

**THE COMPANIES ACT, NO. 71 OF 2008**

(AS AMENDED)

**MEMORANDUM OF INCORPORATION FOR A LISTED  
PUBLIC COMPANY**

**NAME: AFRICAN DAWN CAPITAL LIMITED**

**REGISTRATION NO: 1998/020520/06**

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## 1. INTERPRETATION

In this Memorandum of Incorporation:

- 1.1. Words that are defined in the Companies Act but not in this Memorandum of Incorporation, will bear the same meaning as in the Companies Act. Defined terms, whether in terms of the Companies Act or this Memorandum of Incorporation, have been capitalized. The same terms appearing in lower case shall be given their plain English meaning.
- 1.2. Unless the context otherwise requires-
  - 1.2.1. "**the Act**" means the Companies Act, Act No. 71 of 2008, as amended or any legislation which replaces it from time to time, and includes all schedules to such Act and regulations promulgated in terms of the Act;
  - 1.2.2. "**BEE Act**" means the Broad-Based Economic Empowerment Act, 2003 (Act No.53 of 2003)
  - 1.2.3. "**BEE Codes**" means the Broad-Based Black Economic Empowerment Codes of Good Practice gazette from time to time under the BEE Act in terms of Code 100-the Measurement of Ownership Element of Broad-Based Black Economic Empowerment
  - 1.2.4. "**Board**" means the board of Directors from time to time of the Company;
  - 1.2.5. "**Business Day**" means any day other than a Saturday, Sunday or day which is a gazetted public holiday in the Republic of South Africa;
  - 1.2.6. "**Certificated Securities**" means Securities issued by the Company that are evidenced by a certificate or written instrument;
  - 1.2.7. "**Central Securities Depository**" has the meaning set out in section 1 of the Securities Services Act, Act 36 of 2004;
  - 1.2.8. "**Commission**" means the Companies and Intellectual Property Commission established in terms of section 185 of the Act;
  - 1.2.9. "**Companies Tribunal**" means the Companies Tribunal established in terms of section 193 of the Act;

- 1.2.10. "**Company**" means African Dawn Capital Limited, a company duly incorporated in the Republic of South Africa under the registration number 1998/020520/06 (or such other designation as the Registrar of Companies may direct from time to time);
- 1.2.11. "**Director**" means a member of the Board of the Company as contemplated in section 66 of the Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.2.12. "**Electronic Communication**" means a communication by data messages as defined in section 1 of the Electronic Communications and Transactions Act, Act 25 of 2002;
- 1.2.13. "**Holder**" means a registered holder of securities
- 1.2.14. "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Act;
- 1.2.15. "**JSE**" means the exchange, licensed under the Securities Services Act, operated by JSE Limited (Registration number 2005/022939/06), a public company duly incorporated in South Africa;
- 1.2.16. "**Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;
- 1.2.17. "**MOI**" means this Memorandum of Incorporation as adopted by special resolution of the Shareholders of the Company passed on 26 September 2012 and as amended from time to time;
- 1.2.18. "**Participant**" has the meaning set out in section 1 of the Securities Services Act;
- 1.2.19. "**Prescribed Officer**" means a person as defined in section 1 of the Act;
- 1.2.20. "**Regulations**" means the regulations published in terms of the Act from time to time;
- 1.2.21. "**Securities**" means -

- 1.2.21.1. any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or
  - 1.2.21.2. anything falling within the meaning of "securities" as set out in section 1 of the Securities Services Act;
  - 1.2.22. "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1) of the Act;
  - 1.2.23. "**Securities Services Act**" means the Securities Services Act, Act 36 of 2004, or any legislation which replaces it, as amended from time to time;
  - 1.2.24. "**SENS**" means the Securities Exchange News Service established and operated by the Listings Division of the JSE;
  - 1.2.25. "**Share**" means one of the units into which the proprietary interest in the Company is divided;
  - 1.2.26. "**Shareholder**" means the holder of a Share who is entered as such in the Securities Register;
  - 1.2.27. "**Solvency and Liquidity Test**" means the test set out in section 4 of the Act;
  - 1.2.28. "**Uncertificated Securities**" means any securities that are not evidenced by a certificate or written instrument and are transferable by entry without a written instrument; and
  - 1.2.29. "**Uncertificated Securities Register**" means the record of uncertificated securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of the Securities Register.
- 1.3. A reference to a section by number refers to that section of the Act.
  - 1.4. A reference to a clause by number refers to that clause of this MOI;
  - 1.5. In the case of a conflict between any provision of this MOI and –
    - 1.5.1. a provision of any agreement entered into between Shareholders concerning any matter relating to the Company, the provision of this MOI shall prevail to the extent of the conflict;

- 1.5.2. an alterable provision of the Act, as defined in section 1, the provision of this MOI shall prevail to the extent of the conflict; and
- 1.5.3. an unalterable provision of the Act, as defined in section 1, the unalterable provision of the Act shall prevail to the extent of the conflict unless this MOI imposes a higher standard, greater restriction, longer period of time or similarly more onerous requirement upon the Company, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.
- 1.6. A reference to the singular includes the plural and *vice versa*, a reference to a gender includes the other genders and a reference to a natural person includes a juristic person and *vice versa*.
- 1.7. Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.8. Clause headings are inserted for reference purposes only and shall not be taken into account in the interpretation of this MOI.
- 1.9. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

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

- 2.1. The Company is a juristic person that, immediately prior to the effective date of the Act, was registered as a public company in terms of the Companies Act, Act 61 of 1973. In terms of the Act, the Company continues to exist as a public company as if it had been incorporated and registered in terms of the Act.
- 2.2. This MOI replaces and supersedes the Memorandum and Articles of Association of the Company which applied to the Company immediately prior to the filing of the MOI.
- 2.3. The Company is a public company listed on the JSE and, as such, there is no restriction on the transferability of any securities of the Company and the Company may offer any of its securities to the public.

### 3. **LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

### 4. **POWERS OF THE COMPANY**

- 4.1. The Company has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, and nothing in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way.

The power of the Company to claim a lien on its fully paid securities is prohibited. Such securities shall not be subject to any lien in favour of the Company and shall be fully transferable.

### 5. **COMPANY RULES**

The Board does not have authority to make, amend or appeal any rules relating to the governance of the Company in terms of section 15(3).

### 6. **MOI-ALTERATIONS AND AMENDMENTS**

- 6.1. This MOI does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or (c).

- 6.2. This MOI may only be altered or amended:

6.2.1. in accordance with a Court Order effected by a resolution of the Board in terms of sections 16(1)(a) and 16(4); or

6.2.2. by a special resolution of the ordinary shareholders of the Company.

- 6.3. An amendment of this MOI shall include, but not be restricted to, the following:

6.3.1. the creation of any class of shares;

6.3.2. the variation of any preferences, rights, limitations and other terms attached to any class of shares;

- 6.3.3. the conversion of one class of shares into one or more other classes;
  - 6.3.4. an increase in the number of securities of a class;
  - 6.3.5. a consolidation of securities;
  - 6.3.6. a sub-division of securities; and/or
  - 6.3.7. the change of the name of the Company.
- 6.4. The amendment of the MOI will take effect from-
- 6.4.1. in the case of an amendment which changes the name of the Company, the date set out in the amended registration certificate issued by the Commission; or
  - 6.4.2. in any other case on the later of the date on which the Commission accepts the filing of the amendment or the date, if any, set out in the Notice of Amendment.
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- 7. AUTHORISED SHARE CAPITAL, ISSUE OF SHARES, RIGHTS AND PRE-EMPTIVE RIGHTS**
- 7.1. The authorised share capital of the Company is R50 000 000 (fifty million rand) divided into 5 000 000 000 (five billion) ordinary shares with a par value of R0,01 each.
  - 7.2. The Shareholders in general meeting may authorise the Directors to issue Shares and/or grant options to subscribe for Shares in the Company, as the Directors, in their discretion, deem fit, provided that such transaction(s) have been approved by the JSE and comply with the Listings Requirements.
  - 7.3. An authority granted to the Directors in terms of 7.2 may be a general authority, which may be either conditional or unconditional, or a specific authority in respect of any particular issue of shares, provided that, if such approval is in the form of a general authority, it shall only be valid until the next annual general meeting of the Shareholders of the Company and may be varied or revoked by the Shareholders in any general meeting of Shareholders before such annual general meeting.
  - 7.4. Unless unissued Shares are to be issued for the purpose of acquiring assets for the

Company, such unissued shares must first be offered to existing ordinary shareholders in proportion to their shareholding and on such terms and in accordance with such procedures as the Directors may determine.

- 7.5. Each of the authorised shares, when issued, entitles the Holder to:
- 7.5.1. vote on any matter to be decided by the Shareholders of the Company as provided for in clauses 26 and 27;
  - 7.5.2. participate proportionally in any distribution made by the Company; and
  - 7.5.3. share proportionally in the distribution of the net assets of the Company upon its dissolution.
- 7.6. All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must be in accordance with the Listings Requirements.
- 7.7. Any Shares or other Securities which are to be listed on the JSE or which are of the same class as securities which are listed or are to be listed on the JSE, may only be issued after they have been fully paid for and are freely transferable, notwithstanding the provisions of section 40(5).
- 7.8. Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or is specifically provided for in this MOI, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

## 8. **ALTERATION OF CAPITAL AND VARIATION OF RIGHTS.**

- 8.1. Shares in each class shall rank *pari passu*, in accordance with paragraph 3.29 of the Listings Requirements, in respect of all rights.
- 8.2. The creation, authorisation and classification of Shares, the subdivision or consolidation of Shares, amendments to the numbers of authorised Shares of each class, the conversion of one class of Shares into one or more other classes of Shares, the conversion of Shares from par value to no par value and variations to the preferences, rights, limitations and other terms associated with any class of Shares as set out in this MOI may be changed only by an amendment of this MOI as provided for in clause 6 and in accordance with the Listings Requirements. In this regard:

- 8.2.1. where the amendment relates to any preferences, rights, limitations or other terms associated with any class of Shares already in issue, such amendment requires a Special Resolution adopted at a separate meeting of the Holders of shares in that class; and
- 8.2.2. the Holders of shares referred to in 8.2.1 shall, in addition, be entitled to vote at any other meeting of shareholders where such amendment is to be approved.
- 8.3. Any allocation of Securities, whether as a result of a consolidation or otherwise, will be rounded up or down based on standard rounding convention (i.e. all allocations will be rounded to the nearest whole number if they are less than 0,5 and will be rounded up to the nearest whole number if they are equal to or greater than 0,5) resulting in allocations of whole securities and no fractional entitlements.
- 8.4. Preferences, rights, limitations or other terms of any class of shares may not be varied, and no share may be authorised which permits such variation, in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7).
- 8.5. Any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, as provided for in section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.

## 9. **CERTIFICATES**

- 9.1. The securities issued by the Company may either be certificated or uncertificated, as determined by the Board from time to time. Unless specifically provided in the Act, the rights and obligations of Holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities.
- 9.2. Certificates shall be issued in such manner and form as the Directors may prescribe, save that they must -
  - 9.2.1. state on the face of the certificate –
    - 9.2.1.1.the name of the Company;

9.2.1.2.the name and identifying number of the Holder of the Securities;

9.2.1.3.the number, class of Shares and designation of the series, if any, evidenced by that certificate;

9.2.1.4.any other information required by the Act from time to time; and

9.2.2. be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means.

9.3. In the absence of evidence to the contrary, a certificate in terms of 9.2 is proof that the named Holder owns the Securities and remains valid despite the subsequent departure from office of any person who signed it.

9.4. Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.

9.5. Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. The Company may not issue such certificates unless the Uncertificated Securities are withdrawn and replaced by Certificated Securities as provided for in the Act and 9.6 below.

9.6. A holder of Uncertificated Securities who wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, must, in accordance of the rules of the Central Securities Depository, notify the relevant Participant or Central Securities Depository. After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register and obtain a certificate in respect thereof, the Company shall, in accordance with the provisions of the Act –

9.6.1. enter the relevant Security Holder's name and details of its 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; and

9.6.2. within the time periods specified in the Act, prepare and deliver to the

relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.

- 9.7. The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

## 10. SECURITIES REGISTER

- 10.1. With effect from the date upon which this MOI is adopted, the Company shall convert its share register into a Securities Register, which shall be maintained in accordance with the standards prescribed by the Act.

- 10.2. As soon as practicable after issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –

10.2.1. the total number of Uncertificated Securities;

10.2.2. with respect to Certificated Securities –

10.2.2.1. the names and addresses of the persons to whom the Certificated Securities were issued;

10.2.2.2. the number of Certificated Securities issued to each of them;

10.2.2.3. the number of and prescribed circumstances relating to any securities which have been placed in trust, as contemplated in section 40(6)(d), or whose transfer has been restricted;

10.2.2.4. in the case of Debt Instruments as defined in section 43, the number of those Securities issued and outstanding and the names and addresses of the Holders of the Securities and any holders of a beneficial interest in the security; and

10.2.2.5. any other prescribed information.

10.3. If the Company has issued Uncertificated Securities, or has issued Securities that have become Uncertificated Securities, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

10.3.1. forms part of the Securities Register; and

10.3.2. must contain, with respect to all Uncertificated Securities, any details referred to in clause 10.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.

10.4. In the absence of evidence to the contrary, the Securities Register or Uncertificated Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it.

10.5. Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.

10.6. If all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

10.6.1. each certificate issued in respect of those Shares must be distinguished by a numbering system; and

10.6.2. if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified,

provided that, in terms of Schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any share certificate to satisfy the provisions of clauses 10.2 and 10.6 is not a contravention of the Act and does not invalidate that certificate.

10.7. If a certificate for securities is defaced, lost or destroyed, it may be replaced on such terms as to evidence, indemnity and payment of such fee as the Directors think fit and, in case of defacement, on delivery of the old certificate to the Company.

## 11. TRANSFER OF SECURITIES

- 11.1. Subject to the Act and the Listings Requirements, there is no restriction on the transfer of any Security which is listed on the JSE.
- 11.2. The instrument of transfer of any Certificated Securities which are not listed on the JSE shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, in their discretion, dispense with requiring the signature of the transferee on the instrument of transfer.
- 11.3. Subject to such restrictions as may be applicable to the Security concerned, any Shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.
- 11.4. Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by the certificate of the Securities to be transferred and/or such other evidence as the Company may require in order to prove the title of the transferor or his rights to transfer the Securities.
- 11.5. All authorities to sign transfer deeds or other instruments of transfer granted by Holders for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its registered office or at its transfer office 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 registered office or transfer office at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, 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.
- 11.6. All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide.
- 11.7. The transfer of Uncertificated Securities may be effected only by a Participant or Central Securities Depository:
  - 11.7.1. on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court;

11.7.2. in accordance with section 53 and the rules of the Central Securities Depository; and

11.7.3. by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected,

in accordance with the rules of the Central Securities Depository.

11.8. If the Company is legally obliged to pay Securities transfer tax or any other costs in respect of any transfer of Securities, the Company shall be entitled to recover such amounts from the transferee.

11.9. The Securities Register (or any part thereof relating to holders of any class of Shares) may, upon notice being given by advertisement in the South African Government Gazette and a newspaper circulating in the district in which the registered office of the Company is situated, be closed during such time as the Directors may think fit, not exceeding in the aggregate 60 (sixty) days in any year.

## 12. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

12.1. Any person who submits such proof as may be required by the Directors of his appointment as:

12.1.1. the executor or administrator of the estate of a deceased Holder;

12.1.2. the trustee of an insolvent holder;

12.1.3. the liquidator of a body corporate;

12.1.4. the parent or guardian of a Holder who is a minor; or

12.1.5. the tutor or curator of a Holder under any other legal disability;

shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.

12.2. Any person referred to in clause 12.1 or any other person who becomes entitled to any Security by operation of law other than a transfer in terms of this MOI, shall have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that, in respect of a transfer other than to himself, the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed

transfer of such Security by the Holder.

- 12.3. Failure by the executor or trustee of a deceased or insolvent Holder to register shares which are held in the name of such Holder when called upon by the Directors to do so, shall not result in the forfeiture of such shares.

### 13. **BENEFICIAL INTEREST IN SECURITIES**

The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as provided for in, and subject to the provisions of, section 56.

### 14. **COMMISSION**

- 14.1. The Company may pay commission of not more than 10% (ten percent) of the subscription price at which Securities are issued to any person in consideration for such person subscribing or agreeing to subscribe, absolutely or conditionally, or for procuring or agreeing to procure subscriptions, absolute or conditional, for such Securities.
- 14.2. Such commission may be paid in whole or in part by fully paid up Securities, provided that the prior approval of Shareholders by means of an ordinary resolution shall be required before any commission or portion thereof is paid in Shares.

### 15. **DEBT INSTRUMENTS**

The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2), but no special privileges associated with any such debt instruments as contemplated in section 43(3) may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation. Without detracting from the generality of the foregoing, it is specifically noted that the holders of such instruments shall not be entitled to attend or vote at general meetings of Shareholders.

### 16. **CAPITALISATION SHARES**

- 16.1. Subject to the provisions of this MOI relating to the authority required in order to issue

Shares and compliance with the Listings Requirements and the requirements set out in section 47, to the extent applicable, the Board shall have the power and authority to

–

- 16.1.1. approve the issuing of any authorised Shares as capitalisation Shares;
  - 16.1.2. to issue Shares of one class as capitalisation Shares in respect of Shares of another class; and/or
  - 16.1.3. subject to the provisions of clause 16.2, to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share.
- 16.2. The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in clause 16.1.3, unless the Board –
- 16.2.1. has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and
  - 16.2.2. is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

## 17. **FINANCIAL ASSISTANCE FOR THE PURCHASE OF SECURITIES**

The authority of the Board to authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities, as contemplated in section 44, is not limited or restricted by this MOI.

## 18. **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

18.1. Subject to the Act, and specifically sections 46 and 48, and to the Listings Requirements–

- 18.1.1. the Board may determine that the Company acquire a number of its own Shares; and

18.1.2. the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –

18.1.2.1. not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and

18.1.2.2. no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.

18.2. In accordance with the Listings Requirements, an acquisition as contemplated in 8.1, shall be approved by a special resolution of the Shareholders, whether in respect of a particular repurchase or generally approved by Shareholders, and such acquisition shall otherwise comply with paragraphs 5.67 to 5.69 of the Listings Requirements (or such other sections as may be applicable from time to time), provided that no such approval of Shareholders shall be required in respect of a pro rata acquisition by the Company from all its Shareholders.

## 19. **ODD-LOT OFFERS**

19.1. If, upon implementation of any odd-lot offer made by the Company in accordance with the Listings Requirements, there are Holders who hold less than 100 (one hundred) ordinary Shares in the Company, or such other number of Shares as determined by the JSE as amounting to an odd-lot, and such Holders fail to make an election to retain or sell their odd-lot holdings in accordance with the odd-lot offer made by the Company, the Holders shall be deemed to have elected to sell their odd-lot holdings. The Directors shall then, with the approval of an Ordinary Resolution, be entitled to cause the odd-lots to be sold in such manner as the Directors may determine; and to procure that the proceeds of such sales be paid to such odd-lot Holders.

19.2. If the proceeds of the sales referred to in 19.1 cannot be paid to such Holders for any reason, such proceeds shall be dealt with in accordance with clause 28.7.

## 20. **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

The record date for the purpose of determining which Shareholders are entitled to receive notice of or participate in any event or qualify for any entitlement shall be determined by the Board, provided that, for as long as the Listings Requirements

apply to the Company and prescribe a record date, the record date for all transactions shall be the date as set out in the Listings Requirements.

## 21. **SHAREHOLDERS' MEETINGS**

21.1. The Board, or any Prescribed Officer of the Company authorised by the Board, may call a Shareholders' meeting at any time.

21.2. The Company shall, as determined by the Board, either

21.2.1. hold a Shareholders' meeting in order to consider one or more resolutions;  
or

21.2.2. if the resolution is one that can be voted on otherwise than in an annual general meeting or other Shareholders meeting called for in terms of the Listings Requirements, put the proposed resolution to Shareholders to be dealt with in terms of section 60. In such event the Company must deliver a statement describing the results of the vote, consent process or election to every Shareholder who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be, within 10 (ten) business days of the date of such adoption or election.

21.3. The Company must hold a Shareholders meeting or, if the resolution is one that does not have to be dealt with in an annual general meeting or other meeting required in terms of the Listings Requirements, put the proposed resolution to Holders entitled to vote in accordance with section 60 -

21.3.1. at any time that the Board is required by the Act, the Listings Requirements or this MOI to refer a matter to Shareholders for decision; or

21.3.2. whenever required in terms of the Act to fill a vacancy on the Board.

21.4. A Shareholders meeting must be convened if one or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –

21.4.1. each such demand describes the specific purpose for which the meeting is proposed; and

21.4.2. in aggregate, demands for substantially the same purpose are made and signed by the holders, as of 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 meeting.

- 21.5. In addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each 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.
- 21.6. Subject to the applicable provisions of the Act and the Listings Requirements, the following shall apply in respect of any annual general meeting:
- 21.6.1. The Company shall deliver notices of meetings to each Shareholder entitled to vote at such meeting who has elected to receive such documents;
- 21.6.2. Such meeting shall be capable of being held by Electronic Communication in accordance with the further provisions of this MOI; and
- 21.6.3. Each annual general meeting of the Company shall provide for at least the following business to be transacted –
- 21.6.3.1. presentation of the Directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 21.6.3.2. the election of Directors, to the extent required by the Act or this MOI;
- 21.6.3.3. the appointment of an auditor and an audit committee for the following financial year;
- 21.6.3.4. any matters raised by the Shareholders, with or without advance notice to the Company.
- 21.7. Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act and the Listings Requirements.
- 21.8. If the Company is unable to convene a Shareholders meeting as required in terms of this clause due to the fact that it has no Directors or all of the Directors are incapacitated, any Holder may convene such a meeting.

## 22. LOCATION OF AND NOTICES OF MEETINGS

- 22.1. The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in South Africa or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this MOI.
- 22.2. Every Shareholder's meeting shall be reasonably accessible within South Africa for electronic participation by Shareholders, irrespective of whether the meeting is held in South Africa or elsewhere.
- 22.3. All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) Business Days' notice.
- 22.4. An immaterial defect in the form or manner of delivery of notice or an inadvertent failure in the delivery of notice to any particular Holder, does not invalidate any action taken at the Shareholders meeting.
- 22.5. In the case of a material defect in the form or manner of giving of notice of a Shareholders meeting, the meeting may nevertheless proceed if-
- 22.5.1. every Holder or other person who is entitled to exercise voting rights in respect of any item on the agenda is present at the meeting and votes to ratify the defective notice; or
  - 22.5.2. if the defect only relates to one or more particular matters on the agenda and these matters can be severed from the agenda, in which case the meeting may proceed in respect of the remaining matters.

## 23. QUORUM AND ADJOURNMENT

- 23.1. Business may be transacted at a Shareholders meeting only while a quorum is present.
- 23.2. The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and present at the meeting. In addition –
- 23.2.1. a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of

the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

23.2.2. a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the 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 that matter at the time the matter is called on the agenda.

23.3. The time periods specified in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within one hour after the appointed time for a meeting to begin, the requirements of clause 23.2 –

23.3.1. for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for one week;

23.3.2. for consideration of a particular matter to begin have not been satisfied –

23.3.2.1. if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

23.3.2.2. if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for one week,

provided that the person intended to chair a meeting that cannot begin as a result of a quorum not being present, may extend the one hour limit allowed in terms of this sub-clause for a reasonable period on the grounds that –

23.3.3. exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or

23.3.4. one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would form a quorum.

23.4. The Company shall not be required to give further notice of a meeting that has been postponed or adjourned as provided for in clause 23.3 unless the location for the meeting is different from –

23.4.1. the location of the postponed or adjourned meeting; or

23.4.2. the location announced at the time of adjournment, in the case of an adjourned meeting.

23.5. Notwithstanding the provisions of clause 23.4, for so long as the Company's Securities are listed on the JSE, the Company shall release a notice on SENS of any postponed or adjourned meeting (whether postponed or adjourned in terms of clause 23.3 or otherwise).

23.6. If at the time appointed in terms of clause 23.3 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 23.2 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

23.7. After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.

23.8. The chairperson of a meeting may with the consent of a meeting at which a quorum is present (and must if the meeting resolves thus) adjourn the meeting from time to time and from place to place, but an adjourned meeting may only deal with matters which could legally be dealt with at the meeting on which the adjournment took place.

23.9. The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.

#### **24. CHAIRPERSON AND CONDUCT OF MEETINGS**

24.1. The chairperson, or in the absence of the chairperson, the deputy chairperson, if any, of the Board shall preside as chairperson at every Shareholders' meeting.

24.2. If there is no such chairperson or deputy chairperson, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose one of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

- 24.2.1. The chairperson of a Shareholders' meeting may –
  - 24.2.1.1. appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
  - 24.2.1.2. act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 24.2.2. If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not invalidate the resolution, unless it is brought to the attention of the chairperson at the meeting and the error is of sufficient magnitude to affect the outcome of the vote.
- 24.2.3. Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised at the meeting or adjourned meeting at which the vote objected to was recorded; or at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 24.2.4. Even if he is not a Shareholder, any Director may attend and speak at any Shareholders' meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

## 25. **ELECTRONIC PARTICIPATION IN SHAREHOLDERS MEETINGS**

- 25.1. The authority of the Company to conduct a Shareholders' meeting entirely by Electronic Communication or to provide for participation in a meeting by Electronic Communication is not limited or restricted by this MOI, provided that-
  - 25.1.1. the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting; and
  - 25.1.2. it is in accordance with the Listings Requirements.

- 25.2. Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

## 26. RESOLUTIONS AND VOTING AT SHAREHOLDERS MEETINGS

- 26.1. Every resolution of Holders is either an ordinary resolution or a special resolution.
- 26.2. For an ordinary resolution to be approved by Holders, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution.
- 26.3. For a special resolution to be approved by Holders, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9).
- 26.4. A special resolution shall only be required to be adopted at a Shareholders' meeting in respect of –
- 26.4.1. those matters set out in section 65(11); or
  - 26.4.2. any other matter required by the Act to be resolved by means of a special resolution; or
  - 26.4.3. for so long as the Company's Securities are listed on the JSE, any other matter required by the Listings Requirements to be resolved by means of a special resolution.
- 26.5. Subject to any special rights or restrictions as to voting attached to any class or classes of Shares in terms of this MOI, at a meeting of the Company –
- 26.5.1. every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
  - 26.5.2. on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder, provided that the Holders of ordinary

shares shall be entitled to one vote in respect of each share; and

26.5.3. the holders of Securities, other than ordinary Shares and special shares created for the purposes of black economic empowerment in terms of the BEE Act and BEE Codes, shall not be entitled to vote on any resolution taken by the Company, except as provided in clause 26.6.

26.6. If any resolution is proposed which relates to the variation of any preferences, rights, limitations or other terms relating to any class of shares already in issue, other than ordinary shares, the Holders of such Shares shall be entitled to vote on such resolution at the meeting of ordinary Shareholders, provided that-

26.6.1. the votes of the Shares of that class shall not carry any special rights or privileges;

26.6.2. each Holder of such Shares shall be entitled to one vote for each Share held; and

26.6.3. the total voting rights of the Holders of all shares in such class shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary Shareholders) exercisable at that meeting.

26.7. At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

26.7.1. at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or

26.7.2. a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or

26.7.3. the chairperson of the meeting,

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 defeated, and an entry to that effect in the book containing the minutes of the proceedings 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. The demand for a poll may be withdrawn.

- 26.8. 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 meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 26.9. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the 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.
- 26.10. A poll demanded on the election of a chairperson to preside over the meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 26.11. A person who is entitled to more than one vote, does not have to exercise all his or her votes and does not have to exercise all his or her votes in the same manner.
- 26.12. If a Shareholder abstains from voting in respect of any resolution, such Shareholder shall, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.
- 26.13. Where there are joint registered holders of any Share, any one of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, the person whose name stands first in the Securities Register in respect of such Share shall be entitled to vote in respect thereof.
- 26.14. The board of any company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, and the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Shares. Such authorisation shall take place by the authorising company, entity or person lodging a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

26.15. A resolution that could be voted on at a Shareholders' meeting may instead be submitted to Shareholders and voted on in accordance with and subject to the provisions of section 60, provided that such resolution -

26.15.1. is not in respect of the appointment of Directors;

26.15.2. is not a resolution required to be dealt with at a Shareholders meeting convened in terms of the Listings Requirements; or

26.15.3. is not a resolution required to be passed at an annual general meeting of the Company.

26.16. No resolution may be proposed to Shareholders in terms of sections 20(2) and 20(6) if such a resolution would lead to the ratification of an act which is contrary to the Listings Requirements, unless the JSE has agreed to same.

## **27. PROXIES AND REPRESENTATIVES**

27.1. Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to attend and speak on his behalf at a Shareholders' meeting and to vote on behalf of such Shareholder whether by show of hands, on a poll or in respect of a decision contemplated in section 60.

27.2. A Shareholder may appoint more than one proxy to exercise voting rights attached to different Securities held by the Shareholder.

27.3. A proxy appointment must be in writing, dated and signed by the Shareholder; and remains valid for one year from the date on which it was signed, or such longer or shorter period as may be provided in the proxy itself, unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.

27.4. The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting. A Shareholder so represented at a meeting of the Company shall be deemed for purposes of this MOI to be a Shareholder who is present at the meeting.

27.5. All of the remaining provisions of the Act relating to the appointment and revocation of

proxies and the rights of proxies generally shall apply and, in particular –

- 27.5.1. a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a);
- 27.5.2. a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);
- 27.5.3. a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy not less than 48 (forty eight) hours, excluding Saturdays, Sundays and public holidays, before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights, provided that the chairperson of the meeting may, in his discretion, accept proxies that have been delivered after the expiry of the aforementioned period up until the time of commencement of the meeting; and
- 27.5.4. unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7),

and none of such rights or powers are limited, restricted or varied by this MOI.

- 27.6. Subject to the provisions of the Act, a form appointing a proxy shall be in such form as the Directors may approve from time to time. The Company shall supply a standard form of proxy upon request by a Holder entitled to vote.
- 27.7. A proxy may delegate the authority granted as a proxy, subject to any restriction in the proxy itself.

## 28. **DISTRIBUTIONS AND DIVIDENDS**

- 28.1. Dividends will be declared by the Directors in accordance with the Act.
- 28.2. Any proposed distribution by the Company may only be made in terms of the provisions of section 46 and no distribution may be made unless the requirements of section 46(1) are met.
- 28.3. Payments to be made as a distribution must be provided for in accordance with the Listings Requirements.

- 28.4. No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.
- 28.5. Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty.
- 28.6. The Directors may from time to time if they deem it to be appropriate, declare and pay an interim distribution to Shareholders.
- 28.7. All unclaimed dividends and any other monies which are due to Shareholders and are unclaimed, shall be held in trust for an indefinite period until claimed, subject to the following provisions:
- 28.7.1. whilst such amounts are held in trust, they may be invested by the Company for the benefit of the Company;
- 28.7.2. any dividends which remain unclaimed for a period of three years (or any longer prescription period which may apply in law) from the date on which they were declared may be declared by the Directors to be forfeited for the benefit of the Company;
- 28.7.3. monies other than dividends due to Shareholders must be held in trust in accordance with clause 28.7.1 indefinitely until claimed by the Shareholder.
- 28.8. Any distribution, interest or other sum payable in cash to the Holder of a Share may be paid by cheque, electronic transfer or otherwise as the Directors may, from time to time, determine.
- 28.9. Any cheque or similar instrument shall be made payable to the Holder and sent by post and addressed to the Holder at his registered address or, in the case of joint Holders, the Holder whose name appears first in the Securities Register in respect of the Share, at his registered address or to such person or such address as the Holder or joint Holders may in writing direct.
- 28.10. Any cheque or similar instrument or document sent by post in terms of clause 28.9 is sent at the risk of the Holder and the Company shall not be responsible for the loss in transit.
- 28.11. A Holder or any one of two or more joint Holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such Holder or joint Holders.

- 28.12. When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 28.13. If a distribution is paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 28.14. Subject to the provisions of this MOI regarding the issuing of shares, a distribution may be paid, in whole or in part,
- 28.14.1. by the distribution of specific assets; or
- 28.14.2. by the issue of Shares, debentures or securities of the Company or of any other company; or
- 28.14.3. in cash; or
- 28.14.4. in any other way which the Directors may, at the time of declaring the distribution, determine.
- 28.15. Any distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date. A period of at least fourteen days should be allowed between the date of declaration or date of confirmation of the dividend, whichever is the later, and the date of the closing of the transfer registers in respect of such dividend.
- 28.16. Without derogating from any of the other provision in this MOI, all payments made to holders of Securities listed on the JSE must be provided for in accordance with the Listings Requirements and may not provide for capital to be repaid on the basis that it may be called up again.

## 29. **APPOINTMENT OF DIRECTORS**

- 29.1. The minimum number of Directors shall be four and the Shareholders shall be entitled, by ordinary resolution, to determine such maximum number of Directors as they may, from time to time, consider appropriate. The Company shall appoint a sufficient number of Directors to satisfy the requirements of the Act regarding the appointment of an audit committee, a social and ethics committee and any other committee which may be required in terms of the Act.

- 29.2. Subject to the power of the Board to appoint or co-opt a Director, as provided for in Clause 30.2 below, all Directors shall be elected by an ordinary resolution of the Shareholders at an annual general or a general meeting of the Company, provided that any Shareholder will have the right to nominate a person to the Board of Directors of the Company. Such election may not take place at a meeting of Shareholders which is conducted in terms of section 60.
- 29.3. In any election of Directors, the election is to be conducted as follows –
- 29.3.1. the election is to be conducted as a series of votes, 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 have been filled; and
- 29.3.2. in each vote to fill a vacancy –
- 29.3.2.1. each vote entitled to be exercised may be exercised once; and
- 29.3.2.2. the vacancy is filled only if a majority of the votes exercised support the candidate.
- 29.3.3. Subject to the rights of the Board to appoint or co-opt a Director in terms of clause 30.2, this MOI does not provide for -
- 29.3.3.1. the direct appointment or removal of one or more directors by any particular person; or
- 29.3.3.2. the appointment of any person as an *ex officio* director of the Company.
- 29.3.4. This MOI does not provide for any specific qualifications or eligibility requirements, apart from those set out in the Act, for a person to become or remain a Director or a Prescribed Officer of the Company.
- 29.3.5. No Director shall be appointed for life or for an indefinite period.
- 29.3.6. At each annual general meeting of the Company, one third of the non-executive Directors for the time being, or if their number is not a multiple of three, the number nearest to one third, but not less than one third, shall retire from office, subject to the following provisions: -

- 29.3.6.1. the Directors to retire at each annual general meeting shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agreed among themselves, be determined by lot;
- 29.3.6.2. a retiring Director shall act as a Director throughout the meeting at which he retires;
- 29.3.6.3. such retiring Directors may be re-elected, provided that the Board of Directors, via the Nomination Committee, recommends such re-election based upon past performance and contribution made;
- 29.3.6.4. if, at any meeting at which an election of Directors ought to take place, the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned as in accordance with the provisions of clause 23. If at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

### **30. POWERS OF THE DIRECTORS**

- 30.1. This MOI does not limit or restrict the authority of the Board to manage and direct the business and affairs of the Company as contemplated in section 66(1). Subject always to the Act and the Listings Requirements, the Board has all of the authority to exercise the powers and perform any of the functions of the Company, except to the extent that this MOI specifically provides otherwise,
- 30.2. The Board may appoint or co-opt any person who satisfies the requirements for election as a Director to fill any vacancy or as an additional member to the Board, provided that such appointment must be confirmed at the next annual general meeting of the Company.

- 30.3. If the number of Directors falls below the minimum provided in this MOI, the remaining Directors must, as soon as possible and in any event not later than three months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 30.2 or call for a general meeting for the purposes of filling the vacancies. Failure by the Company to have the minimum number of directors during the three month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation. After expiry of the three month period, the remaining directors shall only be able to act for the purposes of filling vacancies or calling general meetings of shareholders.
- 30.4. The Directors may from time to time authorise the Company to borrow such amounts as they deem fit and to secure the payment or repayment of any such borrowings by the creation and issue of securities or any form of pledge, mortgage or other encumbrance upon the assets of the Company.

#### **31. COMMITTEES AND DELEGATION**

- 31.1. Nothing in this MOI restricts or limits the power of the Directors to appoint any number of committees or to delegate to any such committee or any executive director any authority of the Board.
- 31.2. The Directors may appoint any number of Board committees, which may include persons who are not Directors, as long as they are not disqualified or ineligible to be directors, and may delegate any powers of the Board to such committees or to any executive director of the company and may, from time to time, revoke, withdraw or vary any such powers.

#### **32. DIRECTORS' INTERESTS**

- 32.1. A Director may hold any other office or be employed in any other capacity (except that of auditor) in the Company or as a director or employee of any company controlled by, or itself a major subsidiary of, the Company, and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of the Directors .
- 32.2. Each Director and each Prescribed Officer and each member of any committee of the Board shall comply fully with the provisions of section 75 in the event that he (or any person who is a related person to him) has a personal financial interest in any matter

to be considered by the Board.

### 33. **DIRECTORS' MEETINGS**

- 33.1. Subject to any specific provisions of this MOI, the Act and the Listings Requirements, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 33.2. The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose one of their number to be chairperson of such meeting.
- 33.3. In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 33.4. As contemplated in section 74, any decision which could be voted on at a meeting of the Board, may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it, unless the resolution itself specifically provides for another date.
- 33.5. This MOI does not restrict the Board from conducting meetings, or Directors from participating in meetings, by electronic communication as contemplated in section 73(3).
- 33.6. The authority of the Board to determine the manner and form in which notice of Board meetings should be given is not limited, restricted or qualified.
- 33.7. The authority of the Board to proceed with a Board meeting in accordance with the provisions of section 73(5)(a), even if the Company failed to give the required notice or there was a defect in the giving of such notice, is not limited, restricted or qualified.
- 33.8. The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, as set

out in section 73(5), are not varied by this MOI.

33.9. Voting on any matter to be decided upon by the Board, shall be subject to the following:

33.9.1. a majority of the Directors must be present before a vote may be called at any meeting of the Directors;

33.9.2. each Director has one vote;

33.9.3. a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;

33.9.4. in the case of a tied vote the chairperson may not cast a deciding vote in addition to any deliberative vote and the matter being voted on fails.

33.10. Resolutions adopted by the Board –

33.10.1. must be dated and sequentially numbered; and

33.10.2. are effective as of the date of the resolution, unless any resolution states otherwise.

33.11. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board or by the Company secretary, or by any other Director authorised who was present at such meeting and is authorised by the Chairman to sign such minutes, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

#### 34. **DIRECTORS' COMPENSATION**

34.1. The Company may pay remuneration to the Directors for their services as Directors in accordance with a special resolution approved by the Shareholders within the previous 2 (two) years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this MOI.

34.2. The Directors may be paid their travelling and other expenses, properly and necessarily incurred by them in and about the business of the Company and in attending meetings of the Directors or any committees of the Directors.

34.3. Any Director who -

- 34.3.1. serves on any executive or other committee; or
  - 34.3.2. devotes special attention to the business of the Company; or
  - 34.3.3. goes or resides outside South Africa for the purposes of the Company; or
  - 34.3.4. otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,
- may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.

### 35. **FINANCIAL ASSISTANCE TO DIRECTORS OR PRESCRIBED OFFICERS**

The authority of the Board to authorise the Company to provide financial assistance to a Director or Prescribed Officer of the Company or of a related or inter-related company, or to a related or inter-related company or corporation or to a member of a related or inter-related company or corporation or to a person related to any such person or entity, as contemplated in section 45, is not limited or restricted by this MOI.

### 36. **EXECUTIVE DIRECTORS**

- 36.1. The Directors may from time to time appoint one or more executive Directors for such term and at such remuneration as they may think fit, and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A Director so appointed shall not be subject to retirement in the same manner as the other Directors, but his appointment shall terminate if he or she ceases for any reason to be a Director.
- 36.2. An executive Director shall comply with the eligibility requirements for Directors and shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

### 37. **INDEMNIFICATION OF DIRECTORS**

- 37.1. The Company may –

37.1.1. advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

37.1.2. indemnify a Director in respect of liability as set out in section 78(5); and/or

37.1.3. purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

37.2. The provisions of clause 37.1 shall apply *mutatis mutandis* in respect of any Prescribed Officer or member of any committee of the Board, including the audit committee, or any former Director, former Prescribed Officer or former member of any committee of the Board.

#### 38. **ANNUAL FINANCIAL STATEMENTS**

38.1. The Company shall keep all such accurate and complete accounting records as are necessary to comply with the provisions of this MOI, the Act and any other law which may govern the preparation of financial statements by the Company from time to time.

38.2. After each financial year end of the Company, the Company shall prepare annual financial statements within the period prescribed by the Act, or such shorter period as may be necessary in order to give the required notice of an annual general meeting in terms of section 61(7).

38.3. The Company shall appoint an auditor each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

38.4. The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30.

38.5. A copy of the annual financial statements must be delivered to Shareholders at least fifteen business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.

38.6. The annual financial statements shall:

38.6.1. be prepared in accordance with the provisions of the Act;

38.6.2. satisfy, as to form and content, the financial reporting standards of IFRS; and

38.6.3. clearly indicate that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

#### 39. **COMPANY SECRETARY**

39.1. The Company must appoint a company secretary who is a permanent resident of South Africa, and remains so whilst serving as secretary, and has the required knowledge of or experience in the relevant laws.

39.2. The Company Secretary may be a juristic person provided that:

39.2.1. any employee or partner of such juristic person who provides company secretarial services is not ineligible or disqualified from acting as company secretary; and

39.2.2. at least one employee of the juristic person or one partner of the partnership satisfies the requirements of 39.1.

39.3. The Board must fill any vacancy in the office of company secretary within the period prescribed by the Act after such vacancy arises, by appointing a person whom the Directors consider to have the requisite knowledge and experience.

#### 40. **AUTHENTICATION OF DOCUMENTS**

Any Director or the company secretary or any person appointed by the Board for that purpose shall have the power to authenticate –

40.1. this MOI;

40.2. any resolution taken by the Company in general meeting or the Board; and

40.3. any other document, account or certificate relating to the matters of the Company,

and to certify copies thereof as true copies and excerpts.

#### **41. ACCESS TO COMPANY RECORDS**

- 41.1. Any person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy the information contained in the records of the Company referred to in section 26(1) in accordance with the provisions of such section and either for no fee or for payment of such reasonable fee as may be levied by the Company, to the extent that such fee is permitted in terms of the Act or any other relevant legislation.
- 41.2. A person not contemplated in clause 41.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection in terms of the Act, or such lesser fee as may be determined by the Company from time to time.
- 41.3. A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26, and in accordance with the rules of the Central Securities Depository. Within the period as prescribed by the Act after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details referred to in section 50(3)(b) at the close of business on the day on which the request for inspection was made.
- 41.4. Rights of access to the Securities Register are subject to the provisions of clause 11.9 relating to periods during which such register is closed.
- 41.5. No additional information rights, other than those provided for in the Act or any other legislation which may apply, are established in terms of this MOI.

#### **42. NOTICES**

- 42.1. All notices shall be given by the Company to each Shareholder of the Company who has elected to receive such notices and simultaneously to the Issuer Regulation Division of the JSE, and shall be given in writing in any manner authorised by the JSE Listings Requirements and/or the Act, as may be applicable. All notices shall, in addition to the above, be released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be delivered in accordance with the provisions of the Act.
- 42.2. Each Shareholder of the Company shall notify the Company in writing of an address

which shall be his registered address for the purposes of receiving written notices from the Company by post and may, in addition, notify the Company in writing of an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.

- 42.3. Any Shareholder who fails to notify the Company of an address in terms of clause 42.2 above, will be deemed to have elected not to receive notices and documents from the Company.
- 42.4. A Shareholder shall be entitled to register an address which is not within South Africa, and shall be entitled to have notices served upon him at such address.
- 42.5. In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 42.6. Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which was properly given in terms of this clause to the person in whose name the share was registered at the date of such notice.
- 42.7. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, for so long as the Share Register reflects such Shareholder as the registered owner of the shares.

#### 43. **WINDING-UP**

- 43.1. In the event of the winding-up of the Company, the Shareholders may, by means of a special resolution, direct the manner in which the assets are to be valued and divided.
- 43.2. Such resolution may authorise the liquidator to transfer the whole or any part of the assets to trustees to be held in trusts for the benefit of the Shareholders or any of them.
- 43.3. Any such resolution may provide for and sanction a distribution of specific assets amongst the holders of different classes of Shares contrary to their existing rights, but each Shareholder shall in that event have a right of dissent and other ancillary rights in

the same manner as if such resolution were a special resolution passed pursuant to the provisions of the Act.

**SCHEDULE 1****CLASSES OF SHARES**

1. The Company is authorised to issue 5 000 000 000 (five billion) ordinary Shares with a par of R0.01 each.
2. In addition to the Shares contemplated in paragraph 1 above, the company is authorised to issue the following further Shares-

[Nil]