

21 August 2017

**Dated 21st**

**August 2017**

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**(3) AFRICA OPPORTUNITY FUND LIMITED**

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**INSTRUMENT**

**constituting**

**Contingent Value Rights**

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## CONTENTS

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1	Definitions and Interpretation	2
2	CONTINGENT VALUE RIGHTS	5
3	Certificates	6
4	Covenants by the Company	6
5	Register of Holders	6
6	Conditions of Issue	7
SCHEDULE 1	Form of Certificate	8
SCHEDULE 2	Conditions	10
SCHEDULE 3	Provisions as to Registration, Transfer and Other Matters	13

**THIS INSTRUMENT** is made on 21<sup>st</sup> August 2017 by **AFRICA OPPORTUNITY FUND LIMITED** (registered in the Cayman Islands with number MC-188243) having its registered office at PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands (the "**Company**").

## **INTRODUCTION**

By a resolution of the Board passed on 17 August 2017 the Company has determined to create and issue the Contingent Value Rights to be constituted as provided below.

**NOW THIS INSTRUMENT WITNESSES AND THE COMPANY HEREBY AGREES AND DECLARES** as follows:

### **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Instrument (including the schedules), unless the context otherwise requires:

<b>Act</b>	the Cayman Islands Companies Law (2016), as amended;
<b>Articles</b>	the articles of association of the Company as amended from time to time;
<b>Board</b>	the board of directors of the Company;
<b>business day</b>	a day (other than a Saturday or Sunday) on which clearing banks are ordinarily open for business (other than solely for trading and settlement in euro) in London;
<b>Certificate</b>	a certificate in the form set out in schedule 1;
<b>Conclusion</b>	the conclusion of the Shoprite Dispute being the handing down of a definitive judgment, determination or award in respect of which no party to the Shoprite Dispute has exercised a right of appeal within the appropriate waiting period or in respect of which there is no right of appeal;
<b>Conditions</b>	the conditions to be endorsed on Certificates, being in the form set out in schedule 2 (as altered from time to time in accordance with this Instrument) and " <b>Condition</b> " shall be construed accordingly;
<b>Costs</b>	all costs and expenses incurred by the Company (after the

	date of this Instrument) in connection with or arising from the Shoprite Dispute to include (without limitation) legal fees and all such other costs, expenses, liabilities (and provisions for the same) as determined by the Board in its sole discretion;
<b>CVR or Contingent Value Rights</b>	the 42,630,327 contingent value rights constituted by this Instrument and entitling the Holders to participate in any Value arising from the Shoprite Dispute on the terms set out in this Instrument;
<b>Entitlement Date</b>	21 August 2017;
<b>Holders</b>	the registered holders for the time being of the CVRs and "Holder" shall be construed accordingly;
<b>Instrument</b>	this Instrument to include the Conditions;
<b>Important Notice</b>	the important notice set out on the Certificate;
<b>Ordinary Shares</b>	ordinary shares of US\$0.01 each in the capital of the Company;
<b>Register</b>	has the meaning given in clause 5.1;
<b>Registered Holders of Ordinary Shares</b>	the registered holders of the Ordinary Shares being Citivic Nominees Limited, Clearstream Banking SA and Julian Coulbert;
<b>Restricted Overseas Person</b>	a person (including an individual, partnership, unincorporated syndicate, limited liability company, unincorporated organisation, trust, trustee, executor, administrator or other legal representative) in, or resident in, Japan, Australia, Canada or the United States or a US Person;
<b>Securities Act</b>	the United States Securities Act of 1933, as amended;
<b>Settlement</b>	the settlement or compromise (on terms agreed by the Board)

of the Shoprite Dispute;

**Shoprite Dispute**

the dispute between Africa Opportunity Fund, L.P., a subsidiary of the Company, Africa Opportunity Cayman Limited, Shoprite Holdings Limited, and Shoprite Checkers (Pty) Ltd ("Shoprite Holdings Limited" and "Shoprite Checkers" referred to jointly and severally herein as "Shoprite"), about whether purchase of ordinary shares of Shoprite on the Lusaka Stock Exchange between October 2009 and July 2011, by Africa Opportunity Fund, L.P. or Africa Opportunity Cayman Limited from Shoprite resulted in transfers of good title to said shares from Shoprite to the purchasers, which dispute has been the subject of an arbitral award in January 2017 affirming that good title in respect of 637528 ordinary shares of Shoprite did not pass to Africa Opportunity Fund, L.P., plus current or future appeals, proceedings, arbitrations, or judicial or regulatory actions arising out of, or relating to, those Shoprite share purchases in South Africa, Zambia, or any other jurisdiction;

**Underlying Holders of Ordinary Shares**

the beneficial owners of Ordinary Shares on the Entitlement Date as identified by the Registered Holders (other than Julian Coulbert) of Ordinary Shares;

**US or United States**

the United States of America, its territories and possessions, any state of the United States and the District of Columbia;

**US Person**

a US person as defined in Regulation 5 of the Securities Act;

**Value**

the total amount and/or quantifiable benefit (if any) net of all Costs actually received or enjoyed by the Company upon Settlement or Conclusion as determined (in the sole discretion) of the Board; and

**Written Resolution**

a written resolution of the Holders executed in accordance with the Conditions.

1.2 In this Instrument (including the schedules) unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- (b) the words and phrases "others," "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (c) a reference to any enactment shall include:
  - (i) any provision which it has re-enacted (with or without modification) or modified; and
  - (ii) that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date of this Instrument; provided that any such changes taking effect after the date of this Instrument shall not impose additional liabilities or obligations on the Company or deprive the Company of any of its rights pursuant to this Instrument.
- (d) references to "writing" or "written" include faxes and any other method of reproducing words in a legible and non-transitory form (excluding email).

1.3 The contents table and the descriptive headings to clauses, schedules and paragraphs in this Instrument are inserted for convenience only, have no legal effect and shall be ignored in interpreting this Instrument.

## **2 CONTINGENT VALUE RIGHTS**

2.1 The CVRs shall be known as the "Contingent Value Rights".

2.2 The total number of CVRs created by this Instrument shall be 42,630,327 and the CVRs shall be issued to the Underlying Holders of Ordinary Shares and Julian Coulbert (at the Direction of the Registered Holders of the Ordinary Shares other than Julian Coulbert) on the basis of one CVR for every Ordinary Share held by the Underlying Holders of Ordinary Shares and Julian Coulbert on the Entitlement Date.

### **3 CERTIFICATES**

- 3.1 Each Holder shall be entitled without charge to a Certificate for the CVRs held by him.
- 3.2 Each Certificate shall bear a denoting number and shall be issued to the Holder duly executed by, or on behalf of, the Company in the manner provided for in the Articles or in any manner permitted by statute.
- 3.3 Each Certificate shall be in the form set out in schedule 1 and shall have the Conditions endorsed on it.
- 3.4 The CVRs shall be held subject to the Conditions and the Important Notice, all of which shall be deemed incorporated in this Instrument, and shall be binding on the Company and the Holders and all persons claiming through or under them respectively.
- 3.5 Subject to clause 3.1, when a Holder transfers part only of his CVRs, the old Certificate shall be cancelled and a new Certificate for the balance of those CVRs shall be issued without charge.

### **4 COVENANTS BY THE COMPANY**

The Company covenants with the Holders and each of them duly to perform and observe the obligations contained in this Instrument and imposed on it, to the intent that the terms set out in this Instrument shall enure for the benefit of all Holders, each of whom may sue for performance or observance of the provisions of this Instrument so far as his holding of CVRs is concerned.

### **5 REGISTER OF HOLDERS**

- 5.1 A register of Holders (the "**Register**") shall be maintained either by the Company or by a service provider acting on its behalf and there shall be entered in the Register:
  - (a) the name(s) and address(es) of the Holders;
  - (b) the number of CVRs held by each Holder;
  - (c) the date on which the name of each Holder is entered in the Register in respect of the CVRs standing in his name; and
  - (d) the serial number of each Certificate.

5.2 Any change of name or address on the part of any Holder which is notified to the Company or by a service provider acting on its half shall be entered in the Register.

5.3 Any Holder may at any reasonable time during office hours inspect the Register, except during any period or periods, not exceeding 30 days in total in any year, when the Register is closed by the Company.

## **6 CONDITIONS OF ISSUE**

6.1 The Conditions and the provisions contained in schedule 3 shall have effect in the same manner as if all those Conditions and provisions were set out in full in this Instrument.

6.2 This Instrument shall be governed by and construed in accordance with English law and the courts of England have exclusive jurisdiction to settle any dispute arising from or in connection with this Instrument, its conditions or the CVR and the Holders agree that the courts of England are the most appropriate and convenient form to settle any such disputes and accordingly will not argue to the contrary.

**IN WITNESS** of the above this Instrument has been duly executed on the date written at the head of this Instrument.



**SCHEDULE 1**

**Form of Certificate**

No:

No of CVRs:

**AFRICA OPPORTUNITY FUND LIMITED**

*a company limited by shares incorporated  
under the laws of the Cayman Islands  
with registered number MC-188243*

**CONTINGENT VALUE RIGHTS**

Created and issued pursuant to the Memorandum and Articles of Association of the Company and to a Resolution of its Board of Directors passed on 15 August 2017.

**Number of Contingent Value Rights:**

**THIS IS TO CERTIFY THAT** \_\_\_\_\_ is/are the registered holder(s) of Contingent Value Rights constituted by an Instrument entered into by the Company on 15 August 2017 (the "**Instrument**") and issued with the benefit of and subject to and in accordance with the terms of the Instrument and the Conditions endorsed on this certificate.

The CVRs are transferable only in amounts or integral multiples of 1,000.

This Certificate must be surrendered before any transfer of the CVRs can be registered.

A copy of the Instrument is available for inspection on the Company's website at [africaopportunityfund.com](http://africaopportunityfund.com). Terms defined in the Instrument shall have the same meanings in this Certificate.

The CVRs and the Instrument are governed by and construed in accordance with English law.

Dated \_\_\_\_\_ 2017

**IMPORTANT NOTICE**

**THE RIGHT OF A HOLDER TO RECEIVE PAYMENT IN RESPECT OF A CVR IS HIGHLY CONTINGENT AND DEPENDENT ON THE OUTCOME OF THE SHOPRITE DISPUTE. THERE CAN BE NO GUARANTEE THAT THE SHOPRITE DISPUTE WILL BE CONCLUDED IN A MANNER THAT IS FAVOURABLE TO THE COMPANY AND WILL RESULT IN A PAYMENT BEING MADE BY THE COMPANY IN RESPECT OF THE CVRS.**

**THE SHOPRITE DISPUTE MAY CONTINUE FOR A CONSIDERABLE PERIOD OF TIME AND UNTIL IT IS CONCLUDED OR SETTLED IN A MANNER THAT IS FAVOURABLE TO THE COMPANY NO PAYMENTS WILL BE MADE BY THE COMPANY IN RESPECT OF THE CVRS.**

**THE CONDUCT OF THE SHOPRITE DISPUTE IS VESTED IN THE COMPANY WHICH SHALL, WITHOUT REFERENCE TO HOLDERS, BE ENTITLED TO TAKE ALL DECISIONS (INCLUDING**

AS TO SETTLEMENT AND THE ABANDONMENT OF THE SHOPRITE DISPUTE) IN RESPECT OF THE SHOPRITE DISPUTE AS IT IN ITS SOLE DISCRETION DETERMINES.

THE COMPANY'S OBLIGATION TO MAKE PAYMENT IN RESPECT OF THE CVRS IS SUBJECT TO COMPLIANCE BY THE COMPANY WITH ALL LAWS AND REGULATORY REQUIREMENTS APPLICABLE TO IT.

IN RESPECT OF ANY PAYMENTS MADE BY THE COMPANY IN RESPECT OF THE CVRS IT IS FOR THE HOLDER TO DETERMINE, IN THE LIGHT OF LAWS AND REGULATION APPLICABLE TO IT, HOW THESE ARE TO BE TREATED FOR TAXATION PURPOSES.

THE CVRS ARE NOT LISTED OR TRADED ON ANY RECOGNISED INVESTMENT EXCHANGE AND MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH THE TERMS SET OUT IN THE INSTRUMENT.

EXECUTED and DELIVERED as a DEED by  
AFRICA OPPORTUNITY FUND LIMITED  
acting by a Director

  
Director  
ROBERT KNAAP

## SCHEDULE 2

### Conditions

Unless the context otherwise requires, all expressions used in these Conditions shall have the meanings given to them in the Instrument.

#### 1 Entitlement

- 1.1 Holders shall, subject to the provisions of Condition 1.6 be entitled (as an unsecured obligation of the Company and subject to these Conditions) in respect of the CVRs to receive an amount in cash (by way of one or more payments) equal to the Value divided by the number of CVRs and so in proportion to the number of CVRs held by each Holder.
- 1.2 Payments made to Holders pursuant to Condition 1.1 shall be in cash (in whatever currency the Board shall determine) or (at the discretion of the Board) may be satisfied, in whole or in part, by in specie distribution of securities owned by the Company at valuations determined by the Board.
- 1.3 Notwithstanding any provision of this Instrument or the Conditions the payment obligations of the Company in respect of the CVRs is subject to compliance by the Company with all laws and regulatory requirements applicable to it including, without limitation, the Act.
- 1.4 All payments made by the Company (or on its behalf) will be made in US Dollars and by way of cheque in favour of the Holder sent by post at the risk of the Holder to the address for the Holder shown on the Register.
- 1.5 The final determination of the Board in respect of the Value, the amount of the Costs, when and if Conclusion or Settlement has occurred whether payments should be made in cash (and in what currency) and/or by way of distribution in specie (and at what valuations) shall, in the absence of manifest error, be final and binding on the Holders.
- 1.6 In the event that any amount received by the Company in respect of the Value is, in the opinion of the Board (in its sole discretion) of such amount that it is not practicable or convenient to pay the same to Holders then such amount(s) shall be retained for the benefit of the Company.

#### 2 Miscellaneous

- 2.1 The CVRs constitute direct, general and unsecured obligations of the Company in accordance with Condition 2.2 but which rank pari passu among themselves.
- 2.2 The obligations of the Company in respect of the CVRs rank pari passu with all other future unsecured obligations of the Company except for those obligations as may be preferred by law.
- 2.3 The Company may from time to time purchase CVRs at any price by tender, private treaty or otherwise. Any CVRs so purchased shall be cancelled by the Company which shall not be at liberty to re-issue or sell any of them.
- 2.4 No application has been or will be made to any recognised investment exchange (being an investment exchange recognised by the Financial Conduct Authority under Part XVIII of the Financial Services and Markets Act 2000).
- 2.5 The CVRs have not been and will not be registered under the Securities Act or under the securities laws of any State of the United States, no relevant clearances have been or will be obtained from the securities commission of any province of Canada, no prospectus has been or will be lodged with the Australian Securities Commission and no steps have been taken, nor will any be taken, to enable the CVRs to be offered in compliance with the applicable securities laws of Japan.
- 2.6 Accordingly, CVRs may not be offered, sold, resold, delivered or distributed (directly or indirectly) in or into the United States (except in transactions exempt from, or not subject to, the registration requirements of the Securities Act), Canada, Australia or Japan not to or for the account on behalf of any Restricted Overseas Person unless in relation to any US person the transaction is exempt from, or not subject to, the registration requirements of the Securities Act.
- 2.7 Subject to Condition 2.8 the Company may (by Deed expressed to be supplemental to this Instrument) from time to time modify, abrogate or vary the provisions of this Instrument on terms previously sanctioned by a "Written Resolution" being executed by or on behalf of the Holders holding a majority in number of the CVRs in issue at the relevant time.
- 2.8 Notwithstanding the provisions of Condition 2.7 the Company shall be entitled (by Deed expressed to be supplemental to this Instrument) from time to time, modify, abrogate or vary the provisions of this Instrument (without the sanction of a Written Resolution) if the Board (in its sole discretion) determines that any such modification, abrogation or variation is required

for regulatory or legal reason, to correct a manifest error or is otherwise (in the opinion of the Board) to the benefit of the Holders.

## SCHEDULE 3

### Provisions as to Registration, Transfer and Other Matters

#### 1 Recognition of Holder as Absolute Owner

Except as required by law or as ordered by a court of competent jurisdiction, the Company shall recognise the Holder as the absolute owner of it and shall not be bound to take notice of or see to the execution of any trust whether express, implied or constructive to which any CVR may be subject and the receipt of the Holder for the time being of any CVR or, in the case of joint registered Holders, the receipt of any of them, for any monies payable in respect of that CVR, shall be a good discharge to the Company, notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest or claim of any other person to or in that CVR or those monies. The Company shall not be bound to enter any notice of any trust (whether express, implied or constructive) on the Register in respect of any CVR.

#### 2 Exclusion of Equities

Every Holder will be recognised by the Company as entitled to his CVRs free from any equity, set-off or cross-claim on the part of the Company against the original or any intermediate holder of the CVRs.

#### 3 Transferability of CVRs

The CVRs are transferable by instrument in writing in the usual or common form (or in such other form as the Board may approve) in respect of amounts and integral multiples of 1,000 CVRs. There shall not be included in any instrument of transfer any CVRs other than the CVRs constituted by the Instrument. No assignment, transfer, sale or other disposal of any holding of CVRs shall be registered except in accordance with paragraphs 4 and 5 below.

#### 4 Execution of Transfers

Every instrument of transfer must be signed by the transferor and the transferor shall be deemed to remain the owner of the CVRs to be transferred until the name of the transferee is entered in the Register in respect of them.

#### 5 Registration of Transfers

Every instrument of transfer must be left for registration at the place where the Register shall for the time being be kept, accompanied by the Certificate(s) for the CVRs to be transferred and any other evidence which the Board or other officers or service providers to the Company authorised to deal with transfers may require to prove the title of the transferor or his right to transfer the CVRs and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person to do so.

**6 Retention of Instruments of Transfer**

All instruments of transfer which shall be registered shall be retained by the Company.

**7 No Fees for Registration of Transfers**

No fee shall be charged for the registration of any transfer or for the registration of any probate, letters of administration, certificate of marriage or death, power of attorney or other document relating to or affecting the title to any CVRs.

**8 Recognition of Personal Representatives**

The executors or administrators of a deceased registered holder of CVRs (not being one of several joint registered holders) and, in the case of the death of one or more of several joint registered holders, the survivor or survivors of those joint registered holders shall be the only person or persons recognised by the Company as having any title to those CVRs.

**9 Transmission of CVRs**

Any person becoming entitled to any of the CVRs in consequence of the death or bankruptcy of any holder of those CVRs or of any other event giving rise to the transmission of those CVRs by operation of law, may upon producing such evidence as to his title as the Board may require, be registered himself as the holder of those CVRs or, subject to the preceding provisions as to transfer, may transfer those CVRs.

**10 Replacement of Certificates**

If the Certificate for any CVRs is lost, defaced or destroyed it may be renewed on such terms (if any) as to evidence and indemnity as the Board may require, but so that in the case of defacement the defaced Certificate shall be surrendered before the new Certificate is issued.

**11 Procedure on Payment**

11.1 The Company shall pay any amounts due in respect of a CVR by means of a cheque sent by post (at the risk of the Holder) to the address of the Holder as shown in the Register, or by such other method as a Holder or Holders may agree with the Company.

11.2 Payments in respect of the Value due to Holders may be made by one or more interim distributions or payments by the Company. In the event that an interim distribution or payment is made, the Company shall notify Holders that this is the case.

11.3 To the extent that any amount remains due to a Holder (by virtue of the Holder not cashing a cheque or otherwise) no interest shall accrue in respect of the same and if any amounts

*RCH*

remain unclaimed for a period of 12 months the Holder shall cease to be entitled to the relevant amount and it shall then belong to the Company.

## **12 Miscellaneous**

- 12.1 In the event that Settlement or Conclusion occurs or the Company otherwise abandons the Shoprite Dispute and there is no Value the Company shall notify Holders and the CVRs (and this Instrument) shall terminate and be of no further force or effect.
- 12.2 Conduct of the Shoprite Dispute (including the terms of any Settlement) shall remain with the Company which shall be entitled to make all determinations in respect of the same (including as to Settlement or as to abandoning the Shoprite Dispute) as it sees fit without being required to seek the consent of or otherwise consult with the Holders.
- 12.3 All notices to or by a Holder under this Instrument or the Conditions shall be in writing and shall be sent to the relevant address on the Register.



**EXECUTED and DELIVERED as a DEED by  
AFRICA OPPORTUNITY FUND LIMITED**  
acting by a Director

A handwritten signature in blue ink, appearing to read 'Rch', with a long horizontal flourish extending to the right.

Director

*ROBERT KNAPP*

