



**THE COMPANIES ACT**

**(CHAPTER 486 OF THE LAWS OF KENYA)**

**PRIVATE COMPANY LIMITED BY SHARES**

**MODEL MEMORANDUM OF ASSOCIATION**

**OF**

**..... WATER SERVICES COMPANY LTD**

1. The name of the company is ..... **WATER SERVICES COMPANY LIMITED**  
**(hereinafter called the 'Company')**
2. The Registered office of the company will be situated ..... in the Republic of Kenya.
3. The objects for which the company is established are: -
  - a) to be an agent of ..... of the county government of ..... to deliver water services within the demarcated service area of the county
  - b) To carry on business of water and sewerage as prescribed by the Water Act 2016 and national standards thereat within the Town/s of .....and its environs and to manage the assets handed over to the company by the ..... Water Services Board and the County Government of..... These assets shall **NOT** be subject to any resolution of the company that is prejudicial to the interest of both the ...Water Services Board, the county government and the beneficiary community.
  - c) To exercise overall control over the sources and supply of water and in particular, to conserve, redistribute and augment those water resources, including sinking wells and shafts, and to make, build and construct, lay down and maintain, reservoirs, waterworks, cisterns, culverts, filter-beds, mains and other pipes and appliances, and to execute and do all other works and things necessary or convenient for conserving , obtaining, storing, selling, delivering measuring and distributing water and regenerating water or otherwise for the purposes of the Company.
  - d) To provide and distribute a constant continuous supply of potable water for commercial, industrial and domestic purposes.
  - e) To be responsible for the provision, control and maintenance of Sanitation Sewerage and drainage for commercial, industrial and domestic purposes
  - f) Subject to the approval of the water services board and/or the county government as the case may be ,to design and construct dams, reservoirs and weirs, to dig wells and drill or sink boreholes and carry on any other water conservation measures and reticulation works for the provision of water for domestic, industrial and agricultural purposes.

- g) To acquire for its own use and distribution by sale to the public water pumps, engines tanks, pipes and any other equipment and chemicals that may be deemed necessary for and connected to the carrying out of the said business of the Company.
- h) To be responsible for the treatment and disposal of waste water by such means and at such times and locations as the company may deem appropriate as guided by standards in the water services sector.
- i) To import, distribute, use or sell chemicals, other materials, equipment or goods relevant or incidental to the conduct of the aforesaid business of the company
- j) To establish laboratories facilities for analysis and to levy charges when applications or requests for the testing are made to the Company.
- k) To undertake laboratory analysis to ensure that acceptable water standards are maintained.
- l) To ensure that lawful and efficient methods of disposal of effluent are applied.
- m) To levy from the consumers charges in respect of the services, which the Company provides, and to make revisions to those rates as the company may from time to time deem appropriate subject to national standards to protect consumers set by the Water Services Regulatory Board.
- n) Subject to national standards to carry on any other business which may seem to the Company necessary to, incidental to, or capable of, being conveniently carried on in connection with the objects of the Company or calculated directly or indirectly to enhance the value of, or render profitable, any of the property or rights of the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company, subject to approval by the County government.
- o) To purchase or otherwise acquire or lease facilities such as land, canals, dams, reservoirs, pipelines waters, warehouses buildings or machinery and construct and equip the same, which may seem to the Company necessary to, or capable of, being conveniently carried on in connection with the objects of the Company or calculated directly or indirectly to enhance the value of, or render profitable, any of the property or rights of the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company, subject to national standards in the water sector
- p) To establish workshops for the repair and fitting of metering equipment electric motors, pumps and other associated equipment common and incidental to the provision of water and sanitary and to offer these services at a fee to other organizations.

- q) To purchase, take in exchange equip, construct, maintain, hire, or otherwise acquire movable property including vehicles, ships or other water-borne vessels, machinery, plant and apparatus necessary or convenient for the carriage of equipment, passengers, freight and goods of all descriptions subject to the national standards in the water sector.
- r) To acquire, establish, construct and provide workshops, waterworks, offices and other premises and facilities necessary or convenient for the performance of the objects of the Company and for that purpose, buy, take on, lease or in exchange, hire or otherwise acquire immovable property and interests therein, and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.
- s) To apply for, buy or otherwise acquire patents, patent rights, trade marks, designs, licenses, concessions, or the like conferring an exclusive or non-exclusive or limited right to their use, or any confidential or other information or a process which may seem to the Company capable of being used for the purpose of the company or the acquisition of which may seem to the Company calculated, directly or indirectly, to benefit the company and to develop and grant licenses in respect of or otherwise turn to account, rights, information and processes so acquired, and to expend money in experimenting upon testing, or improving, any such patents inventions or rights.
- t) To acquire and undertake the whole or any part of the business, property, and liabilities of any person or company carrying on or proposing to carry on, any business which the Company is authorized to carry on, or possessed of property suitable for the purposes of the Company, which can be carried on in conjunction there with or which is capable of being conducted so as directly or indirectly to benefit the Company.
- u) To amalgamate, enter into partnerships or into any arrangement for sharing profits, union of interest, co-operation, joint venture, or reciprocal concession, with any person or company carrying on in conjunction therewith or which is capable of being conducted so as to directly or indirectly benefit the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company subject to the approval of the County Government and the national standards in the water sector.
- v) To subscribe for, take or otherwise acquire and hold shares, stock, debentures or other obligations or securities of any other company having objects wholly or in part similar to those of the company or carrying on any business capable of being conducted so as to directly or indirectly benefit the company subject to approval by the county government and as per the national standards in the water sector.
- w) To apply for, purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property and any rights or privileges which the company may think necessary or convenient for the purpose of its business or businesses and in particular any land, buildings, plant,

and stock in trade, provided that such investments shall not exceed ten percent (10%) of the overall company income subject to the approval of the Water Services Regulatory Board.

- x) To pay for any business, property, or rights acquired or agreed to be acquired by the company by the issue or transfer of shares of this or any other company credited as fully or partly up or debentures or other securities of this or any other company, subject to the national standards in the water sector.
- y) To lend and advance money or give credit to such persons or companies and on such terms as may seem expedient, and in particular to customers and persons having dealings with the company, and to guarantee to performance of any contract or obligation and the payment of money of or by any such persons or companies and generally to give guarantees and indemnities subject to the national standards in the water sector.
- y) Subject to the national standards to receive money on loan and borrow or raise money in such manner as the company shall in consultation with the county government think fit to advance the objects of the company.
- z) To make draw, accept, endorse, negotiate, discount, buy, sell, execute, issue and deal in bills of exchange, promissory notes bills of lading, warrants debentures and other negotiable or transferable instruments subject to the national standards in the water sector.
- aa) To apply for, promote and obtain any legislation, charter, privileges, concession, license or authorization of any government, state, city or authority to enable the company to carry out any of its objects into effect or for extending any of the powers of the company or for extending any modification of the constitutions of the company or for any other purpose any proceedings or application which may seem calculated directly or indirectly to prejudice the interests of the company subject to the national standards in the water sector.
- bb) To enter into any arrangements with any government or authorities (international, regional, national, local or otherwise) or any person or company that may seem conducive to the objects of the company and to obtain from any such governments, authority, person or company, any rights, privileges, charters, contracts licenses and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights privileges and concessions subject to the approval of the County Government and the Water Services Regulatory Board.
- cc) Subject to the national standards in the water sector and the approval of the county government to establish and maintain or procure the establishment and maintenance of any contributory pension or super-annuation funds for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments, to any persons who are or were at any time in the employment or service of the company ,or of any dependants of any such persons and to establish

and subscribe to any institutions, or funds calculated to be for the benefit of or to advance the interests and well being of the company as aforesaid, and make payments of the matters aforesaid .

- dd) To remunerate or make reimbursements to any person or persons whether Directors, Officers or Agents of the company for services rendered in or about the conduct of the company's business subject to the national standards in the water sector and with the approval of the County Government.
  - ee) To invest and deal with the monies of the company not immediately required in the manner agreed upon in the License and especially for the purpose of improving the efficiency of the infrastructure and facilities used in the provision of water services in consultation with the county government and subject to the national water standards .
  - ff) To insure against losses, damages, risks and liabilities, which the Company may incur.
  - gg) Subject to efficiency national standards in the water sector ,to deal with the company's employees according to the human resources policy developed with the consultation and approval of County Government in all matters including: -
    - i. Appointing employees on performance based terms of employment
    - ii. Ensuring employees adhere to the Public Officers Ethics Act
    - iii. Ensuring employees have the technical capacity to improve the services provided of water and sewerage as per regulated standards
  - hh) To carry out all acts necessary for the purposes of improving: -
    - i). The skills knowledge and experience of persons employed in connection with the provision of Water and Sanitation services.
    - ii). The efficiency of the equipment of the company, or the manner in which the equipment is operated; and in that connection to providing or assist other persons in provide facilities for training, education and research.
  - ii) To carry out all acts as are incidental to or conducive to the attainment of the above objects. And it is hereby declared that the word "company" in these clauses, except where used in reference to this company, shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in Kenya or elsewhere and that the object specified in each paragraph shall be separated as independent objects of the company and shall not be limited or restricted by reference to the terms of any other paragraph in the name of the company but may be carried out in as full and apply a manner as construed in a wide a sense as if each of the said paragraphs defined the objects of a separate and distinct company.
4. The Liability of the members is limited.

5. The share capital of the company is *Kenya Shillings One Hundred Thousand (Ksh. 100, 000/= divided in to Five Thousand 5,000 shares of Kenya Shillings Twenty (Ksh. 20/=)* each subject that the company has power to increase or reduce the said capital and to issue any part of its capital, original or increased with or without any preference, priority, or special privileges or subject to any postponement of rights or to any conditions or restrictions, and so that, unless the conditions of issue shall otherwise expressly declare, every issue of shares, whether declared to be preference or otherwise, shall be subject to the power hereinbefore contained. The rights and privileges for the time being attached to any class of shares may be altered, modified varied, abrogated or taken away with the consent in writing of the owners of three fourths of the shares in the class or with the sanction of an extraordinary resolution to be passed at a separate general meeting of the holders of the share in that class.

We, the several persons whose names, addresses and occupations are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses and Description of subscribers	Numbers of shares taken by each subscriber	Signatures of subscribers
<b>County CEC for water in trust for .....county</b>	<b>300</b>	
<b>County CEC for finance in trust for .....county</b>	<b>100</b>	
<b>County secretary in trust for .....county</b>	<b>100</b>	
<b>TOTAL NUMBER OF SHARES TAKEN</b>	<b>(minority shares to be taken the rest to remain outstanding)</b>	

**DATED this.....day of..... 2017**

**Witness to the above signatures**

**CERTIFICATE UNDER THE COMPANIES REGULATIONS**

It is hereby certified that the above Memorandum of Association of has been produced by the process of **XEROGRAPHY**.

**THE COMPANIES ACT  
(CHAPTER 486 OF THE LAWS OF KENYA)**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

**OF**

**.....WATER SERVICES COMPANY LTD**

1. The Regulations contained in Part 1 of the First Schedule to the Companies Act shall not apply to the company in so far as they are excluded by these regulations.

2. In these Articles, if not inconsistent with the subject of context:

(a) "The Act" means the Companies Act Chapter 486 of the Laws of Kenya and any later amendments to that Act

"The Board" means the Board of directors of the Company or the Directors present at a duly convened meeting of the directors at which quorum is present.

"The Company" means the ..... WATER SERVICES COMPANY LTD.

"The county" means the devolved unit of government established under the first schedule to the Constitution 2010 and in these articles primarily refers to the executive arm of the county government.

"director " means a technically competent person in engineering, law, human resources, business, ICT and appointed from the process of stakeholder participation organized under the supervision of relevant arm of the county government.

"These Articles" shall mean these Articles of Association as now framed or as from time to time altered by special resolution.

"The Seal" means the common seal of the company

"Secretary" means any person performing the duties of the Company Secretary.

“Stakeholder” means a person who may have a direct or material interest in the achievement of the economic and social objectives of the company.

“Stakeholder participation procedure” means the process by which the Water Service Provider advertises competitively for directors who have no conflict of interest with the company and appoints them for the water service companies and is elaborated in the Corporate Governance Guidelines issued by the Water Services Regulatory Board.

“Treasury” means the National Treasury and the County Treasury as the case may be.

“Water Services Regulatory Board” means the body established pursuant section 70 to the Water Act 2016 and is a successor to the body established under section 46 of the Water Act 2002.

- b). Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photographs and other modes of representing or reproducing words in a visible form.
  - c) Unless the context otherwise requires words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles becomes binding on the company.
  - d). Words denoting the singular number shall include the plural number and vice versa, words denoting the masculine gender shall include the feminine gender also; words denoting persons shall include corporations.
3. The company shall be Public Limited Liability Company, and accordingly the following provisions shall apply subject to the national standards on consumer protection and of commercial viability of the company:
- a. The members may transfer shares to the public
  - b. Invitation may be made to the public to subscribe for any shares or debentures of the Company for purposes of strategic investment to achieve the progressive realization of the right to water and sewerage services in built up areas with the approval of the County Government.

#### **SHARE CAPITAL AND VARIATION OF RIGHTS**

4. The share capital of the Company is Kenya Shillings One Hundred Thousand (Kshs, 100,000/=) divided into Five Thousand (5,000) shares of Kenya Shillings Twenty (20/=).



5. One (1) share shall be called a GOLDEN SHARE and it shall have all the voting rights of other shares and in addition it shall have VETO POWER on all resolutions of general meeting and board meeting that have the capacity to affect the financial viability company. This share shall vest in the *Treasury where the company is a beneficiary of projects developed by loans by agents of the national government; or an arrangement with development partners under the auspices of the national government or county government*
6. All the other 4,999 shares ( if a golden share is issued) can be divided or subdivided or increased into several classes and to attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions as regards dividend, capital, voting or others.
7. The members for the time being shall have the preferential right to subscribe for and take up all further shares authorized to be issued. All such shares shall be offered to the members in proportion to the existing shares held by them and such offer shall be made by notice specifying the number of shares to which the members are entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined and after the expiration of such time or on intimation from the member to whom such notice is given.

**PROVIDED** that the all the subscribers, shall hold such shares in trust and on behalf of the County for the beneficial provision of water services to the residents of the county and by virtue of their offices and investments to the county and the shares shall at all times belong to the County.

8. If a share certificate is worn out defaced, lost, or destroyed it may be received on such terms, if any as to evidence and indemnity as the Directors think fit
9. No part of the funds of the company shall be employed in the purchase of, or in loans upon security of, the company's shares, but nothing in this clause shall prohibit transaction permitted by the Act and any funds so employed shall be subject to the approval of the County Government and in accordance with the Capital Investment Plan.

#### **LIEN**

10. The Company shall have lien on every share, not being a fully paid share, for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares other than fully paid shares standing registered in the name of a single person for all monies 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 provision of this article. The Company's lien if any, on a share shall extend to all dividends payable thereon.
11. The Company may sell in such a manner as the Directors think fit, any shares on which the company has a lien, but no sale shall be made unless the sum in respect of which the lien exist is

presentably payable, or until the expiration of 14 days (fourteen) after a notice in writing, stating and demanding payment of the sum presently payable, has been given to the registered holder for the time being of the share or the person entitled, by reason of his death or bankruptcy, to the share.

10. To give effect to any such sale the Directors may authorise some person to transfer the share sold to the purchaser thereof. The purchaser shall be registered as the holder of the share 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 effected by any irregularity or in validity in the proceeding reference to the sale.
11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exist as is presently payable, and the residue shall be held (subject to alike lien for sums not presently payable as existed upon the shares prior to the sale) by the Company on behalf of the person entitled to the shares as the date of the sale.

#### **CALLS ON SHARES**

12. The Directors may time to time make calls upon the members in respect of any money unpaid on their shares, and each member shall (subject to receiving at least (14) Fourteen days notice) specifying the time or times of payment 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.
13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
14. If a sum called in respect of a share is not paid before or on the day appointed for the payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of 5 per centum (5%) per annum from the day appointed for payment thereof to the time of actual payment, but the directors shall be at liberty to waive payment of such interest wholly or in part.
15. The provision of these Articles as to payment of interest shall apply in the case of non payment of any sum to which, by the terms of issue of a share, become payable at a fixed time, whether on account of the amount of the share, or by way of premium as if the same as become payable by virtue of call duly made and notified.
16. The Directors may, on the issue of shares, differentiate between the holder as to the amount of calls to be paid and times of payment.
17. The Directors may, if they think fit receive from any members willing to advance the same, or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the monies so advanced may (until the same would, but for such advance, becomes payable) pay

interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 5 percent per annum between the directors and the members paying such sums in advance.

#### **TRANSFER OF SHARES**

18. Subject to the provisions hereinafter contained shares in the Company shall be transferable by written instrument in any common form signed by both transferor and transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof subject to the approval of the county government.
19. The Directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The Directors may decline to recognise any instrument of transfer unless
- a). The instrument of transfer is fully stamped and accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and
  - b). It relates only to one class of shares.
  - c). It has received the approval of the Water Services Board.

If the Directors refuse to register a transfer of any shares they shall within two months after the date on which transfer was lodged with the company send to the transfer notice of the refusal.

20. The Directors may suspend the registration of transfers during any period for which they in their absolute discretion think fit provided that any such period does not exceed a period prescribed by the Act.

#### **TRANSMISSION OF SHARE**

21. The personal representatives of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of the share registered in the names of two or more holders, the survivors or survivor or the personal representatives of the deceased shall be the only persons recognized by the Company as having any title to the share.
22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the Directors, have the right, either to be registered as a member in respect of the share, or instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; 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 the deceased or the bankrupt person before the death or bankruptcy.

23. 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 to the same if they 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.

#### **FORFEITURE OF SHARES**

24. If a Member fails to pay any call or instalment of a call on the day appointed for payment thereof the Board may, at any time thereafter while any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reasons of such non-payment.
25. The notice shall specify a date, not less than fourteen days from the date of service of the notice, on or before which and the place where the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made or instalment is payable will be liable to be forfeited. The Board may accept the surrender of any share liable to be forfeited hereunder and, in such case; references herein to forfeiture shall include surrender.
26. If the requirements of any such notice are not complied with, any shares in respect of which such notice has been given may, at any time after the date specified therein, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
27. When any shares have been forfeited, notice of the forfeiture shall forthwith be given to the holder of the shares or, as the case may be, to the person entitled to the shares by the reasons of the death or bankruptcy of the holder but no forfeiture shall be invalidated by any omission or neglect to give such notice as aforesaid.
28. Forfeited shares shall be deemed to be the property of the Company and may be sold, re-allotted or otherwise disposed of upon such terms and in such manner as the Board may think fit but, at any time before a sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the Board may determine.
29. 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 presently 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 per annum, as the Board may determine.

30. A statutory declaration that the declarant is a Director or the Secretary of the Company and that shares have been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares. The Company may receive the consideration, if any, given on the sale, re-allotment or disposition of the shares and, in the case of sale, may appoint some person to execute a transfer thereof to the purchase who, or, as the case may be, the person to whom the shares are re-allotted or otherwise disposed of shall be registered as the holder hereof and shall not be bound to see to the application of the consideration (if any) and whose title to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, re-allotment or other disposition of the shares.

#### **CONVERSION OF SHARE INTO STOCK**

31. The Company may by ordinary resolution convert any paid up shares, into stock, and reconvert any stock into paid up shares of any denomination
32. The holders of stock may transfer the same of any part thereof, in the same manner, and subject to the same regulation as and subject to which the shares from which the stock arose might prior to conversion have been transferred, or as near there to as circumstances admit as the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.
33. The holders of the stock shall, according to the amount of stock held by them have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stocks arose but no such privileges or advantage (except participation in the dividends and profits of the Company and in the assets on winding up) shall be conferred by an amount of stock which would be not, if existing in shares, have conferred the privileges or advantage.
34. Such of the Articles of the Company as are applicable to paid up shares shall apply to stock and the words "share" and "shareholder" therein shall include "stock" and "stock holder".

#### **ALTERATION OF CAPITAL**

35. Articles 44 to 46 of Table "A" shall apply and the Directors may also (subject to the provisions of the Companies Act) accept surrender of shares.
36. The Directors may from time to time, at their discretion borrow from any and secure the payment of any sum or sums of money for the purpose of the company subject to the approval of the County government.

37. The Directors may secure the repayment of such moneys in such manners and upon such terms and conditions in all respects as they think fit, by the issue of debentures or debenture stock of the company, charged upon or any part of the property of the company, charged upon or any part of the property of the company, (both present and future) including the uncalled capital for the time being subject to the approval of the County Government

#### **GENERAL MEETINGS**

38. The Company shall in every year hold a general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the public notices calling it; thirteen months shall not elapse between the date of one annual general meeting and the next. The annual General Meeting shall be held at the registered offices of the company or a premise in its area of water service operation which the Directors shall appoint and notify publicly to all members and stakeholders. At such annual general meeting the Company shall be represented by all members of the Company and that the County shall be represented by the persons holding the share in trust for the county and no one else. **PROVIDED** that on a poll at any General Meeting or Annual General Meeting members of the County shall not have individual voting rights except on shares held. As the Company structure changes membership of the Annual General Meeting shall be amended to reflect the structure of the shareholders as required by law.
39. All general meetings other than annual meetings shall be called extraordinary general meetings.
- 40 (i). The Directors may, whenever they think fit, convene an extraordinary general meeting, and they shall, on the requisition of members of the Company representing not less than one-fifth of such of the paid-up capital of the company as at the date of the requisition carries the rights of voting at general meetings, forthwith proceed to convene an Extraordinary General Meeting of the company and in the case of such requisition the following provisions shall have effects:
- a). The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office, and may consist of several documents in like form each signed by one or more of the requisitionists.
  - b). If the Directors do not within 21 days from the date of deposit of the requisition proceed to convene a meeting, the requisition, or any of them representing more than one-half of the voting rights of all of them may themselves convene the meeting, but the meeting so convened shall not be held after three months from the date of such deposit.
  - c). In the case of a meeting at which a resolution is to be passed as a special resolution the directors shall be deemed not to have duly convened the meeting if they do not give such notice as is required by the Act.

- d). Any meetings convened under this article by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
  - e). A requisition by joint holders of shares must be signed by all such holders.
- (ii). If at any time they are not within Kenya sufficient Directors capable of acting to form a quorum, any Director or any two 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 THE GENERAL MEETING**

41. An annual general meeting shall be called by twenty one-days' notice in writing at the least, and a meeting for the passing of a special resolution shall be called by seven 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 Articles 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 Articles, be deemed to have been duly called if it is so agreed:
- a. in the case of a meeting called at the annual general meeting, by all the members entitled to attend and vote thereat; 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 95% in nominal value of the shares giving that right.
42. 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 to be a member.
43. The accidental omission to give notices of meeting to, or the non-receipt of notices of a meeting by, any person entitled to receive notice shall not invalidate the proceeding at that meeting.

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

44. Articles 52 to 61 of Table "A" shall apply but only in so far as they are not inconsistent with any other article of the Company.

- 45. An Extraordinary General Meeting may, with the consent in writing of all the members of the time being be convened on a shorter notice than seven days or without written notice.
- 46. Notice of an adjourned meeting shall be required in any case.
- 47. Two members present personally or by proxy shall form a quorum.

**VOTE OF MEMBERS**

- 48. Subjects to the rights of the GOLDEN SHARE 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, **PROVIDED THAT** on a poll every person empowered by this Articles to attend any general meeting or annual general meeting shall have votes equivalent to the number of shares held by the corporate body represented by the said person.
- 49. In the case of joint holders the vote of either 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 of members.
- 50. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
- 51. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 52. On a poll, votes may be given either personally or by proxy shall be in writing under the hand of the appointed person or of his attorney duly authorized in writing or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.
- 53. Every instrument of proxy whether for a specified meeting or otherwise shall as nearly as circumstances will admit be in the form or to the effect following or in any other form which the Directors shall approve

**..... WATER SERVICES COMPANY LTD**



I/We,.....of.....

.....  
 being a Member/Members of the above-named Company, hereby  
 appoint.....of.....of failing  
 him.....as my/our proxy to vote for me/us on my/our behalf at the  
 Annual/Extraordinary General Meeting of the Company to be held on the.....day  
 of.....200..... and at any adjournment thereof.

Signed this.....day of.....200.....

- 54. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 55. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, incapacity revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting at which the proxy is used.

**CORPORATIONS**

- 56. Any corporation which is a member of the company may by resolution of its Directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

**DIRECTORS**

- 57. According to the national standards prescribing the size of the companies, the maximum number of Directors who shall be appointed in accordance with the stakeholder participation procedure shall be six **except** that the maximum number of Director shall be nine comprising of the following:-
  - a. 3 persons from the county who shall be the
    - i. The chief officer in charge of water issues
    - ii. The chief officer in charge of finance issues
    - iii. A senior experienced officer in the county well versed in Human Resource Management
  - b. 2 member from an identified stakeholder group of the manufacturing and business community as the case may be.

- c. 2 local professional representing a recognized stakeholder professional organizations.
- d. 2 residents representing a recognized resident organization including water user associations

**PROVIDED** that a third of the members shall be of the other gender as per the constitutional requirements and all directors shall at a minimum be literate and numerate to degree level and have a minimum of 7 years working experience in law, engineering, finance, human resource issues, administration, ICT or business.

Provided also that a director shall meet the leadership and integrity requirements of the Constitution of Kenya 2010 or any enabling legislation applicable in the public service.

**PROVIDED also** more Directors (but not exceeding the maximum number) may be added by the passing of a resolution to that effect in any Annual General Meeting if it is considered so necessary. The names of the first Directors shall be determined in writing after their appointment under the stakeholders' participation procedure in consultation with the county.

58. (i). At the third annual general meeting of the company from the date of incorporation a third of all the directors shall retire from office and subsequently at the annual general meeting of every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three then the number nearest one-third, shall retire from office. A stakeholder participation procedure shall be held to elect the new directors to replace those who have retired. Provided no director shall serve for a term of more than six years.
- (ii). The directors to retire in every year shall be those who have been longest in office since their last election, provided they have served as directors in the company for no less than three years but as between persons who became directors on the same day those to retire shall unless they otherwise agree among themselves be determined by lot.
59. Only the directors representing the County and shall have their institutions appoint in writing only one alternate director who shall only attend in the notified absence of the appointed director.
60. At the appointment of new directors before they take up their duties of office shall sign the code of ethics and shall undergo a corporate governance training approved by the Water Services Regulatory Board .
61. The remuneration of the Directors shall be within the national benchmarks set in the water services sector in reference to ability to pay and shall be by way of sitting allowances only. The Directors may also be paid all travelling expenses from their ordinary place of residence to the place where the meeting is held, hotel and other expenses properly incurred by them in attending

and returning from meetings of the directors or any committee of the directors or general meeting of the company or in connection with the business of the company.

62. Any director who, being so requested by the Board of Directors, performs special or extraordinary services on behalf of the company, or who travels outside Kenya for the purpose of discharging his duties may be paid such extra remuneration as the Board of Directors may determine, provided that the rates of such extra remuneration shall be those approved in the sector by the regulator.
63. The business of the company shall be managed by the Directors who may exercise all powers of the company as required to be exercised by the company in a 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. In the management of the company's business no Director as such shall incur any personal liability except for a breach of trust knowingly and wilfully committed by himself.

#### **PROCEEDING OF DIRECTORS**

64. Article 98 to 106 of Table "A" shall apply but only in so far as they are not inconsistent with any other article of the Company.
65. The quorum necessary for the transaction of the business of the Directors shall be a third (1/3) of the total number of Directors.
66. The directors shall form an Audit Committee as per the requirements of the Public Finance and Management Act 2012 and other committees as prescribed in the national water sector governance standards.
67. A Director who is at any time out of Kenya shall not during his absence have the right of vote.
68. A resolution determined without any meeting of Directors and evidenced in writing under the hands of all the Directors shall be as valid and effectual as a resolution duly passed at a meeting of the Directors.
69. At the end of every year directors shall perform an evaluation of themselves as described in the governance standards in the water service sector.

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

70. The Board of directors shall appoint a Managing Director and senior management team through competitive advertising in the national media to manage the company, for remuneration by way of salary and allowances subject to performance oriented terms as may be agreed upon, and likewise may revoke any such appointment in accordance with the terms and conditions of employment of the company which will have been agreed with the County Government.
71. A managing director so appointed shall head the management team of the company and be responsible for the day to day operations of the company in order to provide for the effective and efficient provision of water services at optimum Cost: be responsible for ordinary expenditure of the company within approved budgets; keep the Board informed on performance; prepare corporate plans and budgets; implement board resolutions and shall sit in the Board of Directors as the managing director.
72. No person shall be appointed or hold office as a Managing Director unless if such a person:
- a. Has a degree in Engineering, Finance, Economics, Management or Law
  - b. Has a minimum of five (5 years experience in Utility Management and/or service industry.
  - c. Is in good standing with his professional body.
73. The Directors may within the Public Finance Management Act 2012, and Standards issued in the Water sector 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 and other securities whether outright or as security (principal or collateral) for any debt, liability or obligation of the company or any third party:

**PROVIDED ALWAYS** that the Directors shall restrict the borrowings of the company and exercise all voting and other rights or powers of control (if any) exercisable by the company in relation to its subsidiary companies (if any) so as to secure (as regards such subsidiaries so far as by such exercise as aforesaid they can secure) that the aggregate amount for the time being remaining undischarged of any monies borrowed by the company and its subsidiaries (exclusive of monies outstanding in respect of borrowings by the company from any such subsidiary or by any such subsidiary from another subsidiary or from the company) shall not at any time without the previous sanction of the company in general meeting exceed two times the issued and paid up capital and reserves of the company;

**PROVIDED** further that no lender or other person dealing with the company shall be concerned to see or inquire whether such limit is observed and that no debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or recipient of such security at the time when the debt was incurred or security given that the limit **hereby** imposed had been or was thereby exceeded.

74. The Directors shall duly comply with the provisions of the Act or any statutory modification thereof for the time being in force, 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 and extraordinary resolutions and a copy of the register of Directors and notifications of any changes therein.
75. The Board of directors may from time to time with the advice of the Managing Director and Company Secretary and in accordance with the Public Procurement and Asset Disposal Act appoint any company or firm to be Advocate or Advocates of the Company to carry out any legal undertakings of the Company as it may be deemed fit.
76. The Board of directors shall be responsible for implementation of the company's Memorandum and Articles of Association provide guidelines and control the functions of the Company. Specifically they shall: in accordance with national standards prevailing in the sector determine the strategic plan of the company, annual budget of the company, subject to national standards staffing levels of the company , approve a Human Resource Manual for appointment and dismissal of staff, terms and conditions of service that are performance oriented, approve the annual corporate plan, provide management guidelines, approve major contracts, authorize changes of policy, hold quarterly meetings and ensure approval of tariffs in compliance with existing legislation and keep open and effective communication channels with the county government.
77. The company may exercise the powers conferred by Section 36 of the Companies Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.
78. The company may exercise the powers conferred upon the company by section 88 of the Act with regard to the keeping of debenture registers, and the Directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such registers.
79. A Director, employee or their proxies shall not be eligible to trade and or in any way contract with the company for the provision of goods and services.
80. All cheques, promissory notes, draft, 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, by signatories who one shall be the managing director of the company and the other the chief financial officer of the company and any other member of

the management team that the directors shall from time to time by a resolution determine. Any such change shall be communicated to the County Government.

81. 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 the names of the Directors present at each meeting of the Director and of any committee of Directors;
  - c). of all resolutions and proceedings at all meetings of the company, and of the Directors and of committees of Directors, and every Director present at any meeting of Directors or committee of Directors shall sign his name in a minute book to be kept for that purpose.
82. The directors may grant contributory 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 service rendered by him to the company whether as Managing Director or in any other office or employment under the company and may make payments towards insurance or trusts for such purposes in respect of such person and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person. Provided always that a policy allowing these provisions shall have been agreed upon with the county government.

#### **DISQUALIFICATION OF DIRECTORS**

83. (i). A Director shall vacate office as such if: -
- a) He is removed from the office pursuant to Section 185 of the Act, or by special resolution by the company in General Meeting.
  - b) He ceases to be a director by virtue of Section 183 and 186 of the Act.
  - c) He ceases to be an officer of the County Government.
  - d) He becomes bankrupt or makes an arrangement of composition with his creditors.
  - e) He becomes prohibited from being a director by reason of any order under section 189 of the Act.
  - f) He becomes of unsound mind.
  - g) He fails without any reasonable cause and without consent of the board to attend three (3) consecutive meetings of the Board and the Board resolves that, the reason of such failure he shall cease to be a director.
  - h) He resigns his office by notice in writing to the company.
  - i) He or any persons to who he has personal ties and transacts with the company
  - j) He breaches the Signed Code of Ethics and Conduct

- k) He ceases to be a representative of the stake holder's body entity that has appointed him or her.
  - l) He is charged with an offence under the Anti Corruption and Economic Crimes Act or Water Act 2002.
  - m) He becomes a director in any other water sector institution.
- ii). A director who held a share or shares in trust or by virtue of his or her office shall cease to hold such a share or shares and cease to be a director upon vacating the office.

#### **THE SEAL**

84. The Seal of the Company shall not be affixed to any instruments except by the authority of a resolution of the Board of Directors and in the presence of one Director, Managing Director and of the Company Secretary and that the Managing Director and the Company Secretary shall sign every instrument to which the seal of the company is so affixed.

#### **UNDERWRITING COMMISSION**

85. It shall be lawful for the company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares, stock or debentures of the company or procuring or agreeing to procure subscription, either absolute or conditional, for any shares, stock or debentures of the company, but so that if the commission in respect of shares shall be payable out of capital the statutory condition and requirements shall be observed and complied with and the amount or rate of commission shall not exceed five per cent of the price at which the stock or shares are issued or debenture subscribed subject to authority previously having been obtained from the company in general meeting, such commission may be paid or satisfied in shares, debentures or debenture stock of the company. The company may, in addition to or in lieu of such commission, pay such brokerage as is permitted by law or may pay such commission in cash without the consent of the company in general meeting.

#### **THE COMPANY SECRETARY**

86. The Company Secretary shall be appointed by the Board of the directors at such terms conditions as shall be agreed.
87. No person shall be appointed or hold office as Company Secretary unless if such a Person is;
- a). Has a Bachelor of Laws Degree from a recognized University, is an advocate of the High Court of Kenya in good standing and has at least 5 (five) years experience and/or is a registered Certified Public Secretary, or
  - b). or Is a practicing registered Certified Public Secretary in good standing with at least six years experience.

**DIVIDENDS AND RESERVES**

88. No dividends shall be paid to the shareholders for the time being and all the profits made by the company shall be ploughed back to the company in accordance with the Licence and Water Act 2016 for the advancement of the company's objectives. Table "A" shall apply only as far as the Articles therein are not inconsistent with the provisions of this article

**ACCOUNTS**

89. The Directors shall cause proper books of accounts 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;

**Provided** that 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 as a water service provider operating under the Water Act 2002.

90. The books of accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.
91. The Directors shall subject to the Service Provisions Agreement /License signed and in force and subject to directives from the Water Service Regulatory Board from time to time determine whether and to what extent and what time 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 members (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 authorized by the Directors.
92. The Directors shall annually 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 required by the Act.



93. Subject to the provisions of the Service Provision Agreement a copy of every balance sheet, billing revenue (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than twenty-one days before the date of the meeting be sent to every member of, every holder of debentures of, the company and to every person registered under Article 26 hereof and all the stakeholders identified in the stakeholder participation procedure.

#### **PROCUREMENT**

94. The directors shall ensure that all procurements in the company are undertaken in accordance with the Public Procurement and Asset Disposal act 2015 and the Public Procurement Regulations and any subsequent amendments thereof.

#### **CAPITALISATION OF PROFITS**

95. Subject to the financial regulations in the water services sector and the obligations under the service provision agreement, the company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize 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 account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time 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 regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.
96. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized 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 authorize 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 capitalization, 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 capitalized, 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**

- 97. Subject to the provisions of the Service Provision Agreement,/License at least once in every year the accounts of the Company shall be examined and the correctness of the profit and loss account and balance sheet ascertained by an independent auditor approved in accordance with statute prevailing in the water services sector.
- 98. The company at each Annual General Meeting shall appoint an auditor to hold office in accordance with statute prevailing in the water services sector until the next Annual General Meeting and his remuneration, rights and duties shall be regulated by sections 159 to 162 of the Companies Act.

**NOTICES**

- 99. A notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter, envelope or wrapper addressed to each member at his registered place and address.
- 100. All notices shall with respect of any registered shares of which persons are jointly entitled be given to whichever of such persons is named first in the register and notice so given shall be sufficient notice to all the holders of such shares.
- 101. Any notice or document sent by post shall be deemed to have been served on the day (following that) on which the letter, envelope or wrapper containing the same is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing that notice was properly addressed and put into the post office.
- 102. In case of special resolution twenty-one days' notice shall be given. In any other case where a given number of days' notice or notice extending over any other period is required to be given the day of service shall, but the day upon which such notice shall expire shall not be counted in such number of days or other period.

**WINDING UP**

- 103. If the Company shall be wound up, whether voluntarily or otherwise the assets of the company shall revert back to .....Water Services Board.

**INDEMNITY**

104. Subject to the requirements of Section 402 of the Companies Act every Director or other officer of the company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or out about the execution of his duty, and no Director or other officer shall be liable for any loss which may be incurred by the Company in the execution of his office or in relation thereto.

**ARBITRATION**

105. Whenever any difference arises between the company and the directors on the one hand, and any of the members or their representatives on the other, or between any members or classes of members or between the directors with regards to the true construction of these presents or with regard to anything done, executed, omitted and suffered in pursuance of these presents or the companies act, or with regard to any breach of alleged breach of these presents or any claim on account of any such breach or alleged breach, or otherwise relating to the premises or to these presents or to any of the affairs of the companies, every such difference shall be referred to the decision of an arbitrator to be appointed by the parties or if they can not agree upon a single arbitrator to the decision of two arbitrators of whom one shall be appointed by each of parties in difference, and any such reference shall be subject to all the provisions of the arbitration act and any statutory modification thereof for the time being in force.

Names, Postal Address and Description of Subscribers	Signature of Subscribers
<b>CEC in charge of Water .....county – in trust for the county</b>	
<b>CEC in charge of Finance .....county -in trust for the county</b>	
<b>County Secretary .....county- in trust for the county</b>	

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DATED this .....day of .....2017

WITNESS to the above signatures; -

**CERTIFICATE UNDER THE COMPANIES REGULATIONS**

Certified that the above Articles of Association of has been produced by the method of Xerox photocopying.

**DRAWN BY:-**