending appointment of his successor.

#### **SECRETARY**

139. The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.
140. No person shall be appointed or hold office as Secretary who is:
- (a) the sole Director of the Company; or
  - (b) a Corporation, the sole Director of which is the sole Director of the Company; or
  - (c) the sole Director of a Corporation which is the sole Director of the Company; or
  - (d) not the holder of the qualification required by law for that office.
141. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary.

#### **THE SEAL**

142. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors or of a committee of the Directors authorised by the Directors in that behalf, and in the presence of Two Directors, or One Director and the Secretary or One Director and such other person as the Directors may appoint for the purpose; and such persons aforesaid shall sign every instrument to which the seal of the Company is so affixed in their presence either autographically or mechanically.
143. All forms of certificate for shares shall be issued under the Seal and shall include the original signature or a signature by facsimile of any Director and the Secretary.

## **DIVIDENDS AND RESERVE**

144. The Company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Directors.
145. The Directors may from time to time pay to the Members such interim dividends (including therein the fixed dividends payable upon any preference or other shares at stated times) as appear to the Directors to be justified by the profits of the Company.
146. No dividend shall be paid otherwise than out of profits.
147. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or certified as paid on the shares, but if and so long as nothing is paid up on any of the shares in the Company dividends may be declared and paid according to the amounts of the shares. No amount paid or credited as paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the share during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms provided that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
148. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending such application 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) as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they may think prudent not to distribute.
149. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.
150. The Directors may deduct from any dividend payable to any Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to the shares of the Company.
151. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the Directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the Directors.
152. (a) Any dividend or other money payable in cash on or in respect of shares may be paid by electronic funds transfer or other automated system of bank transfer, electronic or mobile money transfer system, transmitted to such bank or electronic or mobile telephone address as shown in the share register of the Company or by cheque or warrant payable at such



place of business as the Company shall specify in writing, sent through the post to the address of the Member or person entitled to it as shown in the share register of the Company or if two or more persons are registered as joint holders of the shares, to the registered address of the joint holder who is first named in the share register of the Company or in the case of two or more persons being entitled thereto in consequence of the death or bankruptcy of the holder, to any one of such persons at such address as the persons being entitled to receive payment may in writing direct.

- (b) Every such cheque or warrant or funds transfer shall be made payable to or to the order of the person to whom it is sent or to such person who may be entitled to the same (as described in Article 152 (a) aforesaid). Payment of the cheque or warrant, if purporting to be endorsed or enfacéd, by the addressee or as the case may be, confirmation of payment having been made by the transmitting entity to the addressee of a direct debit, bank transfer or other automated system of bank transfer or via a mobile money transfer system, shall in each case be a good discharge to the Company. Every such payment whether by cheque or warrant or electronic funds transfer or mobile money payments system shall be sent at the risk of the person entitled to the money represented by it.

153. No dividend shall bear interest against the Company.

154. Subject to Article 92, all dividends, interest or other sum payable and unclaimed for 12 months after having become payable may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed and the Company shall not be constituted a trustee in respect thereof.

#### ACCOUNTS

155. The Directors 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 the 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.

156. The books of account shall be kept at the registered office of the Company, or, subject to the Act, at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

157. The Directors shall 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 statute or authorised by the Directors or by the Company in general meeting.

158. The Directors shall from time to time, in accordance with the Act, cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in the Act.
159. 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 Auditors' report (the "Accounts"), shall not less than Twenty-one days before the date of the meeting be sent to every Member of, and every holder of debentures of, the Company and to every person registered under Articles 35 to 42, but this Article shall not require a copy of these documents to be sent to any person of whose address the Company is not aware, nor to more than one of the joint holders of any shares or debentures. The Accounts may be sent or otherwise made available by electronic means or by post. This Article shall not require a copy of the Accounts to be sent or otherwise made available by electronic means to any person whose electronic or postal address the Company is not aware of, nor to more than the first named of any joint holders of any shares. The Company may also send the Accounts to all persons entitled thereto by publishing the Accounts on the Company's official website provided that the Company shall send to every Member or publish a summary of the Accounts in two daily newspapers with national circulation for one day drawing attention to the website on which the Accounts in full may be read, and the address to which a request for a printed copy of the Accounts may be submitted to the Company Secretary and upon any such publication the Accounts shall be deemed to have been sent to every Member or other person entitled to receive a copy of the Accounts.

#### **CAPITALISATION OF PROFITS**

160. The Company in general meeting may upon the recommendation of the Directors 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 to the credit of the profit and loss accounts 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 on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such Members respectively or paying up in full unissued shares or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such Members in the proportion aforesaid, or partly in the one way and partly in the other, and the Directors shall give effect to such resolution: Provided that a share premium account and 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 of the Company as fully paid bonus shares.
161. The Board may with the sanction of an Ordinary Resolution of the Company, and upon such terms and conditions as they shall think fit, resolve to offer to all Members the right to receive an allotment of additional fully paid shares ordinary 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 ordinary shares credited as fully paid to those Members who shall have elected to receive the dividend in scrip.
162. Whenever such a resolution in the terms of Articles 160 or 161 shall have been passed the Directors shall make all appropriations and applications of the undivided profits resolved to be

capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think 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 further shares 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.

#### **AUDIT**

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

#### **NOTICES**

164. Every notice or other document given by the Company shall be in writing. To the extent permissible by law, the Company may serve any notice to be given to its Members by:

- (a) publishing such notice in two daily newspapers with nationwide circulation; or
- (b) sending such notice through the post addressed to such Member at his postal address as appearing in the Register of Members or the Company's other records; or
- (c) by electronic mail to such member at his email address as appearing in the Company's records or as shall be notified by such Member to the Company from time to time.

Provided that where the Company elects to send such notice to such Member at his email address, the Company shall ensure that such notice is also published in two daily newspapers with nationwide circulation.

165. Any Member whose registered address is not within Kenya may by notice in writing require the Company to register an address within Kenya, which, for the purpose of the service of notices, shall be deemed to be his registered address. A Member who has no registered address within Kenya, and who has not given notice as aforesaid, shall be entitled to receive notices from the Company at his address outside Kenya.

166. Where a notice or other document is sent by post it shall be deemed to have been served on the third day after the day on which it was posted, if addressed within Kenya, and on the fifth day after the day on which it was posted, if addressed outside Kenya. Where notice is sent electronically, it shall be deemed to have been served at 9.00 am on the business day following the date when the transmission was sent. Where notice is published in a daily newspaper, it shall be deemed to have been served on the day on which it was first published. In proving the giving of a notice, it shall be sufficient to prove that the notice was published in a daily newspaper of nationwide circulation, or that the envelope containing the notice or document was properly addressed and put into the post office as a prepaid letter or prepaid airmail letter, or that the applicable means of telecommunication or electronic communication was properly addressed and transmitted, dispatched or sent. The failure by any person or entity to receive any notice served

shall not in any way invalidate any proceedings or actions taken by the Company for which the notice was given.

167. A notice may be given by the Company to the person entitled to a share in consequence of the death or bankruptcy of a Member by sending it through the post or email in a letter addressed to him by name, or by the title of representative of the deceased, or trustee of the bankrupt, or by any like description, at the postal or email address, of the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

#### **“LOCAL INVESTORS” AND “FOREIGN INVESTORS”**

168. In these Articles if not consistent with the subject or context the terms “Local Investor” and “Foreign Investor” shall have the same meaning as that defined in The Capital Markets (Foreign Investors) Regulations 2002 as from time to time amended.
169. For the purposes of enabling the Directors to determine whether or not any share is held by a Foreign Investor the Directors shall maintain a register of Local Investors pursuant to Section 4 (1) of The Capital Markets (Foreign Investors) Regulations 2002 which register shall be available for inspection by any person as if it were a part of the Register of Members.
170. For the purposes of enabling the Directors to determine whether or not any share is to be transferred to a Foreign Investor every share transfer shall contain a declaration as to whether or not the transferee shall be a Local Investor and the Directors may require such further evidence as they may properly require to establish that the transferee shall be Local Investor and in default the transferee may be deemed by the Directors to be a Foreign Investor.

#### **SHARE OPTION SCHEME**

171. The Company may by resolution create such share option or ownership plans, schemes or schemes for its employees, directors, former directors, current and former committee members, as it may determine, and may further empower its directors to implement and in particular to allocate and issue shares to such plans, schemes or arrangements and to implement such plans, schemes or arrangements.

#### **WINDING UP**

172. If the Company shall be wound 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 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 contributories 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 whereon there is any liability.

#### **INDEMNITY**

173. Every Director, Chief Executive, Auditor, Secretary other officer and agent for the time being of

the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under Section 763 or 1005 of the Act in which relief is granted to him by the Court.

**CONFLICT WITH THE COMPANIES ACT, 2015**

174. a) In the event of there being any conflict between these Articles and the Act, the provisions of the Act shall prevail.
- b) In the event of there being any conflict between the Companies Act, 2015 and the Capital Markets Act, the provisions of the Capital Markets Act shall prevail.