



Registration No.: 2009/012871/06

Republic of South Africa  
Companies Act, 2008

## MEMORANDUM OF INCORPORATION OF A PUBLIC COMPANY 2013

This MOI was adopted by Special Resolution passed on 12 June 2013 in substitution for the existing memorandum of incorporation of the Company.

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## 1. INTERPRETATION

In this MOI:

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act read where necessary with definitions in the Listings Requirements. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires:
  - 1.2.1. “**Companies Act**” means the Companies Act, No 71 of 2008, as amended or any legislation which replaces it;
  - 1.2.2. “**Company**” means KWV Holdings Limited (Registration No. 2009/012871/06 ) or whatever other name it may be known from time to time;
  - 1.2.3. “**Deliver**” means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 34 and the Companies Act;
  - 1.2.4. “**Effective Date**” means the date on which the Companies Act came into operation, namely 1 May 2011;
  - 1.2.5. “**Electronic Address**” means in regard to Electronic Communication, any email address furnished to the Company by the Holder;
  - 1.2.6. “**Holders**” means registered holders of Securities;
  - 1.2.7. “**Ineligible or Disqualified**” means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2** for easy reference but which do not form part of this MOI for purposes of interpretation) which shall apply not only to Directors and Alternate Directors but also to members of Board committees and members of Audit committees and Prescribed Officers and the secretary of the Company;
  - 1.2.8. “**JSE**” means the exchange operated by JSE Limited (Registration No. 2005/022939/06) (or any other name by which it may be known in the future) or its successor body;
  - 1.2.9. “**Listings Requirements**” means the listings requirements of the JSE, as amended or replaced from time to time;
  - 1.2.10. “**MOI**” means this Memorandum of Incorporation;
  - 1.2.11. “**Odd-Lot**” and “**Odd-Lot Offer**” shall have the meanings ascribed thereto in the Listings Requirements;
  - 1.2.12. “**Participant**” means a depository institution accepted by a Central Securities Depository as a participant in the Securities Services Act;
  - 1.2.13. “**Regulations**” means regulations published pursuant to the Companies Act;
  - 1.2.14. “**Securities Services Act**” means the Securities Services Act, No 36 of 2004, as amended;
  - 1.2.15. “**SENS**” means the Securities Exchange News Service, or its successor;
  - 1.2.16. “**Shares**” means the units into which the proprietary interests of the Company are divided, as contemplated in clause 9 below;

- 1.2.17. **“Uncertificated Securities”** means securities as defined in the Securities Services Act which are by virtue of the Companies Act transferable without a written instrument and are not evidenced by a certificate;
- 1.2.18. **“Writing”** includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3. references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4. references to Holders entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;
- 1.5. all references to “section(s)” in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9. save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act; and
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## **2. CALCULATION OF DAYS**

When a particular number of Business Days or days is provided for between the happening of one event and another, the number of days must be calculated by:

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. in the context of Business Days, excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

## **3. INCORPORATION AND NATURE OF THE COMPANY**

- 3.1. The Company is incorporated as from 2 July 2009 as a public company and a profit company.
- 3.2. The Company is incorporated in accordance with and governed by –
  - 3.2.1. the unalterable provisions of the Act; and
  - 3.2.2. the alterable provisions of the Act subject to the limitations, extensions, variations or substitutions set out in this MOI; and
  - 3.2.3. the provisions of this MOI.

#### **4. OBJECTIVE**

The main business and main objective of the Company is to be an investment holding company.

#### **5. LISTING OF SECURITIES ON THE JSE**

- 5.1. It is recorded that the Holding Company of the Company lists some or all of its Securities on the JSE.
- 5.2. Accordingly, the Listings Requirements shall apply to the Company for as long as the Securities of the Holding Company or the Company itself (as the case may be) are listed on the JSE, and only insofar as the Listings Requirements are applicable. All references to the Listings Requirements in this MOI and compliance with such Listings Requirements shall only apply for as long as any Securities of the Holding Company or the Company itself (as the case may be) remain listed on the JSE.
- 5.3. Furthermore, the application of, and compliance with, the Listings Requirements is subject to any exemptions that may be granted by the JSE. Any exemption granted by the JSE will apply equally to this MOI.

#### **6. POWERS AND CAPACITY OF THE COMPANY**

- 6.1. The Company has the powers and capacity of an Individual. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.
- 6.2. If the MOI limits, restricts or qualifies the powers of the Company or limits the authority of the Board to perform any act on behalf of the Company, the Holders may only ratify any action by the Company or the Directors that is inconsistent with any such limit, restriction or qualification if it is not in contravention of the Companies Act or the Listings Requirements (unless otherwise agreed with the JSE).

#### **7. AMENDMENTS TO THE MOI**

- 7.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and a Special Resolution passed by the Holders of the ordinary Shares.
- 7.2. For the avoidance of doubt, an amendment to the MOI shall be deemed to include, but not be limited to, the actions listed in schedule 10.5(d) of the Listings Requirements, which as at the date of this MOI are the following:
  - 7.2.1. the creation of any class of Shares;
  - 7.2.2. the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
  - 7.2.3. the conversion of one class of Shares into one or more other classes;
  - 7.2.4. an increase in the number of the Company's authorised Securities;
  - 7.2.5. a consolidation of the Company's Securities;
  - 7.2.6. a subdivision of the Company's Securities; and/or
  - 7.2.7. the change of the Company's name.

#### **8. THE MAKING OF RULES**

The Board shall not have the power to make, amend or appeal Rules.

## 9. AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE

- 9.1. The Company is authorised to issue a maximum of 200 000 000 (two hundred million) ordinary Shares (which includes Shares already issued at any time) with a par value of R0.00001 (one thousandth of one cent) each, which shall each entitle the Holder thereof to 1 (one) vote in respect of every matter that may be decided by voting, and shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation.
- 9.2. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.
- 9.3. To the extent that the Company immediately before the Effective Date had authorised but unissued par value Shares in its capital of a class of which there are issued Shares, the unissued Shares of that class may be issued at par or at a premium or at a discount to the market value of such Shares.
- 9.4. All Securities of a class shall rank *pari passu* in all respects (subject to the restrictions of the Companies Act and the Listings Requirements).
- 9.5. Unless otherwise provided by the terms of issue of a class of Securities of the Company, no rights, privileges or conditions for the time being attached to any such class of Securities may, whether or not the Company is being wound up, be varied in any manner (nor may any variations be made to the rights, privileges or conditions of any class of Securities, such that the rights, privileges or conditions of another class of Securities are affected), unless:
- 9.5.1. the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that affected class has been obtained; or
- 9.5.2. a Special Resolution has been passed by the Holders of that affected class of Securities with the support of not less than 75% (seventy five per cent) of the Voting Rights exercised on the Special Resolution at a separate meeting of the Holders of that class.
- 9.6. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any separate meeting of the Holders of a class of Securities contemplated in clause 9.5, except that:
- 9.6.1. the necessary quorum shall be 3 (three) Holders Present representing at least 25% (twenty five per cent) of the issued Securities of that affected class;
- 9.6.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 9.6.1 is not present, those Persons entitled to vote who are Present shall be a quorum.
- 9.7. The Holders of the affected class of Securities shall also be entitled to vote with the Holders of the ordinary Shares as regards the passing of any resolution required to be passed for such variation by the Holders of the ordinary Shares.
- 9.8. Preferences, rights, limitations or other terms of any class of Shares of the Company may not be varied, and no resolution may be proposed to Holders for rights to include such variation in response to any objectively ascertainable external fact or facts provided for in section 37(6) of the Companies Act.
- 9.9. Unless otherwise provided by the terms of issue or by this MOI, any right or restriction attached to all or any class of Shares shall be deemed not to be directly or indirectly affected or varied by:
- 9.9.1. the creation or issue of any other Shares ranking *pari passu* with (but not in priority to) any such Shares already issued by the Company;
- 9.9.2. the cancellation in terms of the Companies Act of any Shares of any class in the share capital of the Company.

## 10. AUTHORITY TO ISSUE SECURITIES

- 10.1. The Board shall not have the power to issue authorised Securities (other than as contemplated in clause 10.4 and 10.5) without the prior approval contemplated in clause 10.2 and the approval of the JSE (to the extent legally necessary).
- 10.2. As regards the issue of:
- 10.2.1. Shares contemplated in sections 41(1) and (3) of the Companies Act or as contemplated in Listings Requirement 5.50, the Directors shall not have the power to allot or issue same without the prior approval required in terms of the Companies Act or the Listings Requirements (which, as at the date of this MOI, is the approval of a Special Resolution);
- 10.2.2. Shares, other than those contemplated in clause 10.2.1, and other Securities including options in respect thereof, the Directors shall not have the power to allot or issue same without the prior approval of an Ordinary Resolution,
- provided that such issue has been approved by the JSE (if legally required) and complies with the Listings Requirements.
- 10.3. Any such approval may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any such Securities contemplated in clauses 10.2.1 and 10.2.2 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities contemplated in clauses 10.2.1 and 10.2.2. Such authority shall endure for the period provided in the Ordinary or Special Resolution in question but may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time.
- 10.4. The Board may issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act.
- 10.5. Subject to the Companies Act and the Listings Requirements (if applicable), the Board may, without approval of the Shareholders, issue debentures that do not have Voting Rights. If, and for as long as, any of the Securities of the Company are listed on the JSE and the Listings Requirements prohibit special privileges in respect of debt instruments, no such special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3) of the Companies Act, except with the appropriate exemption of the JSE.
- 10.6. No Shares of a class which is listed on the JSE may be issued other than as fully paid.

## 11. PRE-EMPTION ON ISSUE OF EQUITY SECURITIES

- 11.1. For purposes of this clause 11, the term “*Equity Security*” shall mean an ordinary share of the Company and other Securities which confer Voting Rights on the Holders thereof.
- 11.2. Subject to clause 11.3, Equity Securities of a particular class in the Company which are authorised but unissued and which are intended to be issued for cash, shall be offered to the existing Holders of that class of Securities by way of a rights offer *pro rata* to their holding in that class of Securities immediately before the offer was made, with a reasonable time (as determined by the Board) allowed to subscribe for such Securities. If any fraction of a Security will have to be issued, that fraction may be sold for the benefit of the Holder of the security in question in such manner as the Board may determine. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Person to whom the offer is made that such Person declines to accept the Securities offered, the Board may issue such Securities in such manner as it thinks most beneficial to the Company.
- 11.3. The Board shall have the power to issue Equity Securities without having to comply with the requirements of clause 11.2 where:
- 11.3.1. Shares are to be issued to or in terms of a share incentive scheme that has been approved by a Special Resolution;

- 11.3.2. the issue of Shares has been approved in accordance with clause 10;
- 11.3.3. a capitalisation issue, an issue for an acquisition of assets (including another company) or an issue for the purposes of an Amalgamation or Merger, is to be undertaken;
- 11.3.4. Equity Securities are to be specifically issued in terms of an option or Conversion rights.
- 11.4. Notwithstanding anything to the contrary contained in this MOI, the Company may exclude from any rights offer any Holder or category of Holders:
  - 11.4.1. in accordance with section 99(7) and with the approval of the JSE (to the extent legally necessary); or
  - 11.4.2. if the Company is precluded by any law or regulatory requirement (including but not limited to anti-money laundering legislation) from extending such rights offer to such Holder or category of Holders.

## **12. CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER**

- 12.1. The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or uncertificated in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities. Each original certificate issued to a Holder in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue.
- 12.2. The Company shall maintain its Securities Register, which shall reflect all such information in relation to certificated or Uncertificated Securities, as the case may be, as may be required in terms of sections 49 and 50 of the Companies Act and such other legislative or regulatory provisions as may be applicable from time to time.
- 12.3. The Company shall, as soon as practicable after the issue, re-acquisition, surrender or transfer of any of its Securities or the disclosure to the Company of any Beneficial Interest in respect of Securities evidenced by the certificates issued, enter into or cause to be entered into the Company's Securities Register the information prescribed in terms of the Companies Act and such other legislative or regulatory provisions as may be applicable from time to time.
- 12.4. Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe, save that they must:
  - 12.4.1. state on the face:
    - 12.4.1.1. the name of the Company;
    - 12.4.1.2. the name of the Person to whom the Securities were issued;
    - 12.4.1.3. the number and class of Shares and the designation of the series, if any, evidenced by that certificate; and
    - 12.4.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE) evidenced by that certificate;
  - 12.4.2. be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.
- 12.5. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 12.6. Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in her/his/its name, or to several certificates, each for a part of such Securities.



- 12.7. A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 12.8. If a certificate for Securities or share warrant to bearer is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate or share warrant to bearer to the Company.
- 12.9. A Person:
- 12.9.1. acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register as a Person to whom those Securities have been issued or transferred; and
  - 12.9.2. ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.
- 12.10. After receiving a notice from a Central Securities Depository or Participant that a Holder who wishes to withdraw all or part of the Uncertificated Securities held by that Person in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, the Company must:
- 12.10.1. immediately enter the relevant Person's name and details of that Person's holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in uncertificated form;
  - 12.10.2. within 10 (ten) Business Days, or 20 (twenty) Business Days in the case of a Holder who is not resident within South Africa:
    - 12.10.2.1. prepare and Deliver to the relevant Person a certificate in respect of the Securities; and
    - 12.10.2.2. notify the Central Securities Depository that the Securities are no longer held in uncertificated form,and may charge the Holder a reasonable fee to cover the actual costs of issuing a certificate.
- 12.11. If the Company issues Securities which are not listed on the JSE, the share certificates for those Securities must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.

### **13. REGISTER OF DISCLOSURES AND NOTIFICATION**

The Company must establish and maintain a register of the disclosures made in terms of section 56(7) of the Companies Act, and make such notifications as it is required to make in terms of the Companies Act and the Listings Requirements.

### **14. PROHIBITION AGAINST THE COMPANY TAKING A LIEN**

The Company shall not be entitled to take any lien over any Securities issued by it.

### **15. LISTINGS ON OTHER STOCK EXCHANGES**

- 15.1. The Company may seek listings on such stock exchanges as the Directors may consider appropriate from time to time.
- 15.2. For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE, if the listing on the JSE is the primary listing and if the Company is obliged to obtain the approval of the JSE in regard to any matter, it shall, to the extent legally necessary, be obliged also to obtain the consent at the same time of any other stock exchanges on which it is listed, and failing receipt of such consent, the Company shall not be permitted to undertake the act for which the consent was required.

## 16. COMMISSION

The Company may pay commission not exceeding 10% (ten percent) of the subscription price at which Securities of the Company are issued to any Person, in consideration of it/him/her subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities or of it/him/her procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities.

## 17. TRANSFER OF SECURITIES

- 17.1. There is no restriction on the transfer of Securities.
- 17.2. The transfer of any Securities which are certificated shall be implemented in accordance with using the then common form of transfer. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his/her/its rights to transfer the Securities.
- 17.3. All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.
- 17.4. The Company must enter in its Securities Register regarding every transfer of any Securities all such information as may be required in terms of the Companies Act and such other legislative or regulatory provisions as may be applicable from time to time, including in the entry:
- 17.4.1. the date of the transfer; and
- 17.4.2. if applicable, the value of any Consideration still to be received by the Company on each Share or interest or the subscription price for which has not been fully paid,
- provided that such entry may only be made only if the transfer:
- 17.4.3. is evidenced by a proper instrument of transfer that has been delivered to the company; or
- 17.4.4. was effected by operation of law.
- 17.5. The Securities Register (but not any Subregisters) may, upon receipt of the JSE's approval and after notice has been given by advertisement in the South African Government Gazette and a newspaper circulating in the district in which the office of the Company is situate, and, in the case of any branch register, be closed during such time as the Directors think fit, not exceeding in the whole 60 (sixty) days in each year.

## 18. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

Subject to the laws relating to securities transfer tax upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability:

- 18.1. the parent or guardian or curator of any Holder who is a minor;
- 18.2. the trustee of an insolvent Holder;
- 18.3. the liquidator of a body corporate Holder;

- 18.4. the tutor or curator of a Holder under disability;
- 18.5. the executor or administrator of the estate of a deceased Holder; or
- 18.6. any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Directors, have the right either:

- 18.7. to exercise the same rights and to receive the same Distributions and other advantages to which she/he/it would be entitled if she/he/it were the Holder of the Securities registered in the name of the Holder concerned; or
- 18.8. herself/himself/itself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the Holder.

## **19. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 19.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 19.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited.
- 19.3. The Directors shall from time to time determine at what times and places and under what conditions, subject to the requirements of the Regulations, the Holders and holders of Beneficial Interests not being Directors are entitled to inspect and take copies of:-
  - 19.3.1. the MOI;
  - 19.3.2. amendments to the MOI;
  - 19.3.3. records in respect of Directors;
  - 19.3.4. reports to Annual General Meetings;
  - 19.3.5. annual Financial Statements;
  - 19.3.6. notices and minutes of Shareholders Meetings;
  - 19.3.7. communications generally to Holders;
  - 19.3.8. the Securities Register.
- 19.4. Apart from the Holders and holders of Beneficial Interests, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register) unless expressly authorised by the Directors or by Ordinary Resolution.
- 19.5. The Company shall notify the Holders and the holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements (which shall be made available at least 15 (fifteen) Business Days before the date of the Annual General Meeting at which they will be considered). If a Holder or holder of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Holder or the holder of Beneficial Interests free of charge.

## 20. SHAREHOLDERS MEETINGS

### 20.1. *Convening a Shareholders Meeting*

- 20.1.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted:
- 20.1.1.1. presentation of:
    - 20.1.1.1.1. the Directors' report;
    - 20.1.1.1.2. Audited Financial Statements for the immediately preceding financial year;
    - 20.1.1.1.3. an Audit committee report;
  - 20.1.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 20.1.1.3. appointment of:
    - 20.1.1.3.1. an Auditor for the ensuing year;
    - 20.1.1.3.2. an Audit committee;
  - 20.1.1.4. any matters raised by Holders, with advance notice to the Company; and
  - 20.1.1.5. any additional matters prescribed by the provisions of the Companies Act or the Listings Requirements (to the extent applicable) from time to time.
- 20.1.2. The Company shall be subject to any prohibition in the Listings Requirements concerning the passing, by way of round robin resolution in accordance with section 60 of the Companies Act, of resolutions that could be voted on at a Shareholders Meeting convened in terms of the Listings Requirements.
- 20.1.3. Notwithstanding anything to the contrary contained herein, the Company shall not be prohibited nor restricted from convening a Shareholders Meeting where the resolution which is the subject of such Shareholders Meeting is required to be passed in order for the Company to adhere to the relevant Listings Requirements.
- 20.1.4. A Company must hold a Shareholders Meeting at any time that the Board is required by the Companies Act or the MOI to refer a matter to Holders entitled to vote for decision.
- 20.1.5. The Board or a Shareholder/s holding not less than 10% (ten percent) of the Voting Rights attached to the ordinary Shares, or, if the Company has no Directors, any single Holder entitled to vote, may, whenever she/he/it thinks fit, convene a Shareholders Meeting. A Shareholders Meeting must be convened if one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and:
- 20.1.5.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
  - 20.1.5.2. in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 20.1.6. Every Shareholders Meeting shall be held where the Board determines from time to time.

20.1.7. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.

20.2. *Notice of a Shareholders Meeting*

20.2.1. A Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice given in accordance with clause 34 by the Company to all Holders entitled to vote or otherwise entitled to receive notice, and to the JSE at the same time. An announcement shall also be made on SENS.

20.2.2. A Holder entitled to vote, who is Present at a Shareholders Meeting:

20.2.2.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;

20.2.2.2. has a right to:

20.2.2.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and

20.2.2.2.2. participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and

20.2.2.3. except to the extent set out in clause 20.2.2.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.

20.2.3. A notice of a Shareholders Meeting must be in writing, in plain language and must include:

20.2.3.1. the date, time and place for the Meeting, and the Record Date for the Meeting;

20.2.3.2. the general purpose of the Meeting, and any specific purpose contemplated in clause 20.1.1, if applicable;

20.2.3.3. in the case of the Annual General Meeting a copy of the complete annual financial statements (or a summary thereof if permitted by the JSE) for the preceding financial year unless it has distributed them previously;

20.2.3.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

20.2.3.5. a reasonably prominent statement:

20.2.3.5.1. that a Holder entitled to attend and vote at the Shareholders Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholders Meeting in the place of the Holder entitled to vote;

20.2.3.5.2. that a proxy need not be a Holder;

20.2.3.5.3. that a Holder entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by that Holder entitled to vote in respect of any Shareholders Meeting and may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by the Holder which entitle her/him/it to vote;

- 20.2.3.5.4. that the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;
  - 20.2.3.5.5. that participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Shareholders Meeting;
  - 20.2.3.5.6. of the availability of that participation in the Shareholders Meeting by Electronic Communication, and provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 20.2.4. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information/explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 20.2.5. The Holder of any Securities which are in certificated form and thus not subject to the rules of Strate as the Central Securities Depository in which any Person has a Beneficial Interest must deliver to each such Person:
- 20.2.5.1. a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and
  - 20.2.5.2. a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11) of the Companies Act.
- 20.2.6. A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 20.2.7, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Shareholders Meeting is present at the Shareholders Meeting and votes to approve the ratification of the defective notice.
- 20.2.7. If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting:
- 20.2.7.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 20.2.7.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 20.2.8. An immaterial defect in the form or manner of giving notice of a Shareholders Meeting, or an accidental or inadvertent failure in the giving of the notice to any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.
- 20.3. *Quorum for a Shareholders Meeting*
- 20.3.1. Business may be transacted at any Shareholders Meeting only while a quorum is present.
  - 20.3.2. The quorum shall be sufficient Persons present at the Shareholders Meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting but:

- 20.3.2.1. the Shareholders Meeting may not begin unless in addition at least 3 (three) Persons entitled to vote are Present;
    - 20.3.2.2. if the Company is a subsidiary of a company, those constituting the quorum must include its Holding Company present in person.
  - 20.3.3. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 20.3.2, continue to be Present. If a resolution is proposed to meet the Listings Requirements, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to be counted in the quorum as a matter of law, they shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained.
  - 20.3.4. If within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, a quorum is not present or if the quorum requirements in clause 20.3.3 cannot be achieved for any one or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 20.4.3, for 1 (one) week to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Shareholders Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person(s) entitled to vote Present shall be deemed to be the requisite quorum.
- 20.4. *Adjournment or postponement of a Shareholders Meeting*
  - 20.4.1. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights:
    - 20.4.1.1. held by all of the Persons who are present at the Shareholders Meeting at the time; and
    - 20.4.1.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.
  - Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be given to Holders), as agreed at the Shareholders Meeting.
  - 20.4.2. A Shareholders Meeting may not be adjourned beyond the earlier of:
    - 20.4.2.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
    - 20.4.2.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
  - 20.4.3. No further notice is required to be given by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 20.3.4, unless the location for the Shareholders Meeting is different from:
    - 20.4.3.1. the location of the postponed or adjourned Shareholders Meeting; or
    - 20.4.3.2. a location announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.

20.5. *Proxies*

- 20.5.1. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.
- 20.5.2. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notorially certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, immediately prior to the Shareholders Meeting, before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting.
- 20.5.3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.
- 20.5.4. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 20.5.5. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit unless the proxy indicates otherwise.
- 20.5.6. A Person who holds a Beneficial Interest in any Securities may vote in a matter at a Shareholders Meeting, without a proxy only to the extent that:
- 20.5.6.1. the Beneficial Interest includes the right to vote on the matter; and
- 20.5.6.2. the Person's name is on the Company's register of disclosures as the holder of a Beneficial Interest.

20.6. *Proceedings at a Shareholders Meeting*

- 20.6.1. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he/she is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director present at the Shareholders Meeting, or if no Director be present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.
- 20.6.2. At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by:
- 20.6.2.1. not less than 5 (five) Persons having the right to vote on that matter;
- 20.6.2.2. a Person/s entitled to exercise not less than 10% (ten percent) of the total Voting Rights entitled to vote on that matter; or



20.6.2.3. the chairperson,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

- 20.6.3. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded.
- 20.6.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 20.6.5. A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 20.6.6. Any person entitled to a Share in terms of clause 18 may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Directors have previously accepted her/his/its right to vote in respect of that Security) 24 (twenty four) hours at least before the time of holding the Shareholders Meeting at which she/he/it proposes to vote, she/he/it shall have satisfied the Directors that she/he/it is entitled to exercise the right referred to in clause 18.
- 20.6.7. After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Shareholders Meeting, or on that matter, is Present at the Shareholders Meeting.
- 20.6.8. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution. A Special Resolution shall require to be adopted with the support of not less than 75% (seventy five percent) of the Voting Rights exercised on the resolution. For so long as the Holding Company of the Company or the Company itself (as the case may be) is listed on the JSE, if any of the Listings Requirements require an ordinary resolution to be passed with a 75% (seventy five per cent) majority, the resolution shall instead be required to be passed by a Special Resolution.
- 20.6.9. Subject to any restrictions attaching to any class or classes of Securities which are not ordinary Shares (as no voting restrictions shall be permitted as regards ordinary Shares and no special rights or privileges shall attach to other Securities):
- 20.6.9.1. on a show of hands a Person entitled to vote Present at the Meeting shall have only 1 (one) vote, irrespective of the number of Securities she/he/it holds or represents (a proxy shall irrespective of the number of holders of Securities entitled to vote she/he/it represents have only 1 (one) vote on a show of hands); and
- 20.6.9.2. on a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.

- 20.6.10. The total Voting Rights of the Holders of all Securities, other than ordinary Shares and any special shares created for the purposes of Black Economic Empowerment, may never be more than 24.99% (twenty four point nine nine per cent) of the total Voting Rights of all Persons entitled to vote at such a meeting.
- 20.6.11. If a resolution is proposed to meet the requirements of the JSE, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to vote thereon as a matter of law, their votes shall not be taken into account for the purposes of determining whether or not the requirements of the JSE have been attained.
- 20.6.12. In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Register.

## **21. RECORD DATE**

- 21.1. The Board shall determine the Record Date in accordance with the applicable rules of the Central Securities Depository, the Listings Requirements and the Companies Act.
- 21.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is:
- 21.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to give to Holders entitled to vote, notice of that Shareholders Meeting;
- 21.2.2. in the case of dividends a date subsequent to the declaration date of confirmation of the dividend, whichever is the later;
- 21.2.3. the date of the action or event, in any other case.

## **22. ELECTION OF DIRECTORS, ALTERNATE DIRECTORS AND CASUAL VACANCIES**

- 22.1. The minimum number of Directors shall be 3 (three) and the maximum number shall be 12 (twelve). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 22.2. At the Annual General Meeting held in each year  $\frac{1}{3}$  (one third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than  $\frac{1}{3}$  (one third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the managing director or any other executive Director for a fixed period and her/his contract provides that she/he is not subject to retirement during that fixed period.
- 22.3. The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election, provided that if more than one of them were elected Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves.
- 22.4. Notwithstanding anything herein contained, if, at the date of any Annual General Meeting any Director or Alternate Director will have held office for a period of 3 (three) years since his last election or appointment, he shall retire at such Annual General Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto.
- 22.5. The length of time a Director has been in office shall be computed from the date of his last election.
- 22.6. A retiring Director shall act as a Director throughout the Meeting at which he retires. Retiring Directors, or any other Director whose term of office has or will expire, shall be eligible for re election and, if re-elected, shall be deemed not to have vacated his office.

- 22.7. Retiring Directors shall be eligible for re election. No Person other than a Director retiring at the Meeting shall, unless recommended by the Directors for election, be eligible for election to the office of Director at any Annual General Meeting unless, not less than 7 (seven) days nor more than 14 (fourteen) days before the day appointed for the Meeting, there shall have been given to the secretary notice in Writing by some Holder duly qualified to be present and vote at the Meeting for which such notice is given of the intention of such Holder to propose such Person for election and also notice in Writing signed by the Person to be proposed of her/his willingness to be elected.
- 22.8. If at any Annual General Meeting, the place of any retiring Director is not filled, he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, unless it shall be determined at such Meeting not to fill such vacancy.
- 22.9. Each of the Directors and the Alternate Directors, other than a Director contemplated in clause 22.17, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 22.14.
- 22.10. Life directorships and directorships for an indefinite period are not permitted.
- 22.11. An Alternate Director shall serve in the place of 1 (one) or more Director(s) named in the resolution electing him during the Director's/Directors' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he shall have a separate vote, on behalf of each Director she/he is representing in addition to his own vote, if any.
- 22.12. There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act. The Board must make recommendations to the Holders regarding the eligibility of Persons nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief *curriculum vitae* of each Person standing for election or re-election as a Director at a Meeting or the Annual General Meeting, must accompany the notice of the Meeting.
- 22.13. No Director shall be entitled to appoint any Person as an Alternate Director to himself.
- 22.14. In any election of Directors the election is to be conducted as follows:
- 22.14.1. a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and
- 22.14.2. in each vote to fill a vacancy:
- 22.14.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 22.14.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 22.15. No Person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 22.16. No election of a Director shall take effect until he/she has delivered to the Company a Written consent to serve.

- 22.17. Any casual vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, if any, but the Individual so appointed shall cease to hold office at the termination of the next Annual General Meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Annual General Meeting.
- 22.18. Should the number of Directors fall below the minimum number fixed by or pursuant to this MOI as the minimum, the remaining Directors must, as soon as reasonably possible but in any event no later than 3 (three) months from the date that the number of Directors in office falls below the minimum number, fill the vacancy(ies) in question or call a Shareholders Meeting for the purpose of filling such vacancy(ies).
- 22.19. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as the minimum, and where the 3 (three) month period contemplated in clause 22.18 has expired, the continuing Directors or Director may act only for the purpose of summoning a Shareholders Meeting or filling vacancies.

If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of appointing Directors.

### **23. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

A Director or Alternate Director shall cease to hold office as such:

- 23.1. immediately when she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director/Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 23.2. when her/his term of office contemplated in clause 22 expires;
- 23.3. when she/he dies;
- 23.4. when she/he resigns by Written notice to the Company;
- 23.5. if there are more than 3 (three) Directors in office and if the Board determines that she/he has become incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director/Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 23.6. if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company;
- 23.7. if she/he is removed by Ordinary Resolution;
- 23.8. if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board approved by at least two-thirds of the votes cast on the relevant resolution, for being negligent or derelict in performing the functions of a Director, and the Director/Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 23.9. he/she/it files a petition for the surrender of her/his/its estate or an application for an administration order, or if she/he/it commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he/it makes any arrangement or composition with her/his/its creditors generally; or
- 23.10. she/he/it is otherwise removed in accordance with any provisions of this MOI.

## **24. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

- 24.1. The Directors or Alternate Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or Alternate Directors or members of Board Committees as may have been determined from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors and Alternate Directors shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the Directors and Holders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the members of the Board committees as determined by a disinterested quorum of Directors. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act to any executive Directors.
- 24.2. A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a subsidiary of, the Company and in that event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

## **25. FINANCIAL ASSISTANCE**

The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) of the Companies Act are not limited in any manner.

## **26. GENERAL POWERS AND DUTIES OF DIRECTORS**

- 26.1. The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.
- 26.2. Without limiting the generality of the foregoing, the Directors may, from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company.
- 26.3. The Directors may:
- 26.3.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
  - 26.3.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of, any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with it or any such subsidiary, and the wives, widows, families and dependants of such persons.
- 26.4. The Board must appoint a chief executive officer and an executive financial Director. The Board may from time to time appoint one or more of the Directors to the office of managing Director or manager for such period and at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms they may think fit, and it may be made a term of her/his appointment that she/he be paid a pension, gratuity or other benefit on her/his retirement from office.
- 26.5. The Board may from time to time entrust to and confer upon a managing Director or manager for the time being such of the powers vested in the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A managing Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.

## 27. BOARD COMMITTEES

- 27.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The Directors must appoint a remuneration committee and, if required by the Companies Act or the Regulations, given the nature of the business and composition of the Board, a risk committee and a nominations committee. The members of such committees may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors, but such Persons shall not be able to vote.
- 27.2. No Person shall be appointed as a member of a Board committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 27.3. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 27.4. A member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 27.5. Committees of the Board may consult with or receive advice from any person.
- 27.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.
- 27.7. The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company and, to the extent legally required, in any pre-listing statement or circular.

## 28. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

- 28.1. For the purposes of this clause 28, "Director" includes an Alternate Director, a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 28.2. If, despite the requirements of JSE, there is only 1 (one) Director in office at any time, and since the Company is listed and that Director cannot as a result hold all of the Beneficial Interests of all of the issued Securities of the Company, that Director may not:
- 28.2.1. approve or enter into any agreement in which the Director or a Related Person has a Personal Financial Interest; or
- 28.2.2. as a Director, determine any other matter in which the Director or a Related Person has a Personal Financial Interest,
- unless the agreement or determination is approved by an Ordinary Resolution after the Director has disclosed the nature and extent of that Personal Financial Interest to those entitled to vote on such Ordinary Resolution.
- 28.3. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Holders (if the circumstances contemplated in clause 28.2 are not applicable), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 28.4. If a Director (whilst the Company is not a company contemplated in clause 28.2), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director:

- 28.4.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
  - 28.4.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
  - 28.4.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
  - 28.4.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 28.4.2 or 28.4.3;
  - 28.4.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 28.4.2 or 28.4.3;
  - 28.4.6. while absent from the meeting in terms of this clause 28.4:
    - 28.4.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
    - 28.4.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
  - 28.4.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 28.5. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Holders entitled to vote (if the Company is a company contemplated in clause 28.2), the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.
- 28.6. A decision by the Board, or a transaction or agreement approved by the Board, or by the Holders (if the Company is a company contemplated in clause 28.2), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if:
- 28.6.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clauses 28; or
  - 28.6.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

## **29. PROCEEDINGS OF DIRECTORS**

- 29.1. A Director authorised by the Board:
  - 29.1.1. may, at any time, summon a meeting of the Directors; and
  - 29.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
- 29.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.

- 29.3. If all of the Directors:
- 29.3.1. acknowledge actual receipt of the notice;
  - 29.3.2. are present at a meeting of the Directors; or
  - 29.3.3. waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 29.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 29.5. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 29.6. The quorum for a Directors' meeting shall be 3 (three) Directors.
- 29.7. The Directors may elect a chairperson, deputy chairperson and/or any vice chairperson and determine the period for which they shall hold office. If no chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.
- 29.8. Each Director has 1 (one) vote on a matter before the Board and, subject to clauses 23.8, 29.13 and 29.14, a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 29.9. In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 29.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:
- 29.10.1. any declaration given by notice or made by a director as required by clause 28;
  - 29.10.2. every resolution adopted by the Board.
- 29.11. Resolutions adopted by the Board:
- 29.11.1. must be dated and sequentially numbered; and
  - 29.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 29.12. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 29.13. A written resolution of Directors, inserted into the minute book, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided upon.



29.14. For the purposes of clause 29.13, a written resolution means a resolution passed other than at a meeting of Directors, in respect of which, subject to clause 29.10, at least  $\frac{3}{4}$  (three quarters) of the total number of Directors in office at the time (which must include all executive Directors and the chairperson in office at the time), voted in favour by signing in Writing a resolution, within 20 (twenty) Business Days after the resolution was submitted to them. Such a written resolution may be signed in counterparts and consist of several documents and shall be deemed to have been passed on the date upon which it was signed or executed by the last Director required to sign or execute it. One or more Alternate Directors shall be entitled to sign a written resolution if one or more Directors are not able to sign or timeously return a signed copy of the resolution, and without his/her vote/s the requisite majority cannot be achieved. Where a resolution states a date as being the date of its signature by any Director, that document shall be *prima facie* evidence that it was signed or executed by that Director on that date.

### **30. PRESCRIBED OFFICERS**

30.1. No Person shall hold office as a Prescribed Officer, if she/he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

30.2. A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

### **31. APPOINTMENT OF SECRETARY**

The Directors must appoint the secretary from time to time in accordance with the Companies Act and the JSE Listings Requirements (to the extent applicable).

### **32. DISTRIBUTIONS**

32.1. The Company may make Distributions from time to time, provided that:

32.1.1. any such Distribution:

32.1.1.1. is payable to Shareholders registered as such at a date subsequent to the date of declaration or date of confirmation of the Distribution, whichever is the later; and

32.1.1.2. is pursuant to an existing legal obligation of the Company, or a court order; or

32.1.1.3. has been authorised by the Board, by resolution, provided that where the Listings Requirements require the approval of Holders in addition to such authorisation by the Board, the Distribution shall only be made if such approval of Holders is obtained at a Shareholders Meeting;

32.1.2. it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution; and

32.1.3. the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;

32.1.4. no obligation is imposed, if it is a distribution of capital, that the Company is entitled to require it to be subscribed again;

32.1.5. it must before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 32.1.1,

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 32.1.3, failing which it must again comply with the foregoing.

32.2. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 32.1.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.

32.3. All unclaimed –

32.3.1. monies (including, but not limited to Distributions other than dividends) due to the Holders shall be held in trust indefinitely until lawfully claimed, subject to the laws of prescription;

32.3.2. dividends may be invested or otherwise be made use of by the Directors for the benefit of the Company until claimed, provided that any dividend (but not any other Distribution which shall be held by the Company until lawfully claimed) remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Company.

32.4. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.

32.5. Notwithstanding any other provision of the MOI, if –

32.5.1. the Directors or the Company in general meeting, as the case may be, declare a dividend or resolve to make any other Distribution to Shareholders in their capacity as such (whether or not Shareholders are offered Shares in terms of a capitalisation issue in lieu of such dividend or Distribution); and

32.5.2. any Shareholder ("Applicable Shareholder") would, but for this clause 32.5 be entitled to an aggregate dividend or aggregate Distribution ("Applicable Shareholder's dividend or distribution") of R30.00 or less in respect of all the Certificated Shares held by the Applicable Shareholder on the record date as stated in the dividend declaration,

the Directors shall have the power to direct that each Applicable Shareholder shall (unless she/he delivers a written request to the contrary to the transfer office prior to the payment date as stated in the dividend declaration) irrevocably and unconditionally forfeit the entitlement to the applicable Shareholder's dividend or Distribution on the basis that an amount equal to the aggregate of the Applicable Shareholder's dividend or Distribution of each Applicable Shareholder shall vest in a charity nominated from time to time by the Directors.

32.6. Subject to the provisions of this clause 32, all dividends or other entitlements payable to Shareholders who hold Shares in Certificated form or who have not complied with the requirements to effect payments electronically will not be paid by way of a cheque, unless otherwise requested in writing, and such dividends and/or entitlements will be suppressed and retained by the Company in the Company's unclaimed dividend or Distribution (entitlement) account, whereafter the dividends and/or entitlements may be claimed by the Shareholder by submitting a written claim to the Company in the form prescribed by the Directors from time to time.

### 33. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

## 34. NOTICES

- 34.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing, to the registered address of the Holder or Holder of Beneficial Interests, through any of the methods set out in the Regulations or otherwise and, without limitation, by personal delivery to the Holder or holder of Beneficial Interests or by sending them prepaid through the post either, at the preference of the Board, by registered or by ordinary mail or by transmitting them by fax. The Company must give notice of any Meeting to each Person entitled to vote at such Meeting who has elected to receive such notice other than proxies.
- 34.2. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so:
- 34.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and
- 34.2.2. confirms that same can conveniently be printed by the Holder or the holder of the Beneficial Interests within a reasonable time and at a reasonable cost.
- 34.3. A Holder or Person entitled to Securities (or his/her executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 34.4. If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 34.5. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations (currently Table CR3 in the Regulations (which is included as Schedule 3 for easy reference but which does not form part of this MOI for purposes of interpretation)). In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with the entire clause 2), the provisions of clause 2.1 and 2.2 shall be applied.
- 34.6. The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 34.7. As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

## 35. INDEMNITY

- 35.1. For the purposes of this clause 35, "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board and a member of the Audit committee.

- 35.2. The Company's powers to directly or indirectly indemnify Directors, pay any expenses to Directors, and to purchase insurance to protect Directors or the Company, as contemplated in section 78 of the Companies Act, are not limited in any manner.

### **36. REPURCHASES OF SECURITIES**

- 36.1. The Company is authorised to repurchase Securities subject to compliance with the Companies Act and the Listings Requirements.
- 36.2. Subject to clause 36.1, the Company may repurchase Odd-Lots from Holders pursuant to an Odd-Lot Offer. Each Odd-Lot Offer shall allow the Holder to elect to either retain his Odd-Lot or to sell his Odd-Lot. If the Holder of an Odd-Lot does not respond to the Odd-Lot Offer within the requisite time period specified in the Odd-Lot Offer, such Holder will be deemed to have accepted the Odd-Lot Offer, provided that the specific Odd-Lot Offer was approved by an Ordinary Resolution.

### **37. AUDIT COMMITTEE AND AUDITOR**

- 37.1. At each Annual General Meeting, the Company must elect an Audit committee comprising at least 3 (three) members, unless:
- 37.1.1. the Company is a subsidiary of another company that has an Audit committee; and
  - 37.1.2. the Audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.

Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the Audit committee, but if such an Auditor is elected, the appointment is valid only if the Audit committee is satisfied that the proposed auditor is independent of the Company.

- 37.2. Each member of the Audit committee must:
- 37.2.1. be a Director, who satisfies any applicable requirements prescribed by the Minister;
  - 37.2.2. not be:
    - 37.2.2.1. involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
    - 37.2.2.2. a Prescribed Officer, or full-time employee, of the Company or another Related or inter-related company, or have been such an Officer or employee at any time during the previous 3 (three) financial years; or
    - 37.2.2.3. a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and

nor be related to any Person who falls within the criteria in clauses 37.2.2.1 to 37.2.2.3. In addition at least one third of the members of the Audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

- 37.3. The Board must appoint a person to fill any vacancy on the Audit committee within 40 (forty) Business Days after the vacancy arises.
- 37.4. The duties of the Audit committee shall be those set out in section 94(7) of the Companies Act, together with such additional duties as may be determined by the Board from time to time.

- 37.5. The Company must pay all expenses reasonably incurred by its Audit committee, including, if the Audit committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit committee to assist it in the performance of its functions.
- 37.6. No Person shall be elected as a member of the Audit committee, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a member of the Audit committee nor act as a member of the Audit committee. A Person placed under probation by a court must not serve as a member of the Audit committee unless the order of court so permits.
- 37.7. A member of the Audit committee shall cease to hold office as such immediately when she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 37.8. There are no general qualifications prescribed by the Company for a Person to serve as a member of the Audit committee in addition to the requirements of the Companies Act.
- 37.9. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re appointed at an Annual General Meeting without any resolution being passed, unless:
- 37.9.1. the retiring Auditor is:
- 37.9.1.1. no longer qualified for appointment;
- 37.9.1.2. no longer willing to accept the appointment, and has so notified the company; or
- 37.9.1.3. required to cease serving as auditor, in terms of section 92 of the Companies Act;
- 37.9.2. the Audit committee objects to the re appointment; or
- 37.9.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 37.10. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that:
- 37.10.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
- 37.10.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 37.11. The Auditor's rights and functions shall be regulated in accordance with section 93 of the Companies Act and such other legislative or regulatory provisions as may be applicable from time to time.
- 37.12. If a vacancy arises in the office of Auditor, the Board:
- 37.12.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and
- 37.12.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as auditor of the Company.

If, by comparison with the membership of a firm at the time of its latest appointment, less than ½ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the company, giving rise to a vacancy.

37.13. Before making an appointment in terms of clause 37.9 the Board:

37.13.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one Registered Auditor to be considered for appointment as the new Auditor; and

37.13.2. may proceed to make an appointment of a Person proposed in terms of clause 37.13.1 if, within 5 (five) Business Days after delivering the proposal, the Audit committee does not give notice in writing to the Board rejecting the proposed auditor.

### **38. SOCIAL AND ETHICS COMMITTEE**

38.1. The Board shall appoint the members of a social and ethics committee unless it is a Subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required on behalf of the Company, or the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.

38.2. The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years.

38.3. A social and ethics committee of a company is entitled to –

38.3.1. require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

38.3.2. request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

38.3.3. attend any Shareholders Meeting;

38.3.4. receive all notices of and other communications relating to any Shareholders Meeting; and

38.3.5. be heard at any Shareholders Meeting on any part of the business of the meeting that concerns the committee's functions.

38.4. The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

## Schedule 1 – Definitions in the Companies Act

“**accounting records**” means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;

“**alternate director**” means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

“**amalgamation or merger**” means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in:

- (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamation or merging companies; or
- (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

“**annual general meeting**” means the meeting of a public company required by section 61(7);

“**audit**” has the meaning set out in the Auditing Profession Act, but does not include an “independent review” of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

“**Auditing Profession Act**” means the Auditing Profession Act, 2005 (Act 26 of 2005);

“**auditor**” has the meaning set out in the Auditing Profession Act;

“**beneficial interest**”, when used in relation to a company’s securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to:

- (a) receive or participate in any distribution in respect of the company’s securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company’s securities; or
- (c) dispose or direct the disposition of the company’s securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act 45 of 2002);

“**board**” means the board of directors of a company;

“**business days**” has the meaning determined in accordance with section 5(3);

“**central securities depository**” has the meaning set out in section 1 of the Securities Services Act;

“**Commission**” means the Companies and Intellectual Property Commission established by section 185;

“**Commissioner**” means the person appointed to or acting in the office of that name, as contemplated in section 189;

“**company**” means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date:

- (a) was registered in terms of the:
  - (i) Companies Act, 1973 (Act 61 of 1973), other than as an external company as defined in that Act; or
  - (ii) Close Corporations Act, 1984 (Act 69 of 1984), if it has subsequently been converted in terms of **Schedule 2**;
- (b) was in existence and recognised as an ‘existing company’ in terms of the Companies Act, 1973 (Act 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act 61 of 1973), and has subsequently been re-registered in terms of this Act;

“**Competition Act**”, means the Competition Act, 1998 (Act 89 of 1998);

“**consideration**” means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including:

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

“**convertible**” when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including:

- (a) any non-voting securities issued by the company and which will become voting securities—
  - (i) on the happening of a designated event; or
  - (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

“**director**” means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

“**distribution**” means a direct or indirect:

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares, or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether:
  - (i) in the form of a dividend;
  - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
  - (iii) as consideration for the acquisition:
    - (aa) by the company of any of its shares, as contemplated in section 48; or
    - (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
  - (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);



- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

“**electronic communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

“**Electronic Communications and Transactions Act**” means the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);

“**exchange**” when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act 36 of 2004);

“**exercise**”, when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

“**external company**” means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

“**financial statement**” includes:

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company’s securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

“**group of companies**” means a holding company and all of its subsidiaries;

“**holding company**”, in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

“**individual**” means a natural person;

“**inter-related**”, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

“**juristic person**” includes:

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

“**knowing**”, “**knowingly**” or “**knows**”, when used with respect to a person, and in relation to a particular matter, means that the person either:

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have:
  - (i) had actual knowledge;

- (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
- (iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;

“**material**”, when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person’s judgement or decision-making in the matter;

“**nominee**” has the meaning set out in section 1 of the Securities Services Act;

“**ordinary resolution**” means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8):

- (a) at a shareholders meeting; or
- (b) by holders of the company’s securities acting other than at a meeting, as contemplated in section 60;

“**panel**” means the Takeover Regulation Panel, established by section 196;

“**person**” includes a juristic person;

“**personal financial interest**”, when used with respect to any person:

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

“**personal liability company**” means a profit company that satisfies the criteria in section 8(2)(c);

“**prescribed officer**” means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

“**present at a meeting**” means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

“**private company**” means a profit company that:

- (a) is not a public, personal liability or state-owned company; and
- (b) satisfies the criteria set out in section 8(2)(b);

“**profit company**” means a company incorporated for the purpose of financial gain for its shareholders;

“**public company**” means a profit company that is not a state-owned company, a private company or a personal liability company;

“**record date**” means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

“**registered auditor**” has the meaning set out in the Auditing Profession Act;

“**registered office**” means the office of a company, or of an external company, that is registered as required by section 23;

“**related**”, when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

“**securities**” means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;

“**securities register**” means the register required to be established by a profit company in terms of section 50(1);

“**shareholder**”, subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;

“**shareholders meeting**”, with respect to any particular matter concerning a company, means a meeting of those holders of that company’s issued securities who are entitled to exercise voting rights in relation to that matter;

“**solvency and liquidity test**” means the test set out in section 4(1);

“**special resolution**” means:

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10):
  - (i) at a shareholders meeting; or
  - (ii) by holders of the company’s securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

“**state-owned company**” means an enterprise that is registered in terms of this Act as a Company, and either:

- (a) is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act 1 of 1999); or
- (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), and is otherwise similar to an enterprise referred to in paragraph (a);

“**subsidiary**” has the meaning determined in accordance with section 3;

“**voting power**”, with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

“**voting rights**”, with respect to any matter to be decided by a company, means:

- (a) the rights of any holder of the company’s securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

“**voting securities**”, with respect to any particular matter, means securities that:

- (a) carry voting rights with respect to that matter; or
- (b) are presently convertible to securities that carry voting rights with respect to that matter.

**Schedule 2 – Ineligible/Disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)**

1. A person is ineligible to be a Director if the Person:
  - 1.1. is a juristic person;
  - 1.2. is an unemancipated minor, or is under a similar legal disability; or
  - 1.3. does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if:
  - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act 69 of 1984); or
  - 2.2. the Person:
    - 2.2.1. is an unrehabilitated insolvent;
    - 2.2.2. is prohibited in terms of any public regulation to be a Director;
    - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
    - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand Rand), for theft, fraud, forgery, perjury or an offence:
      - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
      - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
      - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act 24 of 1936), the Close Corporations Act, 69 of 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the Securities Services Act, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act 12 of 2004).

### Schedule 3 – Prescribed methods of Delivery in the Regulations

Person to whom the document is to be delivered	Method of delivery	Date and time of deemed delivery
Any Person	By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;	On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the Person's last known address;	On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that Person in terms of the following rows of this Table.	As provided for that method of delivery.
Any natural Person	By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.	On the date and at the time recorded on a receipt for the delivery.
A company or similar body corporate	By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;	On the date and at the time recorded on a receipt for the delivery.
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.

The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.  If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time recorded on a receipt for the delivery.  On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;  If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.  On the date and at the time recorded on a receipt for the delivery.



