

PROPOSAL TO AMEND THE ARTICLES OF ASSOCIATION OF CENTUM INVESTMENT COMPANY PLC (the Company)

(C.8/67)



We propose the following amendments to the Articles of Association of the Company in order to align them with the provisions of the Companies Act, No. 17 of 2015 which repealed and replaced the Companies Act (Chapter 486) laws of Kenya.

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Title</p> <p>THE COMPANIES ACT (CHAPTER 486)</p>	<p>THE COMPANIES ACT (NO. 17 OF 2015)</p>	<p>The Companies Act, No. 17 of 2015 repealed and replaced the Companies Act (Chapter 486) laws of Kenya.</p>
<p>Article 1</p> <p>The Regulations contained in Table A in the First Schedule to the Companies Act (Chapter 486) shall not apply to the Company.</p>	<p>The model articles for public companies limited by shares contained in Schedule 3 to the Companies (General) Regulations, 2015 shall not apply to the Company.</p>	<p>Table A of the Companies Act (Cap 486) is no longer applicable as Cap 486 was repealed by the 2015 Companies Act.</p>
<p>Article 2 – Definitions</p> <p>The Act means the Companies Act (Chapter 486).</p>	<p>The Act means the Companies Act (No. 17 of 2015).</p>	<p>The 2015 Companies Act repealed and replaced the Companies Act (Chapter 486) laws of Kenya.</p>
<p>Article 9 – Shares</p> <p>Subject to the provisions of these Articles, the unissued shares of the Company shall be at the disposal of the Board, which may allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may determine, but so that no shares shall be issued at a discount except in accordance with Section 59 of the Act.</p>	<p>Subject to the provisions of these Articles, the unissued shares of the Company shall be at the disposal of the Board, which may allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may determine, but so that no shares shall be issued at a discount.</p>	<p>Section 356 of the 2015 Companies Act prohibits the allotment of shares at a discount.</p>

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Article 10 – Commissions</p> <p>The Company may exercise the powers of paying commissions conferred by Section 55 of the Act, provided that the rate or amount of the commission paid or agreed to be paid and the number of shares which persons have agreed for a commission to subscribe absolutely shall be disclosed in the manner required by the said Section, and that such commission shall not exceed ten per centum (10%) of the price at which the shares in respect whereof the same is paid are issued. 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.</p>	<p>The Company may exercise the powers of paying commissions conferred by Section 331 of the Act, provided that the rate or amount of the commission paid or agreed to be paid and the number of shares which persons have agreed for a commission to subscribe absolutely shall be disclosed in the manner required by the said Section, and that such commission shall not exceed ten per centum (10%) of the price at which the shares in respect whereof the commission is paid are issued. 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.</p>	<p>The power to pay commissions for subscribing or procuring subscriptions to the Company's shares is now contained in Section 331 of 2015 Companies Act.</p>
<p>Article 14 – Financial assistance in subscribing for shares</p> <p>No part of the funds of the Company shall be employed in the subscription or purchase of or in loans upon the security of the Company's shares or those of its holding company (if any) and the Company shall not give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with any purchase or subscription by any person of shares in the Company or in its holding company (if any) to make, or guarantee or provide any security in connection with, a loan to any Director of the Company or its holding company (if any) provided that nothing in this Article shall prohibit transactions mentioned in the proviso to Section 56 (1) of the Act.</p>	<p>No part of the funds of the Company shall be employed in the subscription or purchase of or in loans upon the security of the Company's shares or those of its holding company (if any) and the Company shall not give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with any purchase or subscription by any person of shares in the Company or in its holding company (if any) to make, or guarantee or provide any security in connection with, a loan to any Director of the Company or its holding company (if any) provided that nothing in this Article shall prohibit transactions exempted under Sections 442, 443, 445 and 446 of the Act.</p>	<p>The exemptions to providing financial assistance contained in the proviso to Section 56(1) of CAP 486 are now set out in Sections 442, 443, 445 and 446 of the 2015 Companies Act.</p>

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Article 47(b) – Sub-division of Shares</p> <p>Sub-divide its shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provisions of Section 63(1) (d) of the Act) and the resolution whereby any share is so sub-divided may determine that one or more of the shares resulting from such sub-division may carry any such preferred, deferred, special or qualified rights over or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares.</p>	<p>Sub-divide its shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provisions of Section 405 of the Act) and the resolution whereby any share is so sub-divided may determine that one or more of the shares resulting from such sub-division may carry any such preferred, deferred, special or qualified rights over or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares.</p>	<p>The power to sub-divide shares of the Company is now contained in Section 405 of the 2015 Companies Act.</p>
<p>Article 50A – Attendance of A General Meeting by Electronic Means</p>	<p>New Article 50A to be inserted into the Company’s Articles of Association immediately following the current Article 50:</p> <p>“50A ATTENDANCE OF A GENERAL MEETING BY ELECTRONIC MEANS</p> <p>(a) The Board may, whenever it thinks fit—</p> <p>i) convene a shareholders’ meeting entirely by electronic communication; or</p> <p>ii) provide for one or more shareholders, or proxies for shareholders to participate by electronic communication in all or part of a shareholders meeting that is being held in person,</p> <p>as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.</p>	<p>In accordance with the provisions of the Companies Act, No. 17 of 2015 as amended by the Business Laws (Amendment) (No. 2) Act, 2021 allows the Company to hold virtual or hybrid AGMs without needing to seek court permission. This is in line with the lessons from the pandemic.</p>

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Article 50A – Attendance of A General Meeting by Electronic Means (Continued)</p>	<p>(b) If shareholder participation in a meeting is by electronic communication, as contemplated in Article 50A(a):</p> <ul style="list-style-type: none"> i) the notice of that meeting must inform shareholders of the availability of that form of participation, and provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication; and ii) access to the medium or means of electronic communication is at the expense of the shareholder or proxy, except to the extent that the Company determines otherwise.” 	
<p>Article 93 – Removal of Director from Office</p> <p>The Company may, by Ordinary Resolution of which special notice has been given in accordance with Section 142 of the Act, remove any Director before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Company and such Director. Such removal shall be without prejudice to any claim which such Director may have for damages for breach of any contract of service between him and the Company.</p>	<p>The Company may, by Ordinary Resolution of which special notice has been given in accordance with Section 139 of the Act, remove any Director before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Company and such Director. Such removal shall be without prejudice to any claim which such Director may have for damages for breach of any contract of service between him and the Company.</p>	<p>Power to remove director from office now contained in Section 139 of the 2015 Companies Act.</p>

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Article 107 – Official Seal for use outside Kenya</p> <p>The Company may exercise the powers conferred by Section 37 of the Act with regard to having an Official Seal for use outside Kenya and such powers shall be vested in the Board.</p>	<p>Article 107 to be deleted in its entirety.</p>	<p>The Business Laws (Amendment) Act, 2020 deleted Sections 42 and 43 of the 2015 Companies Act, which had the requirement for companies to have an official seal and allowed companies to have a seal for use outside Kenya.</p>
<p>Article 126 – Fractional Shares</p> <p>Where any difficulty arises in regard to any distribution under the last preceding Article, the Board may settle the same as it thinks expedient and, in particular, may provide for the case of fractions by the issue of fractional certificates or may ignore fractions altogether. Where requisite, a proper contract shall be filed in accordance with section 54 of the Act and the Board may appoint any person to sign such a contract on behalf of the persons entitled to the dividend or to such appropriation and distribution and any contract so entered into shall be binding and effective.</p>	<p>Where any difficulty arises in regard to any distribution under the last preceding Article, the Board may settle the same as it thinks expedient and, in particular, may provide for the case of fractions by the issue of fractional certificates or may ignore fractions altogether, or the making of cash payments or adopting a rounding policy.</p>	<p>Section 54 of Cap 486 no longer applies. Changes will empower directors to make cash payments in lieu of fractional entitlements or round them up altogether in line with the recommendations of the model articles for public companies limited by shares.</p>
<p>Article 129 – Storage of Books of Account</p> <p>The books of account shall be kept at the Office or, subject to the provisions of Section 147 (3) (b) of the Act, at such other place or places as the Board may think fit and shall always be open to the inspection of the Directors.</p>	<p>The books of account shall be kept at the Office or, subject to the provisions of Section 630 (1) of the Act, at such other place or places as the Board may think fit and shall always be open to the inspection of the Directors.</p>	<p>Section 630 (1) of the 2015 Companies Act now prescribes how the accounting records of the Company should be kept.</p>

CURRENT TEXT	PROPOSED CHANGE OR NEW TEXT	EXPLANATORY NOTES
<p>Article 131 – Matters to be presented at an AGM</p> <p>The Directors shall, from time to time, in accordance with Sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the Company in General Meeting such profit and loss accounts, balance sheets and reports as are referred to in those sections.</p>	<p>The Directors shall, from time to time, in accordance with Section 679 of the Act, cause to be prepared and to be laid before the Company in General Meeting its annual financial statement and directors’ and other reports as are referred to in that section.</p>	<p>Requirement to table annual financial statements, directors’ report and auditors’ report now provided for in Section 679 of the 2015 Companies Act.</p>
<p>Article 133 – Auditors</p> <p>Auditors shall be appointed and their duties regulated in accordance with Sections 159 to 162, inclusive, of the Act.</p>	<p>Auditors shall be appointed and their duties regulated in accordance with Part XXVII of the Act.</p>	<p>Part XXVII of the 2015 Companies Act, regulates the appointment and duties of Auditors.</p>