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Rural Water Supply Project in Iringa, Mbeya and Ruvuma Region

REPORT ON DIFFERENT LEGAL OPTIONS ON MANAGEMENT OF RURAL WATER SCHEMES

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1. INTRODUCTION

1.1 Background

In the late 1960s and 1970s the Government assumed responsibility for the financing and implementing both construction and operation & maintenance of the water schemes. People were being supplied with free water as a basic social good.

Several donors supported the rural water supply policies, and approximately 70% of all rural water supply projects to date are funded by donors or from external loans. The Danish Government through DANIDA has supported a rural water supply project in three regions namely Iringa, Mbeya and Ruvuma since 1979. The support has been implemented in four phases i.e. Phase I: Water master plan was prepared for the regions from 1980 - 1982

Phase II from 1984 - 1990

Phase III from 1990 - 1996

Phase IV from 1996 - 1999

The main objective of Phase IV is to improve sustainability before phasing out DANIDA assistance to the rural water supply project. Indeed phase IV has bearing to the rest of the country because many external agencies have been completing projects and handing them over to either the government or beneficiaries for operation and maintenance. The crucial issue is strengthening the capacity of the beneficiaries in a bid to sustain the rural water projects after the phasing out of external assistance.

1.2 Present Situation

Currently all schemes including group schemes receive management support to assist them in establishing an effective operation and maintenance system for their water supply schemes. However it has come to light that in order to solve the managerial problems the beneficiaries have to be involved in deciding what type of management system is appropriate for them. Therefore a management system to collect and administer funds needs to be in place. A group scheme management is only allowed to collect funds if they are a legally registered organization or after obtaining a special permit from the District Commissioner. Hence the need to register a group scheme organization legally as a company, an association, a cooperative etc. or any other form of legally recognized entity.

It is from this background that Central Project office commissioned a consultancy or an information paper on legal options on forms of organization to avail the beneficiaries an opportunity to take an informed decision on selecting the legal entity for their scheme. The outputs of the information paper include.

- All the legal possibilities of registering a group scheme organization
- The advantages and disadvantages of all options.
- The procedures of registration of each option
- Uses of the legal registration in solving the most common problems that occur.
- Sample constitution and by-laws for each option.
- Information on obtaining and exercising water rights

The paper will be in both English and Kiswahili. In addressing the above, this information

paper has taken a critical look on both the policies and the legal framework in which the prospective legal entity will operate. It is common place that policy determines the thrust and direction in which the legislation will take. It is important to highlight the key features of the water policy and see the extent to which the same is operationalized at the ground as a legal framework.

1.3 Water policy of 1991

A national water policy was adopted and approved in 1991 and some of the key features of water policy of 1991 include; among others.

- **Beneficiary participation** - To achieve the objectives of the water policy "Water for all by year 2002". The policy puts its main thrust on promotion of the role of communities in the water supply and sanitation sector. Over time communities will progressively own their water supply system, starting by involving the users at all stages of project planning, operation and maintenance and other aspects of sustainability for all water projects. Through this involvement, communities are responsible for the upkeep of their facilities. However there seems to be a conflict as regards to the question of ownership.
- **Community -based management** - is expected to be achieved through establishment of water committees at all levels. Much more responsibility has therefore been given to the communities than before and to complement these efforts the policy requires that all villages with or without water facilities should establish a water fund to signify their willingness to sustain water facilities. In terms of Local Government (District Authorities) Act No.7 of 1982 every district has been empowered to establish fully-fledged committees, which are replicated up to the village level. Section 96(c) talks of a public health and social welfare committee. The meaning of the above is that we don't have a fully-fledged committee on water alone as the same is embraced in the above, and hence a big anomaly and a shortcoming.
- **Sustainability and Rehabilitation** - many of the water supply systems which have been constructed with little user involvement are not working and those which are being constructed are put out of service immediately after they are commissioned because of reasons ranging from poor technology choice, inadequate funds for operation and maintenance. However a hard look on the same has revealed that projects were being initiated and later transpired that water was not their priority, water projects were perceived as government projects and hence were not obliged to take care and the technology involved did not take cognisance of the beneficiary capacity to operate and maintain the projects.
- **Water resources and the wider environment** - the policy aims at ensuring that all sources are protected and optimally utilized to sustain the environment for future generations etc.

1.4 Draft rural water policy 1998

However in view of the social and economic changes taking place in the country and the experience gained over the period of implementation of the 1991 policy there has been a need for a comprehensive review of the policy to take stock of the above. A task force under the Directorate of Rural Water Supply is working on the draft rural policy and currently some of

key elements are:

- A complete departure from the traditional supplies driven to demand responsive approach.
- Increased participation of the beneficiaries in water sector in delivery of goods and services.
- Emphasis is placed on cost recovery for operation and maintenance of service as opposed to the old concept of cost sharing.
- Management of water supplies to be managed at the lowest appropriate level as opposed to the centralized management approach.
- Roles and responsibilities of stakeholder groups emphasized and defined of those individual sector ministries and institution etc.

Despite the good intentions spelt on the water policy, it seems some of the fundamental areas are in conflict with the legal framework e.g. the vesting of assets (water works) in the local government by section 5(2)(a) of Local Government Act No.9 of 1982 defeat the noble cause of handing over the ownership of the water schemes to the beneficiaries. One wonders what is being handed over to the beneficiaries.

1.5 Legal framework

Coming to the Central question of ownership, section 5(2) of Local Government (Finances) Act No.9 of 1982 stipulates that all waterworks and other properties of the kind situate in the respective district are vested in the district council. The section reads;

"all sums of money,.....buildings, waterworks, and all other properties of any kind vested in, belonging to, held by or supported to belong to, or be held by District Development Council or held by Government for or on behalf of that District Development Council, shall, by virtue of this subsection and without further assurance, be transferred to and vest in a like interest in the district council in question....."

By virtue of the above piece of legislation all waterworks, assets situate in the respective districts are deemed properties of the district council. However the liabilities left behind by the predecessors shall remain vested and be settled by the Government. The district council is empowered to delegate the discharge of some of its functions to a village council or other lower government body, and in discharge of those functions, at as agent of the district council. In terms of section 29(i) and 30 of the Local Government (District Authorities) Act No.7 of 1982 the districts are divided into several divisions and the divisions are subdivided into wards and furthermore wards are then subdivided into villages.

Function which district council may perform include:

(Section 118 (4) first schedule clauses 90, 91, 92 and 93).

- i) provide, establish, maintain and control public water supplies and impose water rates.
- ii) regulate or prohibit the sinking of well and provide for closing of wells.

- iii) regulate or prohibit the construction and use of furrows.
- iii) prevent the pollution of water in any river, stream, watercourse, well or other water supply in the area, and for this purpose prohibit, regulate or control the use of such water supply.

This piece of legislation shows the extent of the inconsistencies between the policy and the actual reality on the ground. Many rural water projects, which receive external management support, are looking for different legal options on management to facilitate the projects to stand on their feet financially and organizationally. In chapter eight we have highlighted the extent and scope of the use of the registration of the entity e.g. Water User Association, Company etc. in solving the most common problems.

However when the ownership is vested in the District Councils, and worse still they can even impose water rates, it remains to be seen how the communities/beneficiaries will fit in the jigsaw. To crown it the entire village council is vested with all executive powers in respect of all affairs in the village. Nevertheless it is the subject matter of this study to come up with different legal forms in realization of the above objective and see the extent to which the current legislation can facilitate.

The methodology of this Consultancy has been through literature survey; official documents i.e. water policy and legislation, different studies and round table discussion through DANIDA Central Project Office. My special thanks to the Project Coordinator for facilitating the round table discussion; which was very informative and instructive.

Return of

2 COMPANY

2 (1) THERE ARE TWO CATEGORIES OF PERSONS IN LAW

(i) natural persons and (ii) artificial persons.

The law regards a registered company as a person, just as a human being. This artificial or juristic person (i.e. registered Company) can own land and other property, enter into contracts, sue and be sued, have a bank account in its own name, owe money to others and be a creditor of other people and other companies, and employ people to work for it.

The Company is a person entirely distinct from the persons who own the shares, so that the property of the Company belongs to the company itself and not to the individual shareholders although they own the Company. Similarly the Company's debts are the debts of the Company and the shareholders cannot be compelled to pay them, unless for example, the Company is being wound up and its assets do not realize a sum sufficient to pay its debts, a shareholder whose liability is limited by shares is liable to contribute to the assets up to amount unpaid on his shares.

A Company must have members, otherwise it would never exist at all, and in the case of a Company with a share capital these members are called shareholders. The shareholder's position with regard to the company itself, and to his fellow shareholders is regulated by the Companies ordinance Cap. 212 and by the Memorandum and Articles of Association, and also by principle of controlling shareholders i.e. those with sufficient votes to pass a resolution in general meeting, must act bona fide for the benefit of the Company as a whole. The memorandum and articles vary considerably among different Companies, but in every case the shareholders position is that of the owner of one or more shares in the company, which shares usually carry a right of voting at general meetings, and, if profits are made, he may receive dividends on his shares. His shares are something which he has bought - perhaps from the Company or perhaps from somebody else and something which he can sell or give away, either in his lifetime or by his will.

The general rule is that he cannot get his money back from the company so long as the company is in existence, because his position is not that of a person who has lent money to the company, it is that of the owner of property, namely his shares. Shares may be fully paid or partly paid. When the shares are only partly paid the shareholder can be compelled to pay them up fully if called upon by the company or if the company is being wound up and its debts exceed its assets, by liquidator.

2 (2) ADVANTAGES OF A REGISTERED COMPANY

A registered company has many advantages over an individual trader/partner

(i) A registered Company is a separate legal person distinct from the members.

The debts and contracts of a registered Company are those of the Company and not those of the members whereas every partner is jointly and severally liable with the other partners for all the firm's debts and obligations incurred while he is a partner.

- (ii) Unless it is wound up a registered company continues in existence so that the death, mental disorder or retirement of any of its members does not affect it. In the case of a partnership on the other hand, on the death of a partner, subject to any agreement between the partners is dissolved as regards all the partners. In practice the other partners provide for the share of the partner who dies or retires, and this may cause serious financial embarrassment to the firm.
- (iii) The property of a registered Company belongs to and is vested in the Company, so that there is no change in the ownership of shares in the Company. In partnership the property belongs to the partners and is vested in them. Consequently there are changes in the ownership of, and in the format title to, the firm's property from time on the death or retirement of a partner.
- (iv) A registered Company can contract with its members and can sue and be sued on such contracts. A partner cannot contract with the firm.
- (v) A shareholder in a public limited Company can sell his shares without any restrictions, but a partner of a firm cannot sell or transfer his shares without the consent of all other partners.
- (vi) A registered Company has greater facilities for borrowing than a partnership e.g. the Company may borrow on debentures. A debenture is a document, which creates or acknowledges a debt due from a Company.
- (vii) A public Company has no limitation on the number of its members but a trading partnership cannot have more than twenty members.
- (viii) A public company has access to the capital markets e.g. Dar es Salaam Stock Exchange.

2 (3) DISADVANTAGES OF A COMPANY

These are normally outweighed by the advantages:

- (i) There are too many rules and strict formalities to be observed, and hence considerable expenses are involved. In partnership there is no need to be registered, or to file a memorandum and articles, with Registrar and therefore there are no registration fees and legal costs are less. A partnership agreement may be oral or even inferred from conduct of the parties.
- (ii) The Company has no powers to do anything other than those objects stated in the memorandum. An act done by the Company which is not expressly or implicitly authorized by the memorandum is illegal and there is no way in which the company can validate it.
- (iii) In terms of Section 7 (1) & (ii) of the Companies ordinance the Company may special resolution, alter the provision of its memorandum with respect to the objects of the

Company, however the alteration shall not take effect until it is confirmed on petition by the High Court, which in turn may make order confirming the alteration wholly or in part, and on such terms and conditions as it thinks fit. Hence shareholders are not free to make alterations in the objects of the Company.

2 (4) CLASSIFICATION OF REGISTERED COMPANIES

We have two classifications of registered companies namely:

- (i) Registered companies as being limited by shares limited by guarantee, or unlimited.
- (ii) Another classification is either Public Companies or private Companies.

Limited by shares, Guarantee and unlimited

(a) A registered Company may be:-

- A Company limited by shares, in which case the liability of a member to contribute to the Company's assets is limited to the amount, if any, unpaid on his share (Kili Water Company Ltd falls on this category) or
- A Company limited by guarantee, in which case the liability of a member is limited to the amount which he has undertaken to contribute in the event of it being wound up (e. Ruaha Water Company)
- An unlimited Company, in which case the liability of a member is unlimited. It is a Company not having any limit on the liability of its members for the debts and obligations of the company. Such a company is more like a partnership business, except it becomes a distinct legal entity and enjoys perpetual succession.

(b) Private and Public Companies

A registered Company may be a public company or private company.

A private company is understood as the one which by its articles:

- restricts the right to transfer its shares.
- limits the number of its members to fifty
- prohibits any invitation to the public to subscribe for its shares. e.g. Dar es Salaam Stock Exchange.

Advantages of Private Companies over the Public Companies:

- Only two signatories to the memorandum are sufficient to form a company instead of a minimum of seven in case of a public company.

- A private company does not need an authorized minimum capital either for registration or to commence business. It may commence business immediately after incorporation and allot shares; as provision regarding "minimum subscription" does not apply to it.
- It is not required to hold a statutory meeting or file a statutory report. A public company is under strict duty to hold a statutory meeting within a period of not less than one month and not more than three months from the date at which the Company is entitled to commence business.

Disadvantage - Private Company

- Prohibits any invitation to public to subscribe to its shares and hence doesn't have access to capital markets - Stock Exchange etc.

Advantage - Public Company - See also advantage on 2(2)

- A public company is company, which has no restriction (as the private Company) as to the transferability of shares, the number of members there is (no upper limit), and invitation to the public to invest in the company.

2 (5) COMMENT

To some extent a company is a known organizational concept in Tanzania, unlike Trust, Corporation Sole etc. but the technicalities involved in setting up, issuance of shares, operating and managing the same make it complex for an ordinary person. As shown above the advantages of a registered company tends to outweigh the disadvantages, but it is for the beneficiaries themselves to decide as to the suitability after considering all the pros and cons.

On one hand the water policy is quite clear that communities will progressively own their water supply system but on the other hand the legal framework militates against the move, in particular section 5(2)(a) of Local Government Act No. 9 of 1982 - which vests the water works in the District Council.

It follows that what is being handed over to the communities is not ownership but management of operation and maintenance of the water schemes.

Kili water Company Ltd faced the same dilemma, however to overcome the anomaly Handing over Agreements were prepared between Moshi Rural District Council and Rombo District Council respectively to hand over the East Kilimanjaro Water Supply Project to new Kili Water Company Ltd. Since the District Councils are the owners of the water works it is imperative that Handing over Agreements ought to be prepared with the different legal organization to be formed by the communities. The hand over agreement does not confer ownership to the beneficiaries, because a written agreement can not supercede a statutory instrument.

However the bottom line is, in a bid for the legislation to operationalize the policy on the ground, there is an urgent need to amend the law to facilitate the ownership of the water works by the communities or beneficiaries. This a long overdue. (See the Sample Agreement between district council and beneficiaries)

2 (6) REGISTRATION PROCEDURE

Section 3(1) of the Companies Ordinance (Cap 212) provides that any seven or more persons, or where the Company to be formed is a private Company, any two or more persons, associated for a lawful purpose may by subscribing their names to a memorandum of Association form an incorporated Company with or without limited liability.

The promoter (one undertakes to form a Company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose) a company must produce to the Registrar of Companies the following documents.

1. The Memorandum of Association - objects of the Company
2. The Articles of Association - these contain the regulations governing the relation of the members among themselves and of the company to the members.
3. A statement of the nominal capital of the Company. This is the maximum authorized capital which a company may raise by issuing shares.
4. A list of directors with their written and signed consent to act as directors.
5. A statutory declaration by the proposed secretary or a director that all requirements of the Companies ordinance Cap 212 have been complied with

NOTE: In case of the proposed registration of a private company, the above documents mentioned as 4 and 5 are not required to be filed with the Registrar. Before picking a name of the company one has to conduct a search with Registry of Registrar to satisfy that the name is acceptable.

A company having a share capital of more than 1,000,000 is supposed to pay a total of Tshs. 35,000/= inclusive of fee and stamp duty.

Certificate of Incorporation

When the necessary fee is paid and the Registrar is satisfied all the above documents submitted to him are in order, he will enter the name of the company in the register and issue a CERTIFICATE OF INCORPORATION which gives the company a separate legal entity of its own, independent of its members from the date given on it. The certificate is a conclusive evidence that a company has come into existence.

Registration process depending on the completeness of the documents currently cannot take more than two weeks. (A sample of Public Company limited by shares is attached.)

3.0 CO-OPERATIVE SOCIETIES

The history of Co-operatives is a long one, and the role of cooperatives has changed over time so have the Co-operatives themselves, through their constitutions or by-laws. We have come far from the days when the Co-operatives were first conceived in Europe. At that time emphasis was placed upon democracy in the management of cooperatives and their complete autonomy and independence from external control. However the situation now on the ground is totally different firstly we have legal frameworks which not only regulate the operation of Co-operatives but which appear to dominate the co-operative movements. Secondly, there is control and interference, within the legal frameworks, by the arms of governments in not only the development and future direction of co-operative movements but in the day to day operations of Co-operative organizations. Finally, in many instances government has chosen, on their own initiative, to bring about the introduction of co-operatives, as a tool for introduction of "Socialism" for rural development.

In terms of Section 4 of the Co-operative Societies Act No. 14 of 1982 stipulates:

"A Co-operative society is an association of persons who have joined together with an object of promoting the economic and social welfare of its members. The society shall be operated democratically on the basis of the principles, methods and procedures of Co-operation. It shall thus strive in accordance with its democratic, Socialist and Co-operative outlook:-

- (a) to accelerate the building of socialism by bringing about socialist development both in rural and urban areas....."

To an eye conversant with conventional models of co-operatives, this feature of introduction of Co-operatives "from above" is indicative of bad start, as the same negate some of important principles.

Whether Co-operatives are introduced by the initiative of Co-operators themselves i.e. "from below" or "from above", in either case they will have to face the same challenge and the same constraints.

In each case there will have to be a balancing out between the roles of a government and Co-operatives - how much government control and how much Co-operatives autonomy?

A simple answer would be to suggest that there should be less government control in a developed Co-operative and more in an undeveloped one.

3. (1) ADVANTAGES

However, Co-operatives provide a special attraction for a number of reasons, which may distinguish it from a Corporation.

- A Co-operative law provides for registration of a Co-operative society by giving it legal personality. This enables the society, as a corporate entity, to acquire property;

to enter into contracts; to sue and be sued.

When a Co-operative is sued for debt it has incurred, provision is made as to the extent of liability of each member, to the value of shares purchased by each member.

It also provides for voting rights of members; each member is given the right to vote irrespective of the shares purchased. In this respect a Co-operative is distinguished from a Corporation/Company.

- In another respect in which a cooperative distinguishes itself from a Corporation is in the method of distribution of profits - in cooperative, profits are distributed in proportion to the business and work which each member has done with the Co-operative, not in proportion to shares hold by each member, as is the case in company.
- Placing a ceiling on the number of shares that can be acquired by each member also distinguishes a cooperative from a Company.

The law indicates those powers of a Co-operative which are subject to Government supervision or authorization. it also outlines the circumstances in which one or two circumstances in which one Co-operative may subdivide itself into two or more Co-operatives. Apart from above Co-operatives can provide the following benefits:

- Co-operative encourages the benefits of economies of scale to accrue to their members. Facilities and services, which would be out of reach, due to financial constraints of individuals, could be made available to them through Co-operation.
- Participation in a cooperative group effort facilitates members to articulate their needs, wants and receive feedback. Two-way communication channels can be opened and links strengthened with the government unlike company.

3. (2) DISADVANTAGES

It is important to stress that the failures which are commonly ascribed to cooperatives do not result from an inherent defects in the principles of cooperation, or cooperative effort, but due to the shortcomings of individuals who have either mismanaged or helped themselves to cooperative funds or a host of other misadventure that have destroyed cooperative development.

However there are some areas in which the co-operative is not attractive as shown hereunder:

- During the life of the society, nearly all its actions require the approval of the Registrar in terms of amalgamation, division, borrowing, lending, expenditure divided and bonus payments etc. Because of the requirement of having to constantly seek the Registrar's approval, there is the risk, especially among the members, losing interest and initiative in the affairs of the societies. There is also the risk that committee member may tend to pass their weakness for their mistakes on to the Registrar.

- Due to the shortcomings that may arise in the running of Co-operative Societies, there is also the danger that they may become quasi-government organization.
- Co-operative societies in the country have been subjected to political interference and mismanagement of funds and hence people tend to regard a Co-operative as a means to exploiting the members.
- The application for registration is to be accompanied by such information feasibility studies indicating the viability of the society unlike companies.

3. (3) REGISTRATION

The application for registration is made to the Registrar, on the forms to be prescribed and conditions to be complied with in applying for the registration.

- (a) In the case of a society, which after registration will be a primary society - to be signed by at least ten persons such number of persons as the Registrar may approve.
- (b) In the case of a society, which after registration will be a secondary society, by duly authorized persons of at least two registered primary societies, which are members of such secondary society.
- (c) In the case of an apex organization, by duly authorized persons of at least two registered secondary societies, which are members of such apex organization.
- (d) Three copies of proposed bylaws of the society shall accompany the application.
- (e) It is required to be accompanied by such information or feasibility study indicating the viability of the society.

Upon registration of the society, the co-operators, their personal representatives, and the society are bound by the bylaws.

- On registration the society shall pay such fee as may be required by the Registrar.
- If the Registrar approves registration he shall issue a certificate of registration to the society.
- Where by reasons of non-compliance with any provision of this Act or of the rules or any direction given by the Registrar - the society shall be on probation - A probationary society. A society, which is on probation, must advertise the fact that it is so registered. A probationary society, which contravenes such a provision to advertise, shall be guilty of an offence.
- A certificate of registration signed by the Registrar shall be conclusive evidence that the society mentioned in that certificate is duly registered.

- The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes laid down in its constitution.

3. (4) COMMENT

Co-operative societies have a negative impression in Tanzania, which has made this type of organization well known to most people. As stressed above the failures, which have been attributed to, Co-operative Societies do not result from an inherent defect in the principles of co-operation but due to the shortcoming of individuals who have either mismanaged or embezzled cooperative funds. Hence, the need for close scrutiny of the integrity of the office bearers.

4. CORPORATION SOLE

A Corporation sole is the holder of a certain office and his successor. The President can designate any public office to be a Corporation Sole under Section 3(i) of the Corporation Sole Act No,25 of 1974. The result of this creation is to lend perpetual existence to a certain office or institution quite independent of the person who occupies it.

4 (1) A Corporation Sole has all the attributes of a Company; i.e. positive features:

- (i) It is a legal entity separate from the holder of the office or the members of the corporation.
- (ii) It has a perpetual succession therefore its existence is not affected by death, lunacy or retirement of its members.
- iii) It can sue and be sued.
- (iv) It has a common seal, a symbol of its corporate existence - it authenticates documents etc.

4 (2) Disadvantages:

- i) Although a Corporation Sole is a legal person yet on many cases it is subjected to civil service regulations in area like procurement and payment hence very difficult to run efficiently.
- ii) Corporation Sole is not widely used form of business organization especially in the rural areas.

In Tanzania, is mainly to be found in the Prison Department, Works Department, and Water Department generally departments of the Central Government.

4 (3) Registration

A document in a form of a Government Notice has to be prepared to gazette a Corporation Sole. The Sectoral Ministry in collaboration with the Chief Parliamentary Draftsman prepares the document. Thereafter it is submitted to the Minister of the Sectoral Ministry to sign the same for onward transmission to the Government Printer. The process involves several Ministries.

- i) The Sectoral Ministry
- ii) Chief Parliamentary Draftsman
- iii) Civil Service - the Editor of the Government Gazette
- iv) The Government Printer - PMO's Office.

The process is estimated to take more than one month.

5. WATER USER ASSOCIATION

An association is a fully legal entity, which is normally registered under the Societies Ordinance Cap.337. An association shares many features with co-operative societies.

Section 61(2) of the Co-operative Societies Act No.14 of 1982 stipulate that Co-operative principles means the following principles/advantages and methods used in the operation and administration of society:

- i) each member or delegate has one vote;
- ii) the service of the society is mainly for its members;
- iii) there is no voting by proxy (a person authorized to act for another);
- iv) the control of the society is democratic;
- v) membership is open to all that can use the services of the society;
- vi) there is fair and just distribution of the economic results arising out of the operation of the co-operative enterprise;

The above principles are also the cornerstone of an Association, however they're certain areas, which distinguish a Co-operative from an Association.

1. One of the statutory requirement of a Co-operative society to be registered is to have up front a feasibility study indicating the viability of the society; in an association this is not a requirement.
2. Control and interference within the Co-operative Society by arms of the Government i.e. Registrar. During the life span of a society; nearly all its actions require the approval of the Registrar; but an association is autonomous and there is no interference.
3. Membership to the Co-operative Society by other body corporate not allowed unless by the consent of the Registrar. For an association the members decide upon membership of other body corporate wishing to join.

5 (1) Disadvantages:

In the absence of a control mechanism like the Co-operatives some influential members may hijack the management of the association for their own personal ends.

4 (2) Registration:

Water user association is a non-governmental organization normally registered under the Societies Ordinance Cap. 337 under the Ministry of Home Affairs where the Registrar of Societies is situated. Initially the association were solely being registered vide Societies Ordinance Cap.337, however with the passage of Water Laws (Miscellaneous Amendment) Act No.8 of 1997, an association can also be gazetted by the Minister for Water which for purposes of discharging its functions shall be deemed to be a legal corporate entity, capable of suing and being sued etc. It should be emphasized that the Minister for Water can only gazette Water User Association and not other type of non-governmental organization like environments etc.

4 (3) And a step by step task of formation and registration of a water user association under the Societies Ordinance (Cap.337) is as follows:

Preparation of the Constitution of the Association to be accompanied by the following documents:

- a) Forms So1 and So2 duly filled with two copies each.
- b) List of the Members of Association.
- c) Minutes of the meeting of the member's resolution to form the Association to be signed by Chairman and Secretary respectively 2 copies in original.
- d) Curriculum Vitae of the office bearers - Chairman, Secretary and Treasury.
- e) Letter from the District Commissioner to authenticate the Association.
- f) Forwarding letter from the prospective association to the Registrar.
- g) Letter from the Ministry of Water supporting the Association.
- h) Payment of Registration fee 40,000/= and an annual fees of 10,000/=. Payment can be made to the District Immigration Offices for those Association outside Dar es Salaam.

The process may take a long time (one months) for purposes of verification of the above various steps. However the process does not involve other ministries as the case with gazetting an association by the Minister of Water;

4 (4) For the Water User Association to be consider for gazetting by the Ministry of Water the following documents should be submitted.

- a) Constitution of the Association giving out responsibilities/obligations/objectives etc.
- b) List of the members of the Association.
- c) Minutes of the meeting of the member's resolutions to form the Association to be signed by Chairman and Secretary and to be verified by District Executive Director.
- d) Letter from the District Commissioner to authenticate the Association.

Currently there are no fees, but they are likely to be introduced. Preparation of a government notice entails the following: the Ministry of Water prepares the document in collaboration with the Chief Parliamentary Draftsman. Thereafter it is submitted to the Minister of Water for signature for onward transmission to the Government Printer. Therefore the process involves several ministries/agencies:

- i) Ministry of Water
- ii) Chief Parliamentary Draftsman
- iii) Civil Service - The Editor of the Government Gazette
- iv) The Government Printer

So the process is not entirely within the control of the Ministry of Water - it depends on the other department how fast they can act.

General Comments

A Water User Association, which is registered under the Societies Ordinance Cap.337, is on the same footing with the one gazetted by Minister for Water. While the former will be administered under Societies Ordinance, the latter will be administered under Waterworks Ordinance Cap.281, which was amended by Water Laws (Miscellaneous Amendment) Act No.8 of 1997. In a way the system is still centralized.

As shown above the procedure to register a water user association under the Societies Ordinance is less cumbersome. In terms of how the same should operate at the village level reference should be made to chapter eight. (A sample constitution of users association is attached.)

TRUST

This is a form of organization which is constituted by deed with the Approval of the Administrator General under the Trustees' Incorporation ordinance (Cap 375). The Trust has the following important features:

- (i) Specified property is legally placed under the custody, management and care of a specified persons for the benefit of beneficiaries.
- (ii) The trust deed will usually specify the manner in which the trust property is to be managed or else general trust laws will apply.
- (iii) Under this form of organization a set up of few specified person hold on trust the property on behalf of the beneficiaries who have little say in the management.

Trust is not a popular form of business entity, not that they are bad but largely due to ignorance. In Tanzania they are mainly to be found on political parties association and clubs. As shown above some school of Thought argues that this form of organization impinges on the objective of grass-root participation in running water system in the rural setting. The argument for the above assertion is that for sustainability purposes water ought be managed at the lowest appropriate level right from the household and that decisions or actions concerning water should also be taken at the lowest level so that the beneficiaries can perceive the project as theirs. Because of scanty literature on Trust I will illustrate the same by using Uroki Bomang'ombe Water Supply Project. The Project is in Hai District and is registered under the Trustees' Incorporation Ordinance (Cap 375). In terms of its constitution the lowest level of management is the village water committees which are established along the Uroki - Bomang'ombe Water Supply area. In total they are 8 villages and the highest level is the Board of Trustee in terms of Uroki Bomang'ombe Constitution the functions of the Village Water Committees includes:

- (i) To advise the trustees on the regulation and operational aspects of the trust in their village.
- (ii) To represent the interests of water users in the respective villages.
- (iii) To elect or appoint (as they may deem fit) a member of their respective village to represent them in the Board of Trustee.
- (iv) To assist in providing security of the Trust project, installations of the Trust Project within their respective areas.
- (v) Village Water Committee shall meet once every year and such other times as may be deemed necessary.

COMMENT

Unlike other forms where the supreme decision making body on all matters regarding discharge of obligations and rights are entrusted to the general meeting where people can vote (exercise real power) in a Trust it is the Board of Trustee which ultimately has the final say. Also the frequency of the village water committee meetings cast some doubts on its efficiency. The lowest level of management ought to be the domestic points where the number of people involved is small and most likely know each other and hence it would be rather easy to manage.

Domestic points have a strong incentive to secure the water flowing and they might be less prone to misuse of funds e.g. due to small size etc. It remains to be seen in a village with 30-40

domestic points whether a village water committee can hardly be true representative of the beneficiaries. Coupled with the above beneficiaries ought to perceive the project as theirs if at all they have a say in the running of the project. (See the sample constitution of Trust).

6 (1) REGISTRATION PROCEDURES

Registration is normally conducted by the Administrator General, the arm of the Attorney General's Office. One is required to prepare a constitution with clear obligations and duties of the respective beneficiaries. A registration fee of Tanzania shillings (40,000) Forty Thousand is payable to the office of the Administrator General.

Upon fulfilling the basic requirement that the constitution is consistent with the Trust Instruments the same is registered. After registration if the Trustee fails to fulfill the condition in the Trust Instruments, the Administrator General can revoke the incorporation also under the following situations:e.g

- failure to submit Returns of Trustees every five years
 - appointment of new Trustees - There is an obligation to report within one month etc.
- Registration process can take anything from one day to several weeks depending on the completeness of the requisite documents

7 OWNERSHIP AND RIGHTS TO THE USE OF WATER RIGHTS

In terms of Section 8 of the Water Utilization (Control and Regulation) Act No. 42 of 1974 all water in Tanganyika is vested in the United Republic. Unlike Land law, where the law provides for customary land tenure, in water the question of customary rights don't arise at all. In that regard the Ministry of Water is mandated to deal with all matters pertaining to administration and protection of water. This entails that there is no private ownership of water, but a right to use water derived through a formal water rights issued by the Water Officer. A water officer duly appointed by the Minister of Water and gazetted in the Government Gazette can grant to any person the right to divert, dam, store, abstract, and use water from such source in such quantity, for such period subject to such terms and conditions as he may deem fit.

Water source vide Government Notice No. 370 of 1997 has been defined to mean:

"all water in a spring, stream, swamp, natural lake, river, dam, charco, shallow well and borehole in water to groundwater.

As can be seen above water right touches almost all sources of water one can think of from surface to ground water.

7 (1) Application process for water surface

An application is made to the Water Officer in Form A to be completed in quintuplicate - See GN370/97 pages 841 - 843 (Attached). Upon receipt of an application, the water officer shall prepare a notice setting particulars of the application and cause it to be:

- (a) Published in the Gazette;
- (b) Served upon all persons named in the application as being likely to be affected by the grant of the right for which the application is made, and upon such other persons as he may think fit; and
- (c) Display at the District Commissioner's office in which the right for which the application is made will, if granted, be exercised;
- (d) The application is normally referred to and deliberated upon by Basin Boards together with copies of objection (if any) received within 40 days and such other information relevant which will enable the Board to give full consideration to the application and objections thereto. Notwithstanding the above, the Water Officer may grant a provisional water right for domestic use;
- (e) A Water Officer may refuse to consider any objection to an application for a water right if the objection reaches him forty days after the relevant dates.

In a nutshell, any person may apply for a water right to the Water Officer. The Water Officer will notify any interested, or potentially affected parties about the water right application, who may express their objection to the Water Officer. The water officer will refer the application to the Water Basin Board which will consider the application and any objection that have been made, and can dismiss the application or grant the water right. The water officer may also grant a provisional water right pertaining to domestic use and it is only made final by the Board if the applicant complies with the laid down conditions. After the grant of water right, the holder must pay a water user fee, the amount of which depends on the use.

The water right may be granted for any defined or indefinite period.

The Water Utilization Act provides for a number of occasions in which a water right may be altered or revoked. A water right can be terminated or diminished with the consent of the holder, or in case of non use, i.e. when the holder of a water right has not made beneficial use of the water is entitled to for a period of three years. A breach of condition of the water right by the holder also constitutes a situation where the water officer can lawfully revoke the water right. (Refer to Section 22, 23 and 24 of Water Utilization Act No. 42 of 1997).

Where in the opinion of the Water Officer on account of drought the supply of water from any source is insufficient or likely to become insufficient for the needs of the persons using it the water officer may at any time from time to time, by notice in writing addressed to the holders of water rights suspend or vary all or any rights to abstract or use water from that source, for such period as he may deem necessary.

More important where a water officer is satisfied that water is required for a public purpose he may by notice in writing addressed to the holder of any water right, determine or diminish that right to the extent that such water is required for the aforesaid public purpose, and thereupon the right shall cease or shall be exercisable only as so diminished, as the case may be.

It is important to note that the Minister may by notice in the Gazette declare any purpose to be a public purpose within the meaning of the above. (See Section 20 and 25 (3) respectively Water Utilization (Control and Regulation) Act No. 42 of 1974.

7 (2) Offences

There are number of offences which have been created in the administration of water rights. Just to cite some few examples.

Section 33 (4), which was amended by Water laws (Miscellaneous Amendments Act No. 8 of 1997 stipulates:

"Any person who pollutes the water in any river, stream or water course or in any body of surface water to such extent as to likely to cause injury directly or indirectly to public health, to livestock or fish, to crops, orchards or gardens which are irrigated by such water or to any products in the processing of which such water is used shall be guilty of any offence and liable on conviction to a fine not exceeding one million five hundred thousand shillings or to imprisonment for a term of three years or to both fine and imprisonment and in case of subsequent or to imprisonment not exceeding three years or both fine and imprisonment and in case of continuation of the offence, to an additional fine not exceeding fifty thousand shillings in respect of every day during which the offence has continued".

7 (3) Groundwater

As regards to licensing of ground water an applicant should follow the following procedure.

- (i) The applicant shall submit data and information collected during the groundwater exploration and drilling activities to the water officer.
- (ii) The quantity and quality of the water abstracted
- (iii) The area of activities in the basin
- (iv) The purpose for which the water will be used (Thereafter the above process (as in surface water) will take place)

7 (4) Fees

There are two fees namely:-

- (i) Application fees
- (ii) Economic water user fees- (see below)
Second Schedule
Government Notice No. 370/97

FEES

There are two types of fee namely:-

- (i) Application Fees
- (ii) Economic Water User Fees - An example to illustrate:

Section II (I) (a) of Act No. 42 of 1974 to illustrate:

Section II (I) (a) of Act No. 42 of 1997 elaborates on "inherent right to use of limited quantities of underground water as follows:

(The owner or occupier of any land may sink or enlarge any well or borehole thereon lands abstract water therefrom, not exceeding 22,700 litres in any one day). The practice in charging these fees in compliance with the law is any person, household, village or water user group whose domestic water user per day do not exceed 22,700 litres/day is exempted. However, a water user group that uses 72,000 litres/day though out the year, such a group would be required to pay TShs. 7,884.00 per annum as worked here below:

$(72,000/1000) \times 30/100 \times 365 \text{ days} = \text{TShs. } 7,884.00 \text{ per year or TShs. } 657/= \text{ per month.}$

For a village or water user group having several shallow wells or boreholes is issued with a single water right and such liable to pay only TShs. 35,000/= as application fees.

Application Fees

- a) Water Rights application for domestic/livestock, small scale
Irrigation/Fish Farming.....35,000/=
- b) Water Rights application for large scale, irrigation
Power generation/industrial/commercial.....120,000/=
- c) All other application..... 35,000/=
- d) On every appeal to the Minister (in case

	Aggrieved by decision of the Basin Board).....	70,000/=
Economic Water User Fee - (They are paid annually)		
a)	Domestic/Livestock/Fish farming/District Centres/Rural for every 100m ³	30/=
b)	Irrigation:	
	Small scale for every 1,000m ³	30/=
	Large scale every 1,000m ³	60/=
	Business (e.g. flower export) for every 1,000m ³	1,000/=
c)	TANESCO power royalty fee.....	105/=
d)	Power royalty fee per 1 MW installed Capacity.....	280,000/=
e)	Industrial for every 100m ³	100/=
f)	Institutional/Regional Centres for Every 100m ³	120/=

TRANSFER

The water right is personal to the grantee and may not be transferred without the consent of the Water Officer.

Initially the rural water schemes in the country were granted water rights in the name of District Executive Director of that District in which the scheme is situated. Currently the practice is to grant the water right direct to the beneficiaries. It is further observed that in terms of Local Government Act the waterworks belong to the District Council, however the law is silent as to whether the applicant should be the owner or mere applicant.

The beneficiaries can apply to the Water officer for the transfer of their water right in their name provided the district executive director has no objection and the application will be transferred to the beneficiaries.

Even if the District Executive Director objects, the water officer and Basin Board have the final decision on the grant or refusal of the grant of the water right as laid down in the Water Utilization (Control and Regulation) Act No. 42 of 1974 and its subsequent amendments.

The application for transfer of water right from the District Executive Director to the beneficiaries need not be gazetted because all the interested persons who are likely to be affected are know (District Executive Director) will be served with a copy of application for transfer.

7 (5) Basin boards

In terms of Section 7 (I) of the Water Utilization (Control and Regulation) Act No. 10 of 1981 the Minister responsible for water has gazetted nine basins namely:-

- 1) Ruvu/Wami River

- 2) Pangani Basin
- 3) Rufiji Basin
- 4) Ruvuma/Lukuledi/Mbemkuru Basin
- 5) Lake Nyasa Basin
- 6) Lake Rukwa Basin
- 7) Lake Natron/Manyara/Eyasi Basin
- 8) Lake Tanganyika Basin

Currently two basins are operational namely Pangani Basin Water Board stationed at Hale Tanga and Rufiji Basin Water Board stationed at Iringa. Water rights application for schemes situated in Moshi, Arusha and Tanga are handled by Pangani Basin while Rufiji Basin handles application from Iringa, Morogoro, Coast, Mbeya etc. The Principal Water officer through Central Water Board is attending the rest of the 7 basins water application, which are operational.

For ease of reference their address is as follows:-

1. Pangani Basin Water Office
P O Box 5946
TANGA - Mr. Butingo A.S. Ruhumbika
Telephone +873 13 15765
Telefax+873 13 15766
2. Rufiji Basin Water Office
P O Box 1798
IRINGA - Mr. William B.J. Mwaruvanda
Telephone 2236-7
3. Principal Water Officer
P O Box 35066 - (Ubungo Office) - Mr. Jeremias Kobalyenda
DAR ES SALAAM

(A) Water Utilization (Appointment of Officers)
The following persons were appointed as the Water Officers for Pangani Basin and Rufiji Basin respectively on 21st June 1997 vide (Government Notice No. 373 published on 25/7/97.

- (i) Butingo A.S. Ruhumbika
- (ii) William B.J. Mwaruvanda

(B) The following person was appointed as Principal Water Officer; on 16th August, 1995 vide Government Notice No. 673 published on 17/11/95.

- (i) - Mr. Jeremias Kobalyenda
DAR ES SALAAM

COMMENT

It should be borne in mind that the above officers have quasijudicial, functions i.e. they are dealing with administration of water rights which has bearing to the rights and wrong and hence they have to be gazetted. They are duty bound to observe to the letter the principles of natural justice in granting or refusing to grant water rights. A water right certificate has to be signed by the above gazetted officers.

8 USES OF THE LEGAL REGISTRATION IN SOLVING THE MOST COMMON PROBLEMS

It seems to me that legally "Water user Association, Trust, Companies" etc on its own cannot meet the high expectation of the beneficiaries to enforce certain social relation norms unless they enlist the support of the village Council despite their legal status. The acquired legal status is meant to facilitate management of the water system only because the ownership of the water works and executive powers are vested in different entities altogether. A close scrutiny of the Local Government (District Authorities No. 7 of 1982 will support the above assertion.

To start with, Section 5(2) of the Local Government (Finances) Act No. 9 of 1982 stipulates all water works are vested in the Local Council. Moreover the district Council is empowered to delegate the discharge of some of its functions to a village Council or other lower government body, and in discharge of those functions act as an agent of the district Council. From the above it remains to be seen whether term "other lower government body" will include entities outside the village Council. Coupled with the above, they have powers to levy or impose water rates. It is very clear that "Water user Association, Trusts, Companies" etc despite their legal Corporate status, do not own the water works but only the management of the system in terms of operation and maintenance worse still the relationship between the actual owners i.e. District Councils and the operators e.g. Water user Association has not been worked out. Are they on lease, management contract etc.

Otherwise it is very difficult even with their acquired legal status to solve the most common problems e.g. water fees not being paid, vandalism, illegal connections etc. Again on the executive powers - Section 142 (1) of the Local Government (District Authorities) Act No.7 of 1982 stipulates:

"A village Council is the organ which is vested all executive power in respect of all the affairs and business of a village..."

As can be seen ownership of water works emanates from the District Council and trickles down to the village Council by a way of delegation. The village Council is vested with all executive powers in respect of all affairs, in the village and water can be no exception. With this kind of legal framework, it is very difficult for operators' e.g. Water user Association, Company etc. to operate independently from the Village Council, though they are corporate legal entities.

Since the District Council and the Village Council have powers to make by laws which encompass the broad spectrum of activities and penalties it is imperative that "Water user Association", Company, trust etc. as the case may be should be incorporated in the bylaws and given powers to enforce some of the common problems. The byelaw should be very clear by stating e.g.

"Village Council shall mobilize, support and protect the "Water User Association" (as the case may be) established in the village. It shall be the duty of the Village Council to submit the Water User Association etc. resolutions to the District Council for Consideration as the Village bye laws...."

The above will comply with section 163 which stipulates "A Village Council may make by laws for Carrying into effect or for purposes of any of the functions conferred by this Act."

8 (1) COMMENT:

Given the legal framework at the village level it is very difficult for water user Association etc. to work independently of the village Council that is statutorily vested with the executive powers in respect of all affairs and business of a village. As shown above since District Council and Village Council have powers to make bylaws, then it should be the duty of the village Council to submit resolutions/by laws of the water user Association etc to the District Council for consideration as the village bylaws.

The other option is to have an agreement (a lease?) between the owner i.e. the District Council on one hand and the operator i.e. water user Association (or as the case may be) on the other hand. (see the sample on handing over Agreements)

However for a long term solution the only remedy is to amend the current legislation to facilitate the ownership of the water works by the communities or beneficiaries and more important to avail them with the executive powers in their areas of operation as it is the case with the village Council.

THE COMPANY ORDINANCE

(CAP.212)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

A PUBLIC COY.

Incorporated this.....Day of.....

THE COMPANIES ORDINANCE (CAP.212)
COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION OF

1. The name of the Company is
2. The registered office of the Company will be situated in the United Republic of Tanzania.
3. The objectives for which the Company is established are to improve the living standards of its members and the general population in its area of operations through provision of clean and safe water for domestic and non-domestic use and in particular:
 - 3.1 To secure the contained supply of water in the Company's area of operations for all lawful purposes.
 - 3.2 To develop, acquire, maintain and operate water works in, or connected with the supply of water to the Company's area of operations in accordance with any lawful provision;
 - 3.3 To promote the conservation and proper use of water resources including the application of rainwater harvesting technology in the Company's area of operations;
 - 3.4 To carry out surveys for plan and execute projects for the supply of water to the Company's area of operations;
 - 3.5 To provide amenities or facilities which the Company considers necessary or desirable for persons making use of the services or facilities provided by the Company;
 - 3.6 To educate, provide information and/or provide related goods and services to persons residing in or outside of the Company's area of operations on all aspects of water supply, rainwater harvesting, water conservation and similar issues;
 - 3.7 To ensure that as far as possible water and other services provided by the Company are equally available to all residents in its area of operations who are able and willing to pay therefore, without discrimination;
 - 3.8 To collect fees for water supplies to consumers by the Company;
 - 3.9 To liaise with respective government authorities and/or other persons and institutions on matters relating to water disposal and the operation and execution of plans relating to the expansion of water supply;
 - 3.10 To advise the respective government authorities in the formulation of policies relating to the development and conservation of water and potable water standards in relation to the Company's area of operations;
 - 3.11 To purchase, take on lease or exchange, hire or otherwise acquire any real or personal property, rights or privileges and in particular land, buildings casements, machinery, plant, spares and components which the Company may think necessary or convenient for the purpose of its business.
 - 3.12 To acquire the business of or share in, or enter into union of interest, partnership, joint venture, amalgamation or reciprocal concession with any person, group of person or legal entity carrying on or about to carry on similar activities in the Company's area of operations, or calculated to enhance the activities of this Company for the benefit of its members or consumers;
 - 3.13 To promote of assist in the promotion of any other company, association, society or group,

or to establish any branch or agency for the purpose of carrying out all or any of the objectives of this Company in part or in full;

- 3.14 To raise money through issue of shares, grants and borrowing and secure any loans in such manner as the Company shall think fit, and in particular by the issue of debentures or debenture stock, perpetual or otherwise or by mortgage, charge, pledge or on the security or guarantee of others for the purpose of carrying out the objectives of this Company.
- 3.15 To do anything or enter into any transaction which, in the opinion of the Company, is calculated to facilitate the proper exercise of the functions or enhance the achievement of the objects thereof;
- 3.16 To obtain all powers and authorizations necessary to carry out and extend the objectives of this company.

- 4.0 The liability of the members is limited.

- 5.0 The share capital of the Company is Tanzania Shilling divided into ... ordinary shares of shillings each, with such rights, privileges and conditions attaching thereto as may from time to time be conferred by the regulations of the Company, with the power to increase and reduce the capital into several classes carrying such preferential, deferred, qualified or special rights, privileges or conditions as may be determine by or in accordance with the regulations of the Company, and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may be provided from time to time by the regulations of the Company.

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

Name, Address and Description of Subscriber	No. of Shares taken	Signature
1.		
2.		
3.		
4.		

Dated at Dar es Salaam this.....day of.....199...

WITNESS:

Signature:.....

Full Name:.....

Occupation:.....

Address:.....

THE COMPANIES ORDINANCE (CAP.212)
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION OF

1.0 PRELIMINARY

The regulations contained in Table "A" in the First Schedule to the Companies Ordinance Cap.212 (hereinafter referred to as "TABLE A") shall not apply to this Company save as the same are herein repeated or contained.

2.0 INTERPRETATION

In these Articles, the words standing in the first column of the following table shall bear the meanings set opposite to them respectively in the second column thereof in so far as the same are not inconsistent with the subject or context:

WORD	MEANING
The Ordinance:	The Companies Ordinance (chapter 212 of the laws of Tanganyika) or any replacement or amendment thereof.
These Articles:	These Articles of Association as originally framed or as altered from time to time by Special Regulation.
The Directors:	The Directors or alternate Directors for the time being of the Company.
The Office:	The registered office of the Company for the time being.
The Seal:	The common seal of the Company.
The United Republic of Tanzania:	Tanzania Mainland.
Month:	Calendar month.
Proxy:	Shall include an attorney duly constituted under a Power of Attorney.
Writing:	Shall include printing, lithography and any other mode of representing or reproducing works in a visible form including telegrams and radiograms.
Words importing the Singular:	Shall include the plural.
Words importing the masculine gender:	Shall include the feminine gender.

Persons: Shall include non-person legal entities.

Subject as aforesaid, any words or expressions defined in any statute shall, except where the subject or context forbids, bear the same meanings in these Articles as so defined.

3.0 Any branch or kind of business either expressly or implicitly authorized by the Memorandum of Association or by these Articles, may be undertaken by the Directors at any time as they shall think fit, but once started shall only be discontinued or put in abeyance with the approval of members in general meeting.

4.0 PUBLIC COMPANY

The Company is a public company and accordingly the following provisions shall apply:

4.1 No restriction shall be place on any invitation issued to members of the public resident in the Company's area of operations to subscribe for any shares, debentures or debenture stock of the Company.

4.2 The right to transfer shares in the Company shall not be restricted except in the manner and to the extent hereinafter provided.

5.0 MEMBERSHIP

Membership of the Company, which shall be open to all individuals (households), and institutions who are resident and/or use water in the Company's area of operations, shall be by purchase of at least one ordinary share in the Company.

6.0 SHARES

6.1 The shares in the capital of the Company, whether original or subsequently altered, shall be under the control of the Directors who may a lot or otherwise dispose of the same t such persons, on such terms and conditions as to payment therefore by way of deposit, installments or calls, or as to the amount or time of payment, and either at a premium or otherwise as the Directors may think fit.

6.2 The Company shall maintain a book to be called the "Register of Members" which shall be kept by the Company Secretary under the control of the Board of Directors and in which shall be entered the particulars of every member, his share holding and any changes with respect thereto.

6.3 The Company may pay to any person a commission in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, or procuring ore agreeing to procure subscriptions, whether absolutely or conditionally for any shares, debentures or debenture stock in the Company provided that such commission shall not exceed FIVE PERCENTUM (5%) of the price at which the shares are issued of an amount equivalent to such percentages, and the requirements of section 44 and 45 of the Ordinance shall be observed.

- 6.4 If two or more persons are registered as joint holders of any shares, any one of such persons may give effectual receipts for any dividends or other money payable in respect of such shares.
- 6.5 No persons shall be recognized by the Company as holding any shares upon any trust, and the Company shall not be bound by or required to recognize any equitable, contingent, future or partial interest in any share or any right whatsoever in respect of any of its shares other than an absolute right to the entirety thereof in the registered holder, except as by these articles is otherwise expressly provided or as is by law required or pursuant to any order of the Court.
- 6.6 The Company shall officially notify every member within one (1) month after allotment or registration of a transfer (unless the conditions of issue provide otherwise) of his entry in the Register of Members and the respective number of his share(s), if any. If any shares are numbered, all such shares shall be numbered in numerical progression, beginning with the number one and each share shall be distinguished by its appropriate number, and if any shares are not numbered all the official notifications in respect thereof shall be numbered in numerical progression such that each official notification will be distinguished by its appropriate number, provided in every case that where are joint holders the Company shall not be bound to issue more than one official notification to all joint holder, and delivery or such notification to any one of them shall be sufficient delivery to all. The Company Secretary shall sign every official notification or some other person nominated by the Directors for the purposes and countersigned by one Director.
- 6.7 If any official notification shall be defaced, worn out, destroyed or lost, it may be renewed on such evidence being produced and such indemnity (if any) being given as the Directors shall require, and (in case of defacement or wearing out) on surrendering the old notification and in any case on payment of such sum as the Directors may from time to time fix.

7.0 LIEN

- 7.1 The Company shall have a first and paramount lien upon all shares (whether fully paid or otherwise) registered in the name of any member, either alone or jointly, in respect of any amounts due to the company from such member or members, whether the period for the payment, fulfillment or discharge thereof shall have actually arrived or not, and such lien shall extend to any dividends which may be declared in respect of such shares. But the Directors may at any time declare any share to be exempt, wholly or in part, from the provisions of this Article.
- 7.2 The Directors shall sell, subject to Article 5 hereof, the shares under lien at such time or times and in such manner as they think fit, but no sale shall be made until such time as the money in respect of which such lien exists or some part thereof are, or is presently payable or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharge and until demand and notice in writing of not less than twenty one days stating the amount due or specifying the liability or engagement and demanding payment or fulfillment or discharge thereof and giving notice of intention to sell on default,

shall have been served on such member or the persons (if any) entitled by transmission to the shares, and default in payment, fulfillment or discharge shall have been made by him for seven days after the expiry of such notice.

- 7.3 The net proceeds of any such sale shall be applied in or towards the satisfaction of the amount due to the Company or of the liability or engagement, as the case may be, and the balance (if any) shall be paid to the member or person (if any) entitled by transmission.
- 7.4 Up[on any such sale as aforesaid, the Directors may enter the purchaser's name in the register as the holder of the shares, and the purchaser shall not be bound to see to the application of the purchase money nor shall his title be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 7.5 No member shall be entitled to exercise any privilege as a member until he shall have paid all the calls for the time being due and payable on every shares held by him, whether alone or jointly with any other person together with interest and expenses (if any).

8.0 CALLS ON SHARES

- 8.1 The directors may, subject to the provisions of these Articles, from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit; provided that thirty day's notice at least, is given of such calls and each member shall be liable to pay every call made upon him to the persons, by the installments (if any) and at the times and places specified by the Directors in the notice of call.
- 8.2 A call shall be deemed to have been made on the date the call notices are dispatched to the payment of all calls and installments in respect thereof.
- 8.3 The joint holders of a share shall be jointly and severally liable for the payment of all calls and installments in respect thereof.
- 8.4 If before or on the day appointed for the payment thereof, a call or installment payable in respect of a share is not paid, the holder or allottee of such share shall pay interest on the amount of the call or installment at such rate not exceeding the prevailing mean commercial rate as the Directors shall fix, from the day appointed for the payment thereof of the day when moneys are actually paid, provided that the Directors shall have power to waive the same.
- 8.5 Any sum which by the terms of allotment is made payable upon allotment or at any fixed date, whether on account of the amount of the share or by way of premium shall, for the purposes of these Articles, be deemed to be a call duly made and payable on the date so fixed for payment and in case of non-payment the provisions of these Articles as to payment of interest and expenses, forfeiture and the like, shall apply as if such sum were a call duly made and notified as provided herein.
- 8.6 The Directors may, whenever they make an allotment of, or call on shares, arrange for a

difference between the holders of such shares in the amount to be paid and in the time of payment as they may see fit or expedient provided always that such a difference does not amount to unauthorized discount on the shares.

9.0 TRANSFER OF SHARES

- 9.1 Subject to the restrictions in these Articles, shares of the Company shall be freely transferable, but every transfer shall be evidenced by application in writing in the usual form or in such other form as the Directors shall approve, accompanied by the certificate of shares to be transferred and/or such other evidence (if any) as the Directors may require to prove the title of the intending transferor.
- 9.2 The transferor shall be deemed to remain the holder of the share(s) until the name of the transferee is entered in the register of members in respect thereof.
- 9.3 The Company shall provide a record to be called the "Register of Transfers" which shall be kept by the Secretary under the control of the Directors, and in which shall be entered the particulars of every transfer of transmission of every share.
- 9.4 The Register of Transfers shall be closed during the fourteen days immediately preceding every Ordinary General Meeting of the Company, and at such other times (if any) and for such period as the Directors may from time to time determine, provided always that it shall not be closed for more than thirty days in any one year.
- 9.5 In the case of the death of a member, the survivors or survivor, where the deceased was a joint holder, or the executors or administrators of the deceased where he was a sole or only surviving holder, shall be the only person recognized by the Company as having any title to the shares; but nothing herein contained shall release the estate or a focused joint holder from any liability in respect of any shares jointly held by him.
- 9.6 Any person becoming entitled to a share in consequence of the death or bankruptcy of any member may, upon producing such evidence of title as the Directors may require, be registered himself as a holder of the share or, subject to the provisions as to transfers here in contained,, transfer the same to some other person.
- 9.7 A person entitled to a share by transmission shall be entitled to receive and may give a discharge for any dividends or other moneys payable in respect of the share, but he shall not be entitled in respect of it to receive notices of, or to attend or vote at meetings of the Company, or save as aforesaid, to exercise any of the rights or privileges of a member unless and until he shall have been registered as member in respect of the share.

10.0 FORFEITURE OF SHARES

- 10.1 If any member fails to pay the whole or any part of any call or installment thereof, on or before the day appointed for its payment, the Directors may at any time thereafter, during

such time as the call or any part thereof remains unpaid together with interest at such rate not exceeding the prevailing mean commercial rate per annum as the Directors shall determine, and any expenses that may have accrued by reason of such non-payment, give notice of forfeiture to such member through his respective User Area Water Committee.

- 10.2 The notice shall name a further date (not earlier than the expiration of twenty one days from the date of the notice) on or before which such call or installment, or such part thereof and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made and shall state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made, will be liable to be forfeited.
- 10.3 If the requirements of any such notice are not complied with, any share in respect of which such 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 Directors to that effect. A forfeiture of shares shall include any dividends in respect of the shares not actually paid before the forfeiture notwithstanding that they shall have been declared.
- 10.4 When any share has been forfeited in accordance with these Articles, notice of the forfeiture shall forthwith be given to the holder of share or to the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given, with the date thereof, shall forthwith be made in the register of members opposite to the respective shares; but the provisions of this article are directory only and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- 10.5 Notwithstanding any such forfeiture as aforesaid, the Directors may, at any time before the forfeited share has been disposed of annual the forfeiture, upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share and upon further terms (if any) as they shall see fit, having been complied with.
- 10.6 Every share which shall be forfeited shall thereupon become the property of the Company, and may either be canceled or sold or re-allotted or otherwise disposed of, either to the person who was before the forfeiture the holder thereof or entitle thereto, or to any other person such terms and conditions and in such manner as the Directors shall think fit.
- 10.7 A shareholder whose shares have been forfeited shall, the forfeiture notwithstanding, be liable to pay to the company all calls made and not paid on such shares at the time of forfeiture and interest thereon to the date of payment, in the same manner in all respects as if the shares had not been forfeited and to satisfy all (if any) the claims and demands which the Company might have enforced in respect of the shares at any time before the forfeiture, without any deduction or allowance for the value of the shares at the time of forfeiture.

10.8 The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in, and all claims and demands against the Company in respect of that share, and all other rights and liabilities incidental to the share as shareholder whose share is forfeited and the Company excepting only such of those rights and as are by the status given or imposed by the courts in the case of past members.

10.9 A statutory declaration in writing that the declarant is a Director of the Company, and that a share has been duly forfeited in pursuance of these Articles and stating the date on which it was forfeited shall, against all persons claiming to be entitled to the share, be conclusive evidence of the facts herein stated, and such declaration together with the receipt of the Company for the consideration (if any) given for the share on sale or disposition thereof, and a certificate or proprietorship of the share under the seal of the company delivered to the person to whom the same is sold or disposed of, shall constitute a good title to the share, and such person shall be registered as the holder of the share and shall be discharged from all calls made prior to the sale or disposition, and shall not be bound to see to the application of the purchase money (if any), nor omission or irregularity relating to, or connected with the proceedings with regard to the forfeiture, sale, reallocation or disposal of the share.

11.0 ALTERATION OF CAPITAL

11.1 The company may at any time and with the sanction of a special resolution, alter the conditions of its Memorandum of Association for the following purposes or any of them:

- i) To consolidate and divide its share capital into shares of a larger amount than its existing shares, or
- ii) To cancel any shares not taken up or agreed to be taken up by any person, or
- iii) To divide its share capital or any part thereof, into shares of a smaller amount than is fixed by its Memorandum of Association and subject to the provisions of the Ordinance, so that as between the resulting shares, one or more of such shares may, by the resolution by which subdivision is effected, be given any preference or advantage as regards capital, dividends, capital, voting rights or otherwise over the others or any such shares, or
- iv) To reduce its capital in any manner authorized and subject to the provisions of the Ordinance.

11.2 The Company may from time to time by special resolution, whether all shares for the time being shall have been issued or not, or all the shares for the time being issued shall have been fully called up or not, increase its share capital by the creation of new shares and such new capital to be of such amount and to be divided into shares of such respective amounts and (subject to any special rights) for the time being be attached to any existing class of shares or not, and to carry such preferential, deferred or other special rights (if any), or to be subject to such conditions or restrictions (if any) with regard to dividend, return of capital, voting or otherwise, as the special resolution authorizing such increase may direct.

11.3 Except in so far as otherwise provided by, or pursuant to these Articles, or by conditions of

their issue, any new shares shall be considered as part of the original ordinary to the same provisions as regards payment of calls, lien, transfer, transmission, forfeiture and otherwise as the original share capital.

11.4 Subject to the provisions of section 62 of the Ordinance, all or any of the rights, privileges or conditions for the time being attached, or belonging to any class of shares for the time being forming part of the capital of the company, may from time to time be modified, varied, extended or surrendered in any manner with the consent in writing of the holders of not less than three fourths in sanction of a special resolution passed at a separate meeting of the members of that class.

To any such separate meeting, all the provisions of these Articles as mutatis mutandis, apply but the quorum shall be members of the class holding or representing by proxy three fourths of the capital paid or credited as paid-up.

12.0 GENERAL MEETING

12.1 A general meeting of all User Area delegates of the Company shall be held once in every calendar year at any time (not being more than fifteen months from the last preceding general meeting) and at such place as may be prescribed by the Directors subject always to the provisions of sections 108 and 112 of the ordinance. Such general meetings shall be called "Annual General Meeting" and the notices convening them shall specify them as such. All other general meetings shall be called "Extraordinary General Meetings:.

- 12.2
- i) The directors of the company notwithstanding anything in these articles, shall on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the paid-up capital of the company as at the date of the deposit, or in the case of the company not having a share capital members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at a general meeting of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.
 - ii) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.
 - iii) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.
 - iv) a meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
 - v) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums

due or become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

- vi) For the purpose of this section, the directors shall, in the case of a meeting as which a resolution is to be proposed as special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 117 of the ordinance.
- 12.3 Subject to the provisions of Section 117(2) of the Ordinance relating to special resolutions, fourteen days, notice at the least specifying the place, day and the hour of meeting, and in case of special business the general nature of that business, shall be given in the 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 notice from the Company but with the consent of all the delegates entitled to receive notice or some particular meeting, the meeting may be convened by such shorter notice and in such manner as those delegates think fit.
- 12.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any delegate shall not, by itself, invalidate the proceedings at any meeting.
- 12.5 No business shall be transacted at any general meeting unless a quorum of delegates is present at the time the meeting proceeds to business. Save as provided for in Article 12.6 hereof a quorum at general meetings shall be two thirds of all delegates provided that they represent not less than 50% of the issued share capital.
- 12.6 If within two hours from the time appointed for the meeting to commence a quorum is not present, the meeting shall automatically be adjourned to the same day the following week at the same place and time. In the event of there being no quorum within two hours of its appointed commencement time at the adjourned meeting, the members present at such adjourned meeting shall form a quorum and proceed with the business of the meeting in the normal way.
- 12.7 The delegates present at an Annual General Meeting of the Company shall elect from among the elected Directors a Chairman who shall hold the chair for a period of three years, unless he ceases to be a Director before the expiry of that period. The chairman may be re-elected for such other term or terms of office as the delegates shall decide by ordinary resolution. The Chairman shall preside over all general meetings of the Company.
- 12.8 If there is no such Chairman or if at any meeting he is not present within half a hour after the time appointed for the commencement of the meeting, or if he is unwilling to act as Chairman, the Directors present shall elect one of their number to be Chairman of the meeting or if there are no Directors present or none is willing to act as Chairman, the

members present shall choose one of their number to be Chairman of that meeting.

- 12.9 The Chairman may, with the consent of any meeting at which quorum is present and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no member shall be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. No business shall be transacted at any adjourned meeting other than the business, which might have been transacted at the meeting from which the adjournment took place.
- 12.10 At all general meetings, a resolution put to the vote of the meeting shall be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the Chairman (being a person entitled to vote) or by at least one member present in person or by proxy and entitled to vote. Unless a poll be so demanded, a declaration by the Chairman of the meeting that a resolution has on a show of hands, been carried, or has been carried unanimously, or by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minute book of the Company shall be conclusive evidence thereof without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 12.11 When a poll is demanded in the manner aforesaid, it shall be taken at such time and place, and in such manner, as the Chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. But a poll demanded on the election of a Chairman or on the adjournment of a meeting shall be taken forthwith.
- 12.12 In any case of equality of votes, either on a show of hands or on a poll, the Chairman of the meeting shall be entitled to a further casting vote.
- 12.13 The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.
- 12.14 An ordinary resolution of the Company evidenced in writing and signed by all the Directors and by members of the Company constituting quorum for a general meeting under these Articles shall be as valid and effectual as if it had been passed at a general meeting of the Company.

13.0 USER AREA MEETINGS

- 13.1 Every member of the Company will be entitled to attend a members meeting in his respective user area at which he will choose the user area water committee from the body of members in that area. The user area members meetings will be convened and presided over by the user area water committee secretary and chairman respectively except the first meeting which will be convened and presided over by the Company's Zonal Administrative Officer under whom the user area falls, for the purpose of choosing the respective water committee officials.

13.2. Each user area water committee will consist of six members elected from and by members of the Company resident in the respective user area. At least half the membership of the committee shall be made up of women. The committee which will choose a chairman and a secretary from among its membership, will be responsible for supervising distribution of water in their area; suggesting new connections/distribution points to the Company, setting water tariffs (contributions) within their areas; organizing and supervising revenue collection within their areas; electing two of their number to represent them at (i.e. delegates to) the Company's general meetings; taking part in the nomination of the Company's board member for their zone; reporting any problem in the water supply system in their area to the respective Company zone office; issuing letters of exemption to customers with private water connections in their areas, on the basis of which separate contractual arrangements will be made with the company, where need be, testifying to the rightfulness of transfer of ownership of shares for member(s) within their areas; and preparing their own budgets for the ensuing account period. The water committees have the right to obtain advice on water related matters from the Company through their zonal offices from time to time as may be required.

13.3 Quorum at and decisions of meetings of the user area members as well as user area water committee will be by a simple majority in number and value of all members entitled to attend and vote. The Company's respective Zonal Administrative Officer or some other official of the Company may attend members meetings at Zonal and/or User Area level in an Advisory capacity only and will have no voting rights.

14.0 VOTES OF MEMBERS

14.1 Subject, and without prejudice, to any special privileges or restrictions for the time being affecting any special class of shares for the time being forming part of the capital of the Company, every member shall have one vote on a show of hands and in the case of a poll, shall have one vote for every share of which he is the holder.

14.2 The parent or guardian of a minor, and curator bonis of a lunatic member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof, and in the same manner as if he were the registered holder those shares, provided that forty eight hours at least before the time of holding the meeting at which he proposes to vote, he shall have satisfied the Directors that he is such parent, guardian or curator bonis (as the case may be) or that he is entitled under the transmission clause to transfer those shares, or that the Directors have previously admitted him the right to vote in respect of those shares. Several executors of a deceased member in whose name shares stand in the register shall for the purpose of this regulation, be deemed joint holders.

14.3 If two or more person are jointly entitled to a share, then in voting upon any question, 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 registered holders of the share, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

14.4 Any member entitled to attend and vote at a meeting of the Company shall be represented by a delegate elected from his respective user area to attend and vote in his stead at the company's general and zonal meetings.

14.5 A delegate at any general or zonal meeting shall have voting rights equivalent to the number of paid up shares which he represents weighted by a factor reflecting the ratio of paid up

water bills for last year.

- 14.6 A resolution of the respective User Area members meeting or Water Committee meeting appointing a delegate to the Company's general meeting duly signed by the Chairman of the appointing meeting shall constitute proper authority in that regard. A resolution electing a delegate to the Company's general meeting shall be deemed to include the power to demand or concur in demanding a poll on behalf of the electors.
- 14.7 A copy of the resolution electing a delegate duly signed by the chairman and secretary of the respective meeting shall be filed at the Company's registered office or zonal office at least forty eight hours before the time appointed for the holding of the meeting or adjourned meeting at which the person named in such resolution proposes to vote, otherwise the person so named shall not be entitled to vote at that meeting.
- 14.8 Any body corporate 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 and the person so authorized shall be entitled to exercise the same powers on behalf of the corporate body which he represents as the corporate body could have exercised if it were an individual (personal) members of the Company.
- 14.9 All business shall be deemed special that is transacted at an extraordinary meeting as well as all that is transacted at the Annual General Meeting other than consideration of the Company's annual report, election of Chairman, Director and other officers in place of those retiring or to fill a vacancy, and appointment and fixing of the remuneration of the Company's External Auditors.

15.0 DIRECTORS

- 15.1 Unless and until it is otherwise determined by a general meeting of the company, the number of Directors including the Chairman shall not be less than 6 nor more than 8. The following persons shall be the first Directors of the company:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

- 15.2 Except as provided for in Article 15.1 above, the Directors of the Company shall be nominated one each by the Company's zonal meetings of delegates from water committees. The following Annual General Meeting of the Company will elect them. Elected Directors shall hold office for three years subject to Article 15.7 hereof, but they shall be eligible for re-election at the end of their tenure of office. However, the District Water Engineers for Rombo and Moshi Rural districts shall be ex-officio Directors of the Company.

- 15.3 In the event of a Director's position (other than the District Water Engineer's) falling vacant, the Zonal Administrative Officer or other authorized Company official shall call a zonal meeting of the respective zone's users delegates to nominate a candidate for a replacement.
- 15.4 A retiring Director shall be eligible for re-electing and shall act as Director throughout the meeting at which he retires but unless a resolution re-electing him is passed at the meeting, he shall cease to act as a Director at the conclusion of that meeting.
- 15.5 The company may from time to time in general meeting increase or reduce the number of Directors, vary their tenure of office and determine in what rotation, such increase or reduced number shall go out of office and may make any such appointments as are necessary for effecting any such increase as aforesaid by ordinary resolution.
- 15.6 Except as authorized by these Articles, a Director of the Company while he continues in that capacity may not be a member, director or employee of a Company of organization currently carrying on business, or being promoted to carry on business in direct competition with the Company unless full disclosure has been made and/or consented to by all the other Directors.
- 15.7 All elected Directors must hold at least one paid up share in the Company before their election.
- 15.8 The remuneration of each Director by way of fee and/or allowance shall be proposed by the Directors on the recommendations of management and be approved by the company in general meeting from time to time. Each Director shall also be entitled to be reimbursed, to such extent as is provided for by the company, for reasonable travelling, entertainment and other expenses incurred in the discharge of their duties as Directors of the Company.
- 15.9 A Director shall not hold any other office or place of profit in the Company in conjunction with his office of Director.
- 15.10 Subject as herein otherwise provided, or to the terms of any subsisting agreement, the office of a Director shall be vacated:
- i) If he becomes in-solvent or is adjudicated bankrupt or assign his estate for the benefit of, or compounds with his creditors in Tanzania or a reciprocating country under section 147 of the Bankruptcy ordinance; or
 - ii) If he is found a lunatic or becomes of unsound mind; or
 - iii) If he absents himself from three consecutive meetings of the Board without special leave or absence from the Directors and they pass a resolution that he has, by reason of such absence, vacated office; or
 - iv) If the Company in general meeting passes a resolution terminating his appointment as a Director of the Company; or

- v) If he resigns his office by notice in writing to the Company; or
- vi) If he is imprisoned for a term exceeding six months; or
- vii) If he becomes prohibited from being a Director by reason of any order made under sections 213 or 269 of the Ordinance.

15.11 The Directors may from time to time appoint any one from within or outside the Company to be General Manager for such period and upon such terms as they think fit. The remuneration of the General Manager may be way of salary or participation in profits, or by any or all of these modes.

15.12 A Director who is appointed a General Manager shall vacate his office of Director for the period he remains a General Manager.

15.13 The Directors may, from time to time and with the consent of members in general meeting, appoint any person or body corporate to manage the whole of any part of the Business of the Company for such terms and on such remuneration (whether by way of salary or commission or participation in profits or partly in one and partly in another) as they may think fit, and may remove and discharge any such person and appoint a subs substitute. The Directors shall take such security, if any, for the good conduct and satisfactory discharge of the duties of any such Manager as they shall, in their discretion, think sufficient.

16.0 POWER AND DUTIES OF DIRECTORS

16.1 The business of the Company shall be managed by the Directors, who may pay all such expenses, preliminary and incidental to the promotion, formation, establishment, registration and operation of the Company, as they think fit, and may exercised and done by the Company except those acts as are by these articles or by the Ordinance required to be exercised or done only by the company in general meeting, but subject always to any regulations of these articles, to the provisions of the Ordinance which are herein retained and to such regulations not being inconsistent with any regulations or provisions prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall in-validate any prior act of the Directors which would have been valid if such regulation had not been made.

16.2 The Directors shall, inter alia, have the following powers:

- i) To purchase or acquire in perpetuity or for any less interest and for the benefit of the company, any property movable or immovable, rights, powers, privileges or benefits which the Company is authorized to acquired at such price and generally on such conditions as they may think fit.
- ii) To sell, lease, hire, grant licenses or other rights under, or in respect of, or otherwise deal with, or dispose of any property movable, or unmovable, rights, privileges, powers or benefits of every description whether in possession or in action which shall from time to time belong to the Company for any pecuniary or other consideration paid or agreed to be paid, provided that the Directors of the company shall not be empowered without the approval of the Company in general meeting to dispose of the undertaking of the Company or of the company or of the whole or a great part of the assets of the Company. No resolution of the Company shall the Directors propose effective as approving of such disposal unless it authorizes in turn the specific transaction.

- iii) To borrow or otherwise raise any sum or sums of money upon such terms as the Directors may deem fit from time to time as they in their judgement, may deem expedient for the purposes of the Company, provided that money so raised or borrowed, including temporary loans obtained from the Bankers of the Company in the ordinary course of business, shall not, unless sanctioned by the company in general meeting, exceed 50% of the total annual revenue of the Company.
 - iv) To invest and deal with any of the moneys of the Company not immediately required for the purposes of the company, upon such securities and in such manner as they may think fit, and from time to time to vary or realize such investments.
 - v) To institute, conduct, defend, compound, band or otherwise settle any legal proceedings by or against the Company, or any of its officers or otherwise concerning the affairs of the company, and also to compound and allow time for payment or satisfaction of any debts due, claims or demands by or against the Company.
 - vi) To refer any claims or demands by or against the Company to arbitration and observe and perform the awards.
- 16.3 Subject to the provision contained in Articles 16.2(ii) hereof the Directors may, for the purpose of securing borrowed money and the interest thereon or for any other purpose, create any mortgage, charge or lien upon the undertaking of the Company and the whole or any part of its property, present future including its uncalled capital for the time being, by way either or specific or floating charge security and may also for any purpose and for any consideration, create and issue bonds or perpetual or redeemable debentures, or debenture stocks or other obligations, and secure the principal represented thereby and the interest payable thereon by any such mortgage, charge or lien as aforesaid. Every mortgage or charge requiring to be registered under the Ordinance shall be registered accordingly;
- 16.4 The continuing Directors or Director (if any) may act at any time notwithstanding any vacancy in their body; provided always that in case the Directors shall at any time be reduced in number to less than the prescribed minimum, the remaining Directors or Director may only act for the purpose of convening a general meeting of the Company immediately to appoint an additional Director or Directors not exceeding the prescribed maximum number.
- 16.5 The Directors shall duly comply with the provisions of the Ordinance as are by these Articles adopted or any statutory modifications thereof, and particularly the provisions with regard to keeping a register of the Directors and with regard to sending to the Registrar of Companies annual returns and copies of special resolutions.
- 16.6 No director shall be disqualified by his office from contracting with Company either as a vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company, in which any Director shall be in any way interested, be avoided, nor shall any Director so contacting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reasons only of such Director holding that office or of the fiduciary relationship thereby

established, provided that he shall have declared the nature of this interest in the manner required by section 150 of the Ordinance.

- 16.7 A general notice that a Director is a member of any specified firm of Company and is to be regarded as interested in all transactions with that firm or Company, shall be deemed to be sufficient declaration of interest in relation to any contract or proposed contract so made or to be made provided such notice complies with the provisions of sub-section 3 of section 150 of the Ordinance. A Director may vote as a Director in respect of any contract or arrangement in which he is interested provided that requirements regarding disclosure of interest under these Articles have been fulfilled.
- 16.8 A Director of the Company may be or become in his own right a Director of any company promoted by the Company or in which it may be interested as a vendor, shareholder or otherwise, and no such Director shall be accountable for any benefits received as such director or as a member of such Company.
- 16.9 The Directors may from time to time provide for the management and transaction of the affairs of the company in any specified locality in its area of operations, in such manner as they think fit.

17.0 PROCEEDINGS OF DIRECTORS

- 17.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meeting as they think fit, and determine the quorum necessary for the transaction of business. Unless otherwise determined, however, four Directors shall constitute a quorum. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second casting vote.
- 17.2 A Director may, and on the request of a Director, the Secretary shall, at any time summon a meeting of the Directors.
- 17.3 The Company Chairman, shall preside at meetings of the Directors but if at any meeting the Chairman be not present within thirty minutes after the time appointed for the holding of the same, the Directors present shall choose one of their number to be the Chairman of that meeting.
- 17.4 The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. any Committee so appointed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Directors.
- 17.5 A Committee may elect a Chairman of its meeting. If no such Chairman is elected, or if any meeting the Chairman is not present within on hour from the time appointed for holding the meeting, the members of the committee present may choose one of their number to be Chairman of that meeting.

- 17.6 A committee may meet and adjourn as its members think proper. Questions arising at any meeting shall be determined by a majority of votes; the Chairman shall have a second casting vote when necessary to resolve a tie of votes.
- 17.7 All bona fide acts done by any meeting of the Directors, or a Committee of Directors of Directors or by any person acting as Director, shall, notwithstanding it being 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.
- 17.8 The Directors shall cause proper minutes to be made of all general meetings of the company and also of all appointments of offices made by, and the proceedings of all meetings of the Board and its committees, and of attendance thereat, and all business transacted at such meetings, and the minutes of any such meeting if duly signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting, shall be conclusive evidence without any further proof of the facts herein stated. Every Director present at any meeting of Directors shall sign his name in a book to be kept for that purpose.
- 17.9 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be as valid and effectual for all purposes as if it had been passed at a meeting of the Directors duly convened, held and constituted.

18.0 THE COMPANY SEAL

- 18.1 The Board of Directors shall provide for the acquisition and custody of the company seal. The seal shall only be affixed by the authority of the Board or of its committee expressly authorized in that behalf, and every instrument to which the seal shall be affixed shall be signed by a Director and also by the Secretary or a second Director, or by some other persons appointed by the Board for that purpose' such signatures shall be conclusive evidence of the fact that the seal has been properly affixed.
- 18.2 All deeds, contracts, power of attorney and the like to which the Company is a party shall be signed by one Director, and the Secretary of the Company or a second Director, and all deeds shall in addition bear the Seal of the Company.

19.0 SECRETARY

- 19.1 The Directors may from time to time, by resolution appoint a Secretary or a temporary substitute for the Secretary from among themselves.
- 19.2 A provision of the Ordinance or these Regulations requiring or authorizing 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 as Director and as, or in place of the Secretary.

20.0 DIVIDENDS AND RESERVES

Until the Company shall resolve otherwise in general meeting, the Company for improvement and expansion of the water provision service will retain any profit made by the Company.

21.0 ACCOUNTS

- 21.1 The Directors shall cause such books of account as are prescribed by section 122 of the Ordinance, to be kept.
- 21.2 The books of account 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 by the Directors.
- 21.3 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 the right of inspecting any account or book or document of the company except as conferred by statute or authorized by the Directors or by the company in General Meeting.
- 21.4 The Directors will from time to time in accordance with section 123 of the Ordinance, cause to be prepared and laid before the Company in General meeting such profit and loss accounts, balances sheets, group accounts (if any) and reports as are referred to in that Section.
- 21.5 A copy of any 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 Directors' report and the Auditors' report, shall, not less than twenty one days before the date of meeting, be sent to every member of, and every holder of debentures of the Company; provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware and also that the provisions of section 130(1)(b) of the Companies Ordinance are complied with.

22.0 AUDIT

Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Ordinance, or any statutory modifications thereof.

23.0 NOTICES

- 23.1 All notices directed to be given to members in general, shall be given to the delegates of the respective members any notice so given shall be sufficient notice to the holders of such shares, but nothing herein contained should be construed as absolving the Company from specific service to individual members where circumstances dictate.
- 23.2 Any member/delegate described in the register of members by an address not within

Tanzania may from time to time give the Company an address within Tanzania to which may be sent any notice to which he would be entitled under these Articles, but, save as aforesaid, no person other than a member described in the register of members by an address within Tanzania, shall be entitled to receive any notice from the Company.

- 23.3 Whenever a notice is to be given personally to a member, such notice may be given by the Company to the persons entitled to a share in consequence of the death or insolvency of a member by sending in through the post in a pre-paid letter addressed to them by name, or by title of the representatives of the deceased, or trustees of the insolvent, or by any like description, at the address (if any) in Tanzania supplied for the purpose by the persons claiming to be so entitled or, (until such address has been so supplied) by giving the notice in any manner in which the same rights have been given if the death or insolvency had not occurred.
- 23.4 Any notice or other document, if served or sent by post, shall be deemed to have been served or delivered at the time when the letter containing the same is put into the post, and in proving such service or sending, it shall be sufficient to prove that the letter containing the notice or document was properly addressed and put into the post office as a prepaid letter.
- 23.5 Where a given number of day's notice extending any other period is required to be given, the day of service shall not be counted in such number of days or other period.
- 23.6 In the event of the winding up of the Company in Tanzania, every member of the Company who is not for the time being in Tanzania, shall be bound within twenty eighty days after the passing of an effective resolution to wind up the Company voluntarily, or after the receiving of an order for the winding up of the company, to serve notice upon the Company appointing some person resident in Tanzania upon whom all summons, notices, process order or judgements in relation to, or under the winding up of the Company, may be serviced; default of such notification shall make the liquidator entitled on behalf of the member to appoint such person, and service upon any such appointee shall be deemed to be good personal service on such member for all purposes, and where the liquidator makes nay such appointment he shall with all convenient speed, give notice thereof to such member by advertisement in the newspaper or by a registered letter sent through the post and addressed to such member at his address as described to be served on the day following that on which the appointment is made.

24.0 INDEMNITY

The Directors, Auditors, Secretary and other officers for the time being acting in relation to any of the affairs of the Company, and their heirs, executors and administrators respectively, shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duties in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own dishonesty or willful neglect or default respectively; but such officers or trustees shall not be answerable for the acts, neglects or defaults of any

other officer or trustee, or for the insolvency or dishonesty of any bankers or other persons with whom any moneys or effects belonging to the Company may be lodged or deposited for safe custody, or for any insufficiency or deficiency of any security upon which any moneys of the Company shall be invested, or for any other loss or damage due to any such cause as aforesaid, or which may happen in or about the execution of his office or trust, unless the same shall happen through the dishonesty or willful neglect or default or recklessness of such officer or trustee.

25.0 WINDING-UP

25.1 The Company may only be wound up under any or all of the following conditions:

- (a) Where the members have formed a new Company to take over the assets, liabilities and operations of this Company or where it is being merged with another entity for the same purpose, and have so resolved in general meeting, provided that the Ministry of Water shall be given advance notice of the intended action;
- (b) By order of the court;
- (c) Where, for whatever reason, the Company is unable to operate and there is no possibility of its being able to do so for a long time, the members may in general meeting resolve to wind up the company and dispose of the assets to the best advantage in order to preserve their values and/or reduce losses, provided that the Ministry of Water, shall be given advance notice of the intended action.

Where the company has been or is to be wound up under (a) or (b) above, members may decide in general meeting to deploy any remaining assets or proceeds from the sale thereof in the formation and operation of a new Company formed for the purpose of providing the same or similar service to the same beneficiaries in the same area; otherwise the liquidator shall, with the sanction of a special resolution divide among the members in specie, the remaining assets of the Company in accordance with the existing rights of the members, subject to section 230 of the Ordinance.

A special resolution sanctioning a sale of the undertaking to another company duly passed pursuant to the said section may in like manner determine that any shares or the consideration receivable by the liquidators shall be distributed among the members in accordance with their existing rights, and such determination shall be binding upon all the members, subject to the right of dissent and consequential rights conferred by the said section of the Ordinance.

26.0 We, the several person whose names, addresses and occupations are subscribed here below are desirous of being formed into a company in pursuance of these Articles of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Name, Address and Description of Subscriber	No. of Shares taken	Signature
1.		
2.		
3.		
4.		
5.		

Dated at Dar es Salaam this.....day of.....

WITNESS:

Signature:.....
 Full Name:.....
 Occupation:.....
 Address:.....

THE

SOCIETIES ORDINANCE

THE CONSTITUTION

OF

USERS ASSOCIATION

WATER USERS ASSOCIATION

CONSTITUTION

PREAMBLE

The members of theWater Users Association BEING MINDFUL of the need of a legal entity (or body) to foster water supply development in area for the purpose of enhancing general social welfare.

REALISING, NOTING AND RECOGNISING the positive effort made so far by various authorities and agencies in the specified.....area regarding development of the improved water supply; HAVE RESOLVED to establish and constitute theWATER USERS ASSOCIATION with a view to earnestly manage and maintain the Ismani Water Supply Scheme and also supplement the efforts and endeavors undertaken by the various authorities and bodies in the same field by mobilizing financial, material and human resources in that direction, hence, the Association shall be governed by the following provision.

PART ONE

ESTABLISHMENT, NAME OF THE ASSOCIATION, STATUS AND REGISTERED OFFICE

- 1.1 There is hereby established a Society which shall be called and known asWATER USERS ASSOCIATION.
- 1.2 The registered office shall be at.....District, Region, Tanzania.
- 1.3 The Postal Address shall beWATER USERS ASSOCIATION, P.O. BOX
- 1.4 The business of the The Group Scheme Management Committee shall overall manage water Users Association.

PART TWO

DEFINITION INTERPRETATION

- 2.1 In the Constitution, unless the context requires otherwise:
 - "The Association" means the.....Water users Association.
 - "User Area" means an area served by a storage tank and/or an area served by a branchline directly connected to the transmission line.

- "User Group" means a group of users supplied by a Distribution Point (DP), and/or an institution and/or a private connection.
- "The Constitution" means the Constitution of the Water Users Association.
- "Rules and Regulations" means the by-laws governing the management of the association.
- "Ordinary User" means each and every person who is drawing water from the scheme and who has attained the age of 18 years and is of sound mind.

PART THREE AIM AND OBJECTIVES

- 3.1 To Operate and maintain the intake and the transmission lines (including water meters) of the..... Water Supply Group Scheme.
- 3.2 To facilitate adequate and even supply of water to all members of the Association.
- 3.3 To ensure that catchment areas of the water sources for the Ismani scheme are protected against deforestation, fire, and soil erosion and poor land use activities.
- 3.4 To acquire and observe the water right for adequate supply of water from the sources of theGroup Scheme.
- 3.5 To act as manager and owner of all the assets of the Water Supply Group Scheme for and on behalf of all users.
- 3.6 To co-operate with other associations/bodies in the area whose aims and objectives are similar to those of the Association.

PART FOUR MEMBERSHIP OF THE ASSOCIATION & FEES

4.1 Membership:

- i) There shall be the following categories of members of the Association, viz.;
 - a) Ordinary members
 - b) Associate members
 - c) Honorary members
- ii) All ordinary users are deemed to be ordinary members of the ASSOCIATION.
- iii) Body corporate or incorporate, institutions, government department/agency, society, parastatal organization, companies, none governmental organization who scribe to the objectives, functions and purposes of the Association may become associate

members of the association on fulfilling the conditions for entry.

- iv) Honorary members shall be any people recommended and appointed by the Annual General Meeting on account of his/her contribution or position to the welfare of the Association.

4.2 Cessation of Membership

- i) Ordinary members cannot cease their membership as long as they are drawing water from the scheme. Their membership (right to draw water) can be suspended in case of the following:
 - a) The member is more than two month in arrears with payment of any tariffs and fees.
 - b) Is vandalizing the installations of the scheme.
- ii) An associate and honorary member shall cease to be a member on any of the following grounds:
 - a) Voluntary Resignation
 - b) Termination for breach of duties as a member
 - c) Dismissal for disgraceful conduct
 - d) Death
 - e) Failure to pay subscription for a period of two years consecutively without any reasonable ground.
- iii) A person shall not be suspended, terminated or dismissed from membership unless an appropriate inquiry is carried out including according the person an opportunity to defend himself.
- iv) An ordinary member whose membership has been suspended will maintain her/his full rights as an ordinary member when payment of outstanding tariffs and/or fees has been received and acknowledged by the Treasurer.
- v) An associate and honorary member whose membership has elapsed or terminated may be re-admitted to membership if he/she re-applies and the Management Committee approves his/her application.

4.3 Rights of a Member

Every member of the association shall have the following rights:

- a) To vote at any election of the association.

- b) Save for an associate and honorary member to be elected to any leadership position in the association.
- c) Subject to the Constitution to attend all meetings of the Association and to participate in deliberation and decision making at the meetings.
- d) To attend the General Meetings.

4.4 Fees and Donations

- i) **Entry Fee:**
On being registered/admitted to membership, whether ordinary or associate, the user/applicant shall pay an entry fee, which is to be determined by the general meeting.
- ii) **Annual membership Fee:**
Every member of the association shall pay an annual membership fee as determined by the general meeting.
- iii) The honorary members can pay both entry and membership fees any amount on their own discretion.
- iv) The association may from time to time request for donations, gifts, grants and ex-gratia contributions from members and non-members in order to enhance and strengthen the associations financial basis.
- v) any person and associate member may at any time give ex-gratia contributions to the association over and above the fees and annual subscriptions.

PART FIVE ORGANISATION STRUCTURE OF THE ASSOCIATION

5.1 Organization and Management at users Area Level;

5.1.1 Definitions

- a) At user area level users utilizing a Domestic Point (DP), and/or an institutions and/or a private connection shall form a user group.
- b) User groups connected to one tank or branchline shall form a user area, which can be a village, a sub-village or any number of the two. Every user in the user area shall be deemed to be a member of the association.

5.1.2 Organization and Management

At user area level the organization of the association shall comprise; ordinary members, user groups and a user area management committee.

This organization shall have two levels of management:

- a) User area general meetings
- b) User area management committee.

5.1.3 User Area General Meeting

The user area general meeting forms the supreme decision making body on all matters regarding the discharge of rights and duties of the members and organs of the association at user area level.

Functions:

- i) To set rules and regulations in connection with overall management of the association at user area level (which are not in conflict with the ones set by the Group Scheme General Meeting).
- ii) To consider and adopt a report from the Chairman of the User Area Management Committee relating to its activities of the past year.
- iii) To elect, suspend or remove any member of the user area management committee.
- iv) To deliberate upon annual program and budget for the user area.
- v) Recommend tariffs and budget modifications to the Management Committee of the Association at group scheme level.

5.1.3.1 The General Meeting is to be conducted each year in the month of June in each and every user area.

5.1.3.2 Every member in the user area shall constitute the annual general meeting. Each member shall be entitled to attend the meeting and to vote.

5.1.3.3 The members shall be notified on the meeting by a written notice on all public offices in the user area. Such notice is to be announced at least tow weeks before the meeting.

5.1.3.4 The Agenda for the meeting shall be as follows:

- 1) Election of Chairman of the Meeting.

- 2) Annual report from the Chairman of the Area Management Committee.
- 3) Financial report presented by the Treasurer of the User Area Management Committee (assisted by the Accountant of the Association).
- 4) Presentation of plans and budgets for the coming year.
 - a) Elaboration and eventual recommendations with regard to tariffs and membership fee for the coming year.
 - b) Elaborating and eventual recommendations with regard to overall budget.
- 5) Election of members to the user area management committee.
- 6) Matters/proposals submitted in writing prior to the meeting by the committee and/or other members.
- 7) Any other business arising from the meeting.

5.1.3.5 The quorum of the meeting shall be 50% (fifty per centum) of the members in the user Area. Votes shall be taken by show of hands. However, if ten members present at the meeting in each case request secret ballot then secret ballot shall apply in such case.

5.1.3.6 An extraordinary general meeting shall be called if at least 10% percent of the members in the user area are requesting such a meeting in writing. The meeting shall be called not later than 14 days after the User Area Management Committee has received the written request as well as the subjects to be discussed.

5.1.4 **User Management Committee**

The User Area Management Committee shall be constituted by not less than 5 members depending on the size of the user area. The User Area Management Committee shall at least comprise a Chairman, a Treasurer, a Secretary and two ordinary committee members. At least two of the members shall be women. The Committee shall be elected at the annual general meeting.

Functions and Responsibilities:

- i) To administer the management of the water affairs within the user area.
- ii) Responsible for the operation and maintenance of storage tanks, distribution system, the domestic points (DP's) and private connections within the user area.

- iii) Responsible for constituting the organizational set up of any user group.
- iv) To recommend for new connections or extensions.
- v) To propose water tariffs.
- vi) To prepare annual budget proposal and forward the same to the Group Scheme Management Committee.
- vii) Responsible for revenue collection within the user area.
- viii) To call for general and extraordinary meetings.

5.1.4.1 The following election procedures shall apply for election of members to the user area management committee at the annual general meeting:

- a) Any ordinary member in the user area is eligible for being elected to the committee. All candidates are eligible for re-election.
- b) First the Chairman is elected for a one-year period. The same member cannot be re-elected for more than four consecutive years.
- c) Secondly the Treasurer is elected for a two-year period (election takes place in even years).
- d) Thirdly the Secretary is elected for a two-year period (election takes place in uneven years).
- e) Finally the number of ordinary members are elected for a two year period (at least one member is elected in even years and at least one is elected in uneven years).

5.1.4.2 The User Area Management Committee shall at least meet quarterly.

5.1.4.3 The Chairman, the Treasurer and the Secretary shall represent the User Area at the general meeting of the Users Association at group scheme level. At least one of the mentioned members must be a woman.

5.2 Organization and Management at Group Scheme Level

5.2.1 Organization and Management

At Group Scheme Level the organization of the association shall comprise: representatives representing user areas, associate and honorary members, a Group Scheme Management Committee and the Group Scheme Manager and support staff.

This organization shall have three levels of management:

- a) The Group Scheme General Meeting
- b) The Group Scheme Management Committee
- c) The Group Scheme Manager and Support Staff

5.2.2

The Group Scheme General Meeting

The group scheme general meeting forms the supreme decision making body and shall have final authority to all matters pertaining to the overall management of the association.

Functions:

- i) To set policies, rules and regulations in connection with overall management of the Association.
- ii) To introduce by-laws or amend the existing ones in consultation with the Iringa Rural District Council.
- iii) To receive, consider and adopt an annual report from the Chairman of the Group Scheme Management Committee relating to its activities of the past year.
- iv) To receive consider and adopt a report of the Treasurer relating to the audited accounts of the Association.
- v) To consider and approve the annual plan of activities.
- vi) To approve annual budget and new water tariff.
- vii) To deliberate and decide on any strategy regarding the future sustainability of the Ismani Water Supply Scheme.
- viii) To appoint, suspend or remove any member of the management committee.

5.2.2.1 The General Meeting is to be conducted each year in the month of July and shall be constituted by the following:

- i) Three members from each user area, at least one being a woman.

ii) **All associate and honorary members.**

iii) **All patrons of the Association.**

iv) **The manager.**

5.2.2.2 The Annual General Meeting shall be presided over by a Chairman who shall be elected from amongst the members present at the General Meeting.

5.2.2.3 Each member present at the general meeting shall be entitled to vote. No authority to vote can be given by means of a power of attorney to another member or to the Group Scheme Management Committee by members who are refrained from attending the meeting.

Only members representing user areas are eligible for being elected to the Management Committee.

5.2.2.4 The Members, the Patrons and the Manager shall be notified of the meeting by a written notice on all public offices in the area. Such notice is to be announced at least two weeks before the meeting is to take place.

5.2.2.5 The Agenda for the meeting shall be as follows:

- 1) Election of Chairman of the Meeting
- 2) Annual report from the Chairman of the Group Scheme Management Committee.
- 3) Financial report including audited accounts presented by the Treasurer of the Group Scheme Management Committee.
- 4) Presentation of plans and budgets for the coming year.
 - a) Approval of tariffs and fees.
 - b) Approval of plans and total budget.
- 5) Election of members to the Group Scheme Management Committee.
 - a) The Chairman (if applicable)
 - b) The Treasurer (if applicable)
 - c) The Secretary (if applicable)
 - d) Ordinary members (if applicable)
 - e) Substitutes (if applicable)
- 6) Any matter/proposal submitted in writing seven days prior to the meeting (by the committee, the members, the patrons and/or the manager.

7) Any other matter arising from the meeting.

5.1.3.5 The quorum at the meeting shall be 50% (fifty per centum) of the User Area representatives (ordinary members). Votes shall be taken by show of hands. If 10% of the members present at the meeting request secret ballot shall apply.

5.1.3.6 An extraordinary general meeting shall be called for at any time if, at least, 10% percent of the members request such a meeting in writing. The meeting shall be called for not later than 14 days after the Group Scheme Management Committee has received such written request for such meeting.

5.2.3 The Group Scheme Management Committee

The committee shall be constituted by not more than eight (8) provided that two (2) members of whom at least one is a woman shall represent each ward. The general meeting shall elect the committee members. The committee members shall hold position for a term of three (3) years and can be re-elected. The Chairman and Treasurer shall not come from the same ward.

Functions and Responsibilities

- i) To regulate, plan and administer the management of the scheme.
- ii) To cause the proper keeping and maintenance of books of accounts and submit the same for annual audit.
- iii) To cause the preparation of accounts and to submit the annual accounts for external audit.
- iv) To cause the preparation of annual plans and overall budget of the Association.
- v) To prepare and recommend to the general meeting tariffs and fees.
- vi) To call for General Meetings of the Association.
- vii) To approve applications for associate membership.
- viii) To recommend to the general meeting new by-laws or amendments to existing ones.
- ix) To cause the preparation of rules and regulations and to cause the proper enforcement of the same and to impose fines or penalties in accordance with rules and regulations in force.

- x) To appoint the manager and in case of misconduct and/or mismanagement to suspend and/or replace the same.
- xi) To liaise with central and local authorities for better function and operation of Ismani Group Water Supply Scheme and/or the Association.
- xii) Responsible for the protection of the catchment area of the Mgera stream.

5.2.3.1 The following election procedures shall apply for election of members to the Group Scheme Management Committee at the Annual General Meeting:

- a) Any ordinary member (representatives from User Areas) is eligible for being elected to the committee. All candidates are eligible for re-election.
- b) First the Chairman is elected for a two-year period. The same member cannot be re-elected for more than two consecutive periods.
- c) Secondly the Treasurer is elected for a three-year period.
- d) Thirdly the Secretary is elected for a three-year period.
- e) Fourthly five (5) ordinary members are elected for a three-year period.
- f) Finally two substitutes are elected for a three-year period.

5.2.3.2 The Group Scheme Management Committee shall at least meet quarterly.

5.2.3.3 The Chairman, the Treasurer and the Secretary are office-bearer of Ismani Water Users Association. None of the office-bearers can bind the Association as an individual; but two of the office-bearers of which the one has to be the Chairman can jointly bind the Association.

PART SIX SOURCES OF FUNDS AND FINANCIAL MATTERS

6.1 The association shall have powers to receive funds from the following sources:-

- 6.1.1 Grants, donations, or voluntary contributions from other associations of similar nature, individuals, corporate bodies public or private, government institutions within and outside Tanzania and NGO's.
- 6.1.2 Revenue from water sales, penalties etc.
- 6.1.3 Entrance and Subscription fee from members of the Association.

- 6.1.4 The Management Committees may initiate Fees/funds raising as.
- 6.1.5 Sums of monies or property as may be payable to the association by way of loans.
- 6.2 All funds of the Association shall be deposited with such Bank or Banks as the management committee may determine.
- 6.3 The financial year of the Association shall be the period of twelve months commencing from the first day of January and ending on the last day of December in each year (except that the first financial year after establishment of the Association may be of a shorter or longer period than twelve months).
- 6.4 The management committee shall with the approval of general meeting engage a professionally qualified and duly registered person or body of persons to be external auditors of the Association. Auditing of the accounts shall be carried out within two months after the closing of each financial year.

PART SEVEN QUORUM AND DECISION MAKING

- 7.1 The quorum of the Association Meetings shall be 50% (fifty per centum) of the members. Votes shall be taken by secret ballot or by show of hands as the members may see fit to direct in each case.
- 7.2 Decisions at the Association meetings except for amendments of the constitution shall be by a simple majority of the members present.

PART EIGHT AMENDMENT OF THE CONSTITUTION

- 8.1 Nothing in this constitution shall be amended, changed varied, altered, or rescinded except by a resolution at an extra-ordinary General Meeting specifically called for that purpose and voted by at least three - fourth (3/4) of the members present and eligible to vote.

PART NINE PATRONS OF THE ASSOCIATION

- 9.1 The following leaders of the District shall be the Patrons of the Association.
 - 9.1.1 The District Executive Director

9.1.2 The District Commissioner

9.2 The Patrons shall be Guardians and Principal advisers of the Association.

**PART TEN
MISCELLANEOUS PROVISIONS**

10.1 The Management Committee shall have power of making rules and Regulations of the association, which shall become effective on being adopted by the Annual General Meeting.

The Rules of the Association may relate but not limited to:-

- a) matters of procedures guiding the conduct of meetings of the organs of the association.
- b) matters of procedure of performance of the functions of each organ of the association.
- c) procedure governing the expulsion and re-admission of persons to membership of the association.
- d) matter of procedure and activities of the Registered Board of Trustees.
- e) procedure governing the management of funds of the association.
- f) the electoral procedure at the Annual General Meeting.
- g) Any other matters which the management shall consider desirable to regulate by rules of the association.

10.2 The Association may be dissolved if and when all the following conditions have been fulfilled.

- i) three fourth (seventy-five per centum) of all ordinary members at general meetings of user areas vote for dissolution.
- ii) Three fourth (seventy five percent) of all user areas have voted for dissolution.
- iii) Three fourth of ordinary members at an extra-ordinary general meeting at Group Scheme level, specifically called for that purpose, vote for a resolution to dissolve the Association.

If the resolution to dissolve the association is voted for the general meeting shall appoint a person or persons to be the liquidator(s) who shall make provisions for the disposal of the

Association's assets. The assets can be disposed to public entities only.

- 10.3 Without prejudice to the foregoing, save wherein stated and interpreted in the Consultation, whenever there is any matter of conflict within the provisions, the English written constitution, definition and interpretations, shall prevail.
- 10.4 This Constitution shall become effective and operative upon being adopted by at least three fourth of members of the association present and voting at the first general meeting at Group Scheme level and upon registration of association with the Registrar of Societies.

SAMPLE OF

TRUST DEED

UNDER THE

TRUSTEE INCORPORATION

ORDINANCE (CAP 375)

**TRUST DEED OF
PROJECT REGISTERED TRUSTEES**

WATER SUPPLY

THIS TRUST DEED is made theday ofbetween of P.O. Box (hereinafter referred to as the "Settlor") of the one part and

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

(thereinafter referred to as the "First Trustees" who together with the future Trustees of this Trust shall be referred to as the "Trustees" respectively) of the other part.

WHEREAS the Settlor and Trustees are desirous of establishing a Trust for the purposes of carrying out the objectives set out in this Deed.

AND WHEREAS contemporaneously with the instrument the Settlor has transferred to the Trust Tshs.

AND WHEREAS it is contemplated that further monies and assets shall vested or paid to Trust upon the same trusts.

NOW THIS DEED WITNESSETH AS FOLLOWS

1. ADMINISTRATION

- 1.1 The Charitable trust constituted by this deed shall be operated, administered managed and supervised by the Trustees under the name..... (In short "The Trust) or by such other name as Trustees from time to time may decide with the approval of the Administrator General of Trustees.
- 1.2 The Trustees shall operate the Trust as indicated in paragraph 3 here below.
- 1.3 The Trustees shall hold and use this Trust Fund in accordance with the provisions and objectives of the Trust Deed and the laws of Tanzania in force from time to time.

2. OFFICE

The Registered office of

WATER SUPPLY PROJECT

REGISTERED TRUSTEES will be District

Tanzania.

3. **OBJECTS**

The objectives of the Trust are:

- 3.1 To provide adequate, clean, safe domestic water supply mainly through public taps.
- 3.2 To ensure that the water supplied is continuous, reliable, affordable and self-financing through consumer contributing revenue to cover the costs of operation, maintenance and expansion.
- 3.3 To improve existing and identify new water resources.
- 3.4 To extend water infrastructure.
- 3.5 To raise finance both from members, through recovery of cost of its services from beneficiaries and through loans, donation, subversions etc. so as to further the objectives of the Trust.
- 3.6 To ensure conformity with the prevailing National Water Policy.
- 3.7 The Trust is a non-profit making organization and no portion of its funds or property shall be paid or transferred directly, by way of dividends bonus or otherwise howsoever by way of profit to the Trustees or any of its beneficiaries.
- 3.8 To carry out other activities as may be legally determined and approved by the Board of Trustees.

4. **POWERS**

In furtherance of the objects but not otherwise the Trustees may exercise any of the following powers:

- (a) to establish or appoint such committees on advisory or continuous basis to facilitate the smooth operation of the Trust.
- (b) to raise funds and invite and receive contributions.
Provided that in raising funds the Trustees shall not undertake any substantial permanent trading activity and shall conform to any relevant statutory regulations:
- (c) to buy, take on lease or in exchange, hire or otherwise acquire any property necessary for the achievement of the objects and to maintain and equip it for use:
- (d) subject to any consent required by law to sell, lease or otherwise dispose of all or any part of the property comprised in the Trust.

- (e) subject to any consent required by law, to borrow money and to charge the whole or any part of the trust fund with repayment of the money so borrowed;
- (f) to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the objectives of similar charitable purposes and to exchange information and advice with them;
- (g) to set up committees or branches as are necessary for the proper pursuit of the objects and dissolve any such committees;
- (h) to establish or support any charitable trusts, associations or institutions formed for the objects herein or any of them;
- (i) to open, maintain and or close any of its bank accounts;
- (j) to employ such staff (who shall not be trustees) as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuating to staff and their dependants;
- (k) to permit any investments comprised in the Trust to be held in the name of any clearing bank, any trust, corporation or any stockbroking company which is a member of the Stock Exchange (or any subsidiary of such a stockbroking company) as nominee for the Trustees and to pay any such nominee for the Trustees and to pay any such nominee reasonable and proper remuneration for acting as such;
- (l) to delegate to any one or more of the Trustees the transaction of any business or the performance of any act required to be transacted or performed in the executing of the trusts herein and which is within the professional or business competence of such trustee or trustees: **Provided** that the Trustees shall exercise reasonable supervision over any trustee or trustees acting on their behalf under this provision and shall ensure that all their acts and proceedings are fully and promptly reported to them;
- (m) to do all such other lawful things as are necessary for the achievement of the objects of the Trust.
- (n) to set, waive, increase or decrease water tariffs whether ordinary or on preferential basis.

5. TRUSTEES

- (a) There is hereby established a Board of Trustees. The Board of Trustees shall be composed of not less than five and not more than ten Trustees who shall be constituted as follows:
 - A representative of each of the.....villages along the Water Supply area elected/appointed by the respective Village Water Committees.

- One member appointed by the Government within its Regional or District Headquarters.
 - The.....or his representative.
- (b) Members of the Board of Trustees shall be elected or appointed on the basis of personal skills and knowledge of the area of operation of the Trust.
- (c) No person shall be elected or appointed trustee unless he/she is a resident of the respective village, or without his consent previously obtained and in selecting persons to be appointed as trustees, the trustees shall take into account the benefits of appointing a person (who through residence, occupation, employment or otherwise has special knowledge of the area of benefit or) who is otherwise able by virtue of his or her personal or professional qualifications to make a contribution to the pursuit of the objects or the management of the Trust. If for any reason trustees cannot be appointed in accordance with the foregoing provisions, the statutory power of appointing new or additional trustees shall be exercisable.
- (d) Subject to the provisions of Clause 5(c) the first trustees shall hold office for a period of 3 years and every future Trustee shall equally serve for a term of three years by a resolution of the Trustees passed at a special meeting called under clause 12. A Trustee elected or appointed to replace another Trustee shall serve for the remaining period of the former Trustee. A Trustee may be re-elected/re-appointed and hence serve more than one ~~term~~.

6. **ELIGIBILITY FOR TRUSTEESHIP**

No person shall be appointed as a trustee:

- (a) unless he or she has attained the age of 18 years; or
- (b) unless he has a proven direct or indirect interest in the successful operation of the Trust.
- (c) in circumstances such that, had he or she already been a trustee, he or she would have been disqualified for office under the provisions of clause 7 here below.

7. **CESSATION OF TRUSTEESHIP**

1. The Trustee shall cease to be trustees on the following grounds:
 - (a) Death
 - (b) Becoming insane, lunatic or of unsound mind.
 - (c) Resignation or retirement in writing. PROVIDED that any Trustees who shall desire to retire. shall signify such desire in writing to the Trust Manager

and thereupon his name shall be removed from the list of Trustees and he shall be deemed to have retired.

- (d) Expulsion due to willful disobedience of any of these rules or guilty of nay conduct rendering one unfit to be a member of the Trust, PROVIDED that before expelling him the Board of Trustees shall call upon him for an explanation of his conduct and shall hear what he may wish to urge in his defense.
- (e) Being declared bankrupt by a Court of Law. Provided that before expelling him the Board of Trustees shall call upon him for an explanation of his conduct and hear what he may wish to urge in his defense.
- (f) Physical incapacity of a member lasting for over a year.
- (g) Conviction of a criminal offence coupled with conviction to a prison term for more than six months.

2. Upon a Trustee ceasing to be a trustee under clause 7(a) above, the Board of Trustees shall inform the authority/village committee responsible for the election/appointment of the relevant trustee to elect/appoint another person to replace the outgoing trustee.

8. VACANCIES

If a vacancy occurs the Trustee shall not the fact in their minute book at their next meeting. Trustees shall be elected or appointed by the respective Village Water Committee. So long as there shall be fewer than five trustees none of the powers or directions hereby vested in the Trustees shall be exercisable.

9. ORDINARY MEETINGS

The Trustee shall hold at least two ordinary meetings in each year.

10. CALLING MEETINGS

The first meeting of the Trustees shall be called by the Settlor or if no meeting has been called within three months after the date of this deed by any of the Trustees, subsequent meetings shall be arranged by the Trustees at their previous meetings, and may be called at any time by the Chairman or any three Trustees upon not less than seven days' notice being given to the other Trustees.

11. CHAIRMAN

The Trustees at their first ordinary meeting in each year shall elect one of their member to be Chairman of their meetings until the commencement of the first ordinary meeting in the following year. The Chairman shall always be eligible for re-election. If the Chairman is

not present within ten minutes after the time appointed for holding a meeting or there is no Chairman the Trustees present shall choose one of their members to be Chairman of the meeting.

12. **SPECIAL MEETINGS**

The Chairman or any three trustees upon not less than four day's notice being given to the other Trustees of the matters to be discussed may call a special meeting at any time. A special meeting may be called to take place immediately after or before an ordinary meeting.

13. **QUORUM**

There shall be a quorum when at least half of the number of Trustees for the time being in office is present at a meeting.

14. **VOTING**

Every matter shall be determined by a majority of votes of the Trustees present and voting on the question. The Chairman of the meeting shall have a casting vote whether he or she has or has not voted previously on the same question but no trustee in any other circumstances shall give more than one vote.

15. **MINUTES**

The Trustees shall keep minutes in books kept for the purpose, of the proceedings of their meetings.

16. **EXPENSES OF MEETINGS**

The Board of Trustees shall be reimbursed for costs incurred in attending Board Meetings. The Trustees may receive modest seating allowances, which shall be regulated under the Trust Financial Regulations. The Trust shall meet expenses of Village Committee Meetings. No seating allowances shall be paid to members of the Committee.

17. **GENERAL POWER TO MAKE REGULATIONS**

Within the limits of this Deed the Trustees shall have full power from time to time to make rules regulations or manuals for the management of the Fund and for the conduct of their business financial management, administration of the Trust, including the calling of meetings, the deposit of money at a bank and the custody of documents.

18. BANK ACCOUNT

Any bank account in which any part of the Trust is deposited shall be operated by the Trustees and shall be held in the name of the Trust. All cheques and order for the payment of money from such account shall be signed by at least two Trustees.

19. TRUSTEES NOT TO BE PERSONALLY INTERESTED

- (1) Subject to the provisions of sub-clause (2) of this clause: No trustee shall acquire any interest in property belonging to the Trust otherwise than as a Trustee receive remuneration or be interested otherwise than as a Trustee in any contract entered into by the Trustees.
- (2) Any trustee who is a solicitor, accountant or other person engaged in any profession may charge and be paid all the usual professional charges for business done by him or her or his or her firm when entrusted by the other trustees to act in a professional capacity on behalf of the Trust: **Provided** that at no time shall a majority of the Trustees benefit under this provision and that a Trustee shall withdraw from any meeting of the Trustees at which his or her own instructions or remuneration, or that of his or her firm, is under discussion.

20. MANAGEMENT OF LAND

Subject to any consent, which may be required by law, the Trustees shall either sell or let any land belonging to the Trust, which is not required to be retained or occupied in furtherance of the objects.

21. LEASES

The Trustees shall ensure that on the grant by them of any lease the tenant shall execute a counterpart lease. Every lease shall contain a covenant on the part of the tenant for the payment of rent and a proviso for re-entry on non-payment of the rent or non-performance of the covenants contained in the lease.

22. REPAIR AND INSURANCE

The Trustees shall keep in repair and insure to their full value, against fire and other usual risks, all the buildings of the Trust which are not required to be kept in repair and insured by the tenant and shall also insure suitably in respect of public liability and employer's liability.

23. ACCOUNTS

The Trustees shall:

- i) keep accounting records for the Trust:

- ii) prepare annual statements of account for the Trust; and
- iii) cause the auditing or independent examination of the annual statements of account of the Trust.

24. AMENDMENT OF TRUST DEED

- (1) The Trustees may amend the provisions of this Deed. **Provided that:**
 - (a) no amendment may be made to paragraph 3 (the objects of the Trust) unless it appears to the Trustees that the objects can no longer provide a suitable and effective method of using the Trust and provided that such amendment has been endorsed by a joint meeting of all Village Water Committees particularly in the Trust:
 - (b) no amendment may be made which has the effect of the Trust ceasing to be Trust at Law.
 - (2) Any amendment shall be made by Deed under the authority of a resolution passed at a special meeting of the Trustees.
 - (3) The Trustees should promptly send to the Administrator General a copy of any amendment made under this clause.

25. VILLAGE WATER COMMITTEES

There shall be established Village Water Committees (VWC) in each of the 8 Villages along the.....Water Supply area which shall be conformed of such number as the Board of Trustees shall in consultation with the Local Government in the villages. determine.

1. The VWCs will advise the Trustees on the regulation and operational aspects of the Trust in their villages.
2. The VWCs will represent the interests of water users in the respective villages.
3. The VWCs shall be responsible to elect or appoint (as they may deem fit) a member of their respective village to represent them in the Board of Trustees, or to re-elect/appoint suitable persons to replace their representatives in terms of Clause 7.
4. The VWCs shall assist in providing security of the Trust project and installations of the Trust Project within their respective areas.
5. The VWCs shall meet once every year and such other times as may be deemed

necessary.

6. The VWCs shall regulate their own meetings.

26. EXECUTIVE COMMITTEE

There shall be established an Executive Committee of the Board of Trustees (EC).

The EC shall be constituted of any three trustees. The Manager shall attend all Executive Committee Meetings and act as its secretary but shall not participate in its decision making.

- Heads of the Administration and Finance Section and the Technical and Supervision Section may attend the EC Meetings on invitation.

The EC shall meet quarterly and or such other times as may be necessary or expedient so to do, to deliberate on matters which would otherwise require the attention of the Board of Trustees. Subject to the directions of, and subsequent approvals of its decisions by, the Board of Trustees, the EC may deliberate on any matter within the powers of the Board of Trustees.

27. MANAGEMENT

A manager through two departments shall manage the Trust, that is:

- Administration and Finance Department;
- Technical and Supervision Department.

The Management duties of the Trust shall be implemented by a Manager assisted by such finance, administrative and technical personnel as the Board of Trustees may appoint from time to time.

The Management shall liaise with VWCs the EC and the Board of Trustees to ensure the smooth operation of the three organs and hence the Trust.

28. DISPUTES

If any dispute shall arise between a trustee or a person claiming through a trustee, or under these rules, or any person aggrieved who has ceased to be a trustee or any person claiming through such person aggrieved and the Trustees, shall be decided by reference to arbitration.

Four arbitrators shall be elected at a general meeting none of them being directly or indirectly interested in the funds of the Trust. The complaining party shall draw three names out of four by lot in the usual way and the three arbitrators whose names are first drawn shall decide the dispute. The decision of the arbitrators shall be final and enforceable.

in accordance with the law for the time being in force in Tanzania.

29. SECRETARY

The Manager and or any other person that may be appointed by the Manager with the Boards approval to assist him as such shall implement the secretarial duties of the Board of Trustees. The Manager shall be responsible to issue notices for Board of Trustees' Meetings and EC's Meetings.

30. SEAL

The Trustees shall provide a common seal, which shall be kept under such custody and control as the Trustees, shall from time to time determine. The seal shall not be affixed to any instrument except pursuant to a resolution of the Trustees and in the presence of at least two Trustees, and the said trustees shall sign every instrument to which the common seal shall be so affixed in their presence. The seal shall have the inscription of the words REGISTERED TRUSTEES OF..... WATER SUPPLY.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hand the day and year first before written.

SIGNED AND DELIVERED by the said.....
Whom do I know personally in my presence this day of.....

Name.....)

Signature.....)

Postal Address.....)

Qualification.....)

.....
SETTLOR

SIGNED AND DELIVERED by the said Trustees

- 1.
- 2.
- 3.
- 4.

SAMPLE FOR HAND OVER AGREEMENT

BETWEEN THE DISTRICT COUNCIL

AND

LEGALLY REGISTERED ENTITIES.

**AGREEMENT FOR THE HANDING OVER OF RESPONSIBILITIES
CONCERNING WATER SUPPLY SYSTEM**

THIS MEMORANDUM of Agreement reached this..... Day
of.....

BETWEEN DISTRICT COUNCIL

(hereinafter to be referred to as "the Council") of the one part;

AND....., which expression shall include its successors and assigns (hereinafter to be referred to as ".....") of the other part;

WHEREAS the Council has hitherto been involved in the operation and maintenance of the communally owned Water Supply Systems in their district which are hereinafter to be referred to as "the Water Systems;

WHEREAS the Council has resolved to hand over the operation and maintenance of the water systems to the beneficiaries;

WHEREAS such beneficiaries have incorporated themselves to form the

.....**AND WHEREAS** the has agreed to take full responsibility for operation and maintenance of the Water Systems in so far as it is within the territorial jurisdiction of the Council and the has agreed to take over such responsibilities; subject to the following conditions.

THIS AGREEMENT witnesseth as follows:

1. The Council hereby agrees to hand over to the the exclusive operatorship of the Water Systems comprising all communally owned piped water systems within such part of the Supply Area as is within the confines of Rural District. The particulars of such part are hereto annexed and marked Annexure.
2. Thehereby agrees to take over the full responsibility for operation and maintenance of the Water Systems;
3. The date of handing over shall be the date of signing of this contract;
4. It is hereby agreed that all liabilities against the Council outstanding as at the date of handing over, or arising thereafter in relation to the period prior to such date shall be the responsibility of the Council;
5. It is further hereby agreed that, with effected from the date of handing over the Council shall cease to receive water fees and charges from the consumers, who are served by those water systems as described in;
6. The Council hereby agrees to hand over the following to the.....
 - (a) The structural drawings and plans of the existing pipe-lines and ancillary structures with all amendments;
 - (b) List of permits for private connection with updated state of payments received (i.e. connection fees and annual fees);
 - (c) Consumption estimates for the supply area and subsequent plans for extension or construction of new water installation;
 - (d) Copies of water rights concerning the water supply installations;
 - (e) Copies of easements of rights of way which may exist in connection with the

water services in the Supply Area;

- (f) Copies of any contracts concerning water supply which the Council may want the Company to execute in its place;

7. The execution by the Company of any contract as is referred to in paragraph 6(f) hereinbefore shall be subject to review in each case

8. The Council further hereby agrees:

- (a) To transfer to the Company all easements, rights of way, water rights and other rights pertaining to communal water supply;
- (b) To exempt the Company from taxes, duties and levies for as long as outside funding is still required to meet the Company's operating costs;

9. It is hereby agreed that the in view of its policy of linking consumption to contribution shall have the right to control the water volume commensurably with contributions made by customers, institutions and user areas.

IN WITNESS WHEREOF the parties hereto have duly executed these presents in the manner hereinafter appearing:-

Sealed with the Common Seal)
of the said.....)
DISTRICT COUNCIL and delivered)
In the presence of us)
Thisday of.....)

(SEAL)

NAME:.....
SIGNATURE:.....
POSTAL ADDRESS:

QUALIFICATION:
and of me.....
to whom the above Signatories
are known personally this.....
..... day of.....

NAME:.....
SIGNATURE:.....
POSTAL ADDRESS.....
QUALIFICATION:.....

Sealed with the Common Seal)
Of the said.....)
..... and delivered in the)
presence of us this.....)
of 1995)

(SEAL)

NAME:.....
SIGNATURE ADDRESS:
QUALIFICATION:

NAME.....
SIGNATURE.....

POSTAL ADDRESS.....
QUALIFICATION.....
And of me.....
To whom the personally this.....
..... Day of.....

NAME.....
SIGNATURE.....
POSTAL ADDRESS.....
QUALIFICATION.....

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5. Local Government (District Authorities) No. 7 of 1982.
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