

Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A PUBLIC COMPANY**

**Name of company: Tiger Brands Limited**

**Registration No.: 1944/017881/06**

This MOI was adopted by Special Resolution passed on 12 February 2013 in substitution for the existing memorandum and articles of association of the Company.

## 1. INTERPRETATION

In this MOI, -

- 1.1. words that are defined in the Companies Act (which are contained in **Annexure A** 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 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. "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
  - 1.2.2. "**Companies Act**" means the Companies Act, 2008, as amended, re-enacted or replaced from time to time and all schedules and Regulations thereto;
  - 1.2.3. "**Company**" means Tiger Brands Limited, a public company incorporated under the company laws of the Republic of South Africa under registration number 1944/017881/06 or by whatever other name it may be lawfully known from time to time;
  - 1.2.4. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 38 (*Notices*) and the Companies Act;
  - 1.2.5. "**Designated Auditor**" means a designated Auditor as contemplated in terms of section 92(2) of the Companies Act;
  - 1.2.6. "**EFT**" means electronic funds transfer;
  - 1.2.7. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by the Holder;
  - 1.2.8. "**Holders**" means registered holders of Securities;
  - 1.2.9. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Annexure B** for easy reference but which do not form part of this MOI for purposes of interpretation);

- 1.2.10. "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;
- 1.2.11. "Listings Requirements" means the listings requirements of the JSE, as amended from time to time;
- 1.2.12. "MOI" means this Memorandum of Incorporation;
- 1.2.13. "Participant" means a depository institution accepted by a Central Securities Depository as a participant in the Securities Services Act;
- 1.2.14. "Present" means present at a meeting as defined in the Companies Act as "present at a meeting";
- 1.2.15. "Regulations" means regulations published pursuant to the Companies Act from time to time;
- 1.2.16. "Securities Services Act" means the Securities Services Act, 2004 re-enacted or replaced from time to time and all schedules and Regulations thereto;
- 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" means legible writing and includes printing, typewriting, lithography or other mechanical process, as well as any 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 a duly authorised representative 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;
- 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;
- 1.11. insofar as any provision of the Companies Act has been repeated in this MOI verbatim or substantially-verbatim, in whole or in part, and the Companies Act is amended such that the relevant provision is deleted, substituted and/or altered, then the relevant provision of this MOI will be deemed to be deleted, substituted and/or altered accordingly to conform with the amended provisions of the Companies Act with effect from the date on which the Companies Act is amended; and
- 1.12. all references to and limitations imposed by reference to the JSE and/or the Listings Requirements shall apply for so long as the Company is listed on the JSE.

## **2. CALCULATION OF DAYS**

- 2.1. When a particular number of days or Business Days is provided for between the happening of one event and another, the number of days must be calculated by —
  - 2.1.1. excluding the day on which the first such event occurs;
  - 2.1.2. including the day on or by which the second event is to occur; and
  - 2.1.3. if calculating Business Days, excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1.1 and 2.1.2 respectively.

**3. JURISTIC PERSONALITY**

The Company is a pre-existing company as defined in the Companies Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of the Fifth Schedule to the Companies Act, and this MOI replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.

**4. PUBLIC COMPANY**

The Company is a Public Company as it is not a Private Company or a State-Owned Company or a Personal Liability Company.

**5. POWERS AND CAPACITY OF THE COMPANY**

- 5.1. 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 it were to be so authorised by its MOI.
- 5.2. No Special Resolution may be put to Holders to ratify any action by the Company or the Directors that is inconsistent with any limit, restriction or qualification regarding the purposes, powers or activities of the Company, or the authority of the Directors to perform an act on behalf of the Company, if that action was contrary to the Listings Requirements.

**6. AMENDMENTS TO THE MOI**

- 6.1. Save for correcting errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, subject to the Listings Requirements, all other amendments of this MOI shall be effected in accordance with section 16(1) and 16(4) of the Companies Act and a Special Resolution passed by the Holders of the ordinary Shares. The Board shall publish a copy of any such correction effected by the Board on the Company's web site. [S10.5(d)] [S10.5(e)]
- 6.2. In accordance with the Listings Requirements, the following items (without limitation) shall be deemed to be amendments to the MOI –
  - 6.2.1. creation of any class of Shares;
  - 6.2.2. variation of any preferences, rights, limitations or other Share terms attaching to any class of Shares;

- 6.2.3. conversion of one class of Shares into one or more other classes;
- 6.2.4. increase in the number of authorised Securities;
- 6.2.5. consolidation of Securities;
- 6.2.6. sub-division of Securities;
- 6.2.7. change of name of the Company; and
- 6.2.8. conversion of Shares from par value to no par value,

but, for clarity, an amendment ordered by a court in terms of section 16(1)(a) of the Companies Act shall not require the approval of Holders. [S10.5(d)]

## **7. THE MAKING OF RULES**

The Board shall not make, amend or repeal Rules (which would otherwise allow the Board to make governance rules, in addition to what the Companies Act and this MOI prescribe). [S10.4]

## **8. AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE**

- 8.1. The Company is authorised to issue 250 000 000 (two hundred and fifty million) ordinary Shares with a par value of R0,10 (ten cents) each which shall, save as limited in terms of the Listings Requirements, have Voting Rights, for clarity being 1 (one) vote per ordinary share held, in respect of every matter that may be decided by voting, and shall be entitled to receive the net assets of the Company upon its liquidation. [S10.5(b)]
- 8.2. 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.
- 8.3. To the extent that the Company immediately before the Effective Date has 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.
- 8.4. All Securities of a class shall rank *pari passu* in all respects. [S10.5(a)]
- 8.5. No rights, privileges or conditions for the time being attached to any class of Securities of the Company nor any interests of that class of Securities may (unless otherwise provided by the terms of issue of the Securities of that class, 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 that the interests of another class of

Securities is affected, unless the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that adversely affected class has been obtained, or a Special Resolution has been passed by the Holders of that adversely affected class of Securities with the support of more 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. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that – [S10.5(G)]

8.5.1. the necessary quorum shall be the Holders of not less than 25% (twenty five per cent) of the issued Securities of that class;

8.5.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 8.5.1 is not Present, those Persons entitled to vote who are Present shall be a quorum; and

8.5.3. any Holder of that class who is Present at such meeting may demand a poll and, on a poll, shall have 1 (one) vote for each Security she/he/it holds or represents.

8.6. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a related or Inter-related company without complying with section 44(3).

## 9. **AUTHORITY TO ISSUE SECURITIES**

9.1. The Board shall not have the power to Issue authorised Securities (other than as contemplated in clause 9.4) without the prior approval contemplated in clause 9.2 and in terms of the Listings Requirements.

9.2. As regards the issue of –

9.2.1. Shares contemplated in sections 41(1) and (3) of the Companies Act or as contemplated in the Listings Requirements, the Directors shall not have the power to allot or issue same without the prior approval of a Special Resolution;

9.2.2. Shares, other than those contemplated in clause 9.2.1, 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 in terms of the Listings Requirements, if applicable.

9.3. Any such approval must be in accordance with the Companies Act and 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 9.2.1 and 9.2.2 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 9.2.1 and 9.2.2 provided that such transactions have been approved by the JSE and are subject to the Listings Requirements (where necessary). 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.[S10.1]

9.4. The Board may issue –

9.4.1. capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act; and [S10.6]

9.4.2. secured and unsecured debt instruments provided that no special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3) of the Companies Act. [S10.10]

9.5. No Shares of a class which is listed may be issued other than as fully paid. [S10.2]

## 10. **JOINT HOLDERS**

Where 2 (two) or more Persons are registered as the Holders of any Securities, they shall be deemed to hold those Securities jointly, and -

- 10.1. notwithstanding anything to the contrary in this MOI, on the death, sequestration, liquidation or legal disability of any one of such joint Holders, the remaining joint Holders may be recognised, at the discretion of the Board, as the only Person/s having title to such Securities;
- 10.2. any one of such joint Holders may give effectual receipts for any dividends, bonuses or returns of share capital or other accruals or Distributions payable to such joint Holders;
- 10.3. only the joint Holder whose name has been entered first into the Securities Register shall be entitled to delivery of the certificate relating to that Security, or to receive any notices from the Company (and each notice shall be deemed to be notice to all such joint Holders); and
- 10.4. any one of the joint Holders of any Securities conferring a right to vote may vote either personally or by proxy at any Meeting in respect of such Security as if he were solely entitled thereto, and if more than 1 (one) of such joint Holders is Present at the Meeting, the joint Holder who tenders a vote and whose name has been entered in the Securities Register



before the other joint Holder/s who are Present at the Meeting shall be entitled to vote in respect of that Security.

**11. FRACTIONS OF SECURITIES**

All allocations of Securities resulting in fractions of Securities will be rounded up or down based on standard rounding convention (i.e. allocations will be rounded down to the nearest whole number if they are less than 0,5 (zero comma five) and will be rounded up to the nearest whole number if they are equal to or greater than 0,5 (zero comma five)) resulting in allocations of whole securities and no fractional entitlements; and otherwise treated in accordance with the Listings Requirements, as amended from time to time.

**12. PRE-EMPTION ON ISSUE OF UNISSUED EQUITY SECURITIES**

Subject to the Listings Requirements, unissued equity Securities in the Company which are intended to be issued for cash, shall be offered to the existing Holders *pro rata* to the Voting Power of that Holder's Voting Rights immediately before the offer was made with a reasonable time allowed to subscribe, unless – [S10.1]

- 12.1. the approvals contemplated in clause 9.1 have been obtained;
- 12.2. 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;
- 12.3. the equity Securities are to be issued in terms of an option or Conversion rights;

provided that if any fraction of an equity Security will have to be issued, that fraction will be rounded in accordance with the provisions of clause 11 (*Fractions Of Securities*) . 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 he/she/it declines to accept the equity Securities offered, the Directors may, subject to the foregoing provisions, issue such equity Securities in such manner as they think most beneficial to the Company.

**13. CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER**

- 13.1. 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. When any new Securities are to be issued by the Company, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to her/him/it shall be in certificated or uncertificated form. 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.

13.2. The Company shall, as soon as may be practically possible, convert its share register into a Securities Register which shall reflect –

- 13.2.1. the number of Securities authorised and the number available to be issued and the date of authorisation;
- 13.2.2. the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;
- 13.2.3. the number of Securities of a class that are held in uncertificated form;
- 13.2.4. the number of Securities of that class that are the subject of options or conversion rights which, if exercised, would require Securities of that class to be issued;
- 13.2.5. in the case of Uncertificated Securities, a unique identifying number of the Person to, from or by whom the Securities were issued, re-acquired or surrendered, as the case may be;
- 13.2.6. details of any unlisted Securities issued by the Company.

13.3. As soon as practicable after -

- 13.3.1. issuing any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities evidenced by certificates that it has issued —
  - 13.3.1.1. the names and addresses and identity numbers of the Persons to whom the Securities were issued;
  - 13.3.1.2. those Persons' Electronic Addresses who have furnished them;
  - 13.3.1.3. the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the subscription Consideration;
  - 13.3.1.4. the total number of Securities of a class held by any Person;

- 13.3.1.5. the date on which any such Securities were transferred by the Holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
- 13.3.1.6. the number of, and prescribed circumstances relating to, any Securities –
  - 13.3.1.6.1. that have been placed in trust as contemplated in section (40)(6)(d) by reason of not having been fully paid for; or
  - 13.3.1.6.2. whose transfer has been restricted;
- 13.3.1.7. as regards debt instruments as contemplated in section 43 of the Companies Act –
  - 13.3.1.7.1. the number of those Securities still in issue;
  - 13.3.1.7.2. the names and addresses of the Holders of the Securities;
- 13.3.1.8. the total number of Uncertificated Securities from time to time; and
- 13.3.1.9. any other information prescribed in terms of the Companies Act from time to time.
- 13.3.2. the re-acquisition or surrender of any Securities, the Company must enter or cause to be entered in its Securities register –
  - 13.3.2.1. the date on which the Securities were re-acquired or surrendered to the Company;
  - 13.3.2.2. the distinguishing number or numbers of any Certificated Securities re-acquired or surrendered to the Company;
  - 13.3.2.3. the Consideration for which the Securities were re-acquired by, or surrendered to the Company;
  - 13.3.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be; and
  - 13.3.2.5. any other information prescribed in terms of the Companies Act from time to time.

- 13.4. If the Company has Uncertificated Securities at any time it shall comply with the provisions of sections 52 and 53 of the Companies Act and in particular shall enter or cause to be entered in its Securities Register the total number of such Uncertificated Securities from time to time.
- 13.5. Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe in accordance with the Companies Act and the Listings Requirements save that they must –
- 13.5.1. state on the face –
- 13.5.1.1. the name of the Company;
- 13.5.1.2. the name of the Person to whom the Securities were issued;
- 13.5.1.3. the number and class of Shares and the designation of the series, if any, evidenced by that certificate; and
- 13.5.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE) evidenced by that certificate;
- 13.5.2. be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.
- 13.6. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 13.7. 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.
- 13.8. 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.
- 13.9. 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.
- 13.10. A Person –

- 13.10.1. 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
  - 13.10.2. 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.
- 13.11. 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 –
- 13.11.1. 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;
  - 13.11.2. within 10 (ten) Business Days, or 20 (twenty) Business Days in the case of a Holder who is not resident within South Africa –
    - 13.11.2.1. prepare and Deliver to the relevant Person a certificate in respect of the Securities; and
    - 13.11.2.2. 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.
- 13.12. If the Company issues Securities which are not listed on the JSE, the certificates for those Securities must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.
14. **PROHIBITION AGAINST VOTING OF SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER OR THE COMPANY TAKING ANY LIEN**
- 14.1. The Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy form from the Holder notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder between the Holder and the holder of the Beneficial interest.

14.2. The Company shall not be entitled to take any lien over any Securities issued by it. [S10.12]

**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 as primary regulator with regard to any matter, such approval shall be sufficient for all intents and purposes in order to allow and permit the Company to undertake the act for which the JSE's consent is required.

**16. COMMISSION**

The Company may pay commission not exceeding 10% (ten per cent) 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. [S10.14]

**17. TRANSFER OF SECURITIES [S10.2]**

17.1. Unless otherwise required by statute, there is no restriction on the transfer of Securities. All Securities for which a listing is sought shall be fully paid up.

17.2. The transfer of any Securities which are certificated shall be implemented in accordance with and 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. [S10.2(b)]

- 17.4. The Company must enter in its Securities Register regarding every transfer of any Securities the information contemplated in clause 13.3.1, any reference to issue being read as a reference to transfer, including in the entry -

- 17.4.1. the date of the transfer; and
- 17.4.2. if and to the extent applicable, as regards Shares of any class which are not listed on the JSE and which are to be issued in accordance with the provisions of section 40(5) and (6) of the Companies Act, the value of any Consideration still to be received by the Company on each Share or interest, or the subscription price which has not been fully paid, in respect of Shares of such class,

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.

#### 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 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. [S10.13]

**19. FINANCIAL YEAR**

The financial year of the Company is 30 September.

**20. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 20.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 20.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited. In addition the annual Financial Statements shall reflect the -
  - 20.2.1. Beneficial Interests of the Directors and major Shareholders;
  - 20.2.2. status of any Securities issued by the Company which are not listed on the JSE; and
  - 20.2.3. other information as may be required by the Listings Requirements.
- 20.3. The documents which the Holders and holders of Beneficial Interests, not being Directors, are entitled to inspect and take copies of are set out below, provided that the Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents shall be available –
  - 20.3.1. the MOI;
  - 20.3.2. amendments to the MOI;
  - 20.3.3. records in respect of Directors;
  - 20.3.4. reports to Annual General Meetings;



- 20.3.5. annual Financial Statements;
  - 20.3.6. notices and minutes of Shareholders' Meetings;
  - 20.3.7. communications generally to Holders;
  - 20.3.8. the Securities Register;
- 20.4. 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 and the Register of Directors) unless expressly authorised by the Directors.
- 20.5. 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. If a Holder or holder of Beneficial Interests requests a copy of the annual Financial Statements, the Company shall make same available to such Holder / holder of Beneficial Interests free of charge.

## **21. AUDIT COMMITTEE AND AUDITOR**

- 21.1. At each Annual General Meeting, the Company must elect an Audit committee comprising at least 3 (three) members, unless –
- 21.1.1. the Company is a subsidiary of another company that has an Audit committee; and
  - 21.1.2. the audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.
- 21.2. 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.
- 21.3. Each member of the Audit committee must –
- 21.3.1. be a Director, who satisfies any applicable requirements prescribed by the Minister;
  - 21.3.2. not be –

21.3.2.1. 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;

21.3.2.2. 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

21.3.2.3. 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 21.3.2.1 to 21.3.2.3. 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.

21.4. The Board must appoint a person to fill any vacancy on the Audit committee within 40 (forty) Business Days after the vacancy arises.

21.5. The Audit committee has the following duties –

21.5.1. to nominate, for appointment as Auditor, a Registered Auditor who, in the opinion of the Audit committee, is independent of the Company;

21.5.2. to determine the fees to be paid to the Auditor and the Auditor's terms of engagement;

21.5.3. to ensure that the appointment of the Auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors;

21.5.4. to determine the nature and extent of any non-audit services that the Auditor may provide to the Company subject to compliance with the Companies Act, or that the Auditor must not provide to the Company, or a Related company;

21.5.5. to pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;

- 21.5.6. to prepare a report, to be included in the annual Financial Statements for that financial year –
    - 21.5.6.1. describing how the Audit committee carried out its functions;
    - 21.5.6.2. stating whether the Audit committee is satisfied that the Auditor was independent of the Company; and
    - 21.5.6.3. commenting in any way the Audit committee considers appropriate on the Financial Statements, the accounting practices and the internal financial control of the Company;
  - 21.5.7. to receive and deal appropriately with any concerns or complaints, whether from within or outside the Company, or on its own initiative, relating to –
    - 21.5.7.1. the accounting practices and internal audit of the Company;
    - 21.5.7.2. the content or auditing of the Company's Financial Statements;
    - 21.5.7.3. the internal financial controls of the Company; or
    - 21.5.7.4. any related matter;
  - 21.5.8. to make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
  - 21.5.9. to perform other oversight functions as may be determined by the Board.
- In considering whether, for the purposes of this clause 21.5, a Registered Auditor is independent of the Company, the Audit committee must –
- 21.5.10. ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
    - 21.5.10.1. as Auditor; or
    - 21.5.10.2. for rendering other services to the company, to the extent permitted in terms of the Companies Act;
  - 21.5.11. consider whether the auditor's independence may have been prejudiced –
    - 21.5.11.1. as a result of any previous appointment as Auditor; or

21.5.11.2. having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the Company; and

21.5.12. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,

In relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group.

- 21.6. 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.
- 21.7. 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.
- 21.8. A member of the Audit committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 21.9. 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.
- 21.10. 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 section 91 of 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 –
- 21.10.1. the retiring Auditor is –
- 21.10.1.1. no longer qualified for appointment;
- 21.10.1.2. no longer willing to accept the appointment, and has so notified the company; or
- 21.10.1.3. required to cease serving as auditor, in terms of section 92 of the Companies Act;

- 21.10.2. the Audit committee objects to the re-appointment; or
  - 21.10.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 21.11. 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 –
- 21.11.1. the same Individual may not serve as the Auditor or Designated Auditor for more than 5 (five) consecutive financial years;
  - 21.11.2. 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.
- 21.12. The Auditor –
- 21.12.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
  - 21.12.2. if the Company is a Holding Company, has the right of access to all current and former financial statements of any Subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties; and
  - 21.12.3. is entitled to –
    - 21.12.3.1. attend any Shareholders' Meeting;
    - 21.12.3.2. receive all notices of and other communications relating to any Shareholders' Meeting; and
    - 21.12.3.3. be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions.

21.12.4. may not perform any services for the Company –

21.12.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or

21.12.4.2. as may be prescribed by the Audit committee.

21.13. Subject to clause 21.14, if a vacancy arises in the office of Auditor, the Board –

21.13.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

21.13.2. 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.

21.14. Before making an appointment in terms of clause 21.13 the Board –

21.14.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least 1 (one) Registered Auditor to be considered for appointment as the new Auditor; and

21.14.2. may proceed to make an appointment of a Person proposed in terms of clause 21.14.1 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.

21.15. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm does not by itself create a vacancy in the office of auditor for that year, subject to clause 21.16.

21.16. If, by comparison with the membership of a firm at the time of its latest appointment, less than one half of the members remain after a change contemplated in clause 21.15, that change constitutes the resignation of the firm as auditor of the Company, giving rise to a vacancy.

21.17. The provisions of clauses 33.4 and 33.5 apply *mutatis mutandis* to the auditor.

## 22. SHAREHOLDERS' MEETINGS

22.1. 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 –

- 22.1.1. presentation of –
    - 22.1.1.1. the Directors' report;
    - 22.1.1.2. Audited Financial Statements for the immediately preceding financial year;
    - 22.1.1.3. an Audit committee report;
  - 22.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 22.1.3. appointment of –
    - 22.1.3.1. an Auditor for the ensuing year;
    - 22.1.3.2. an Audit committee;
  - 22.1.4. any matters raised by Holders, with or without advance notice to the Company.
- 22.2. All Shareholders Meetings that are called for in terms of the Listings Requirements must be held in Person and may not be held by means of a written resolution as contemplated in section 60 of the Companies Act. [S10.11(c)]
- 22.3. 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, provided that the proposal of any resolution in terms of section 20(2) and 20(6) of the Companies Act is prohibited. [S10.11(d)] [S10.3]
- 22.4. 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.
- 22.5. 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.

- 22.6. The Board 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 1 (one) or more Written and signed demands for such a Shareholders' Meeting is/are delivered to the Company, and –
- 22.6.1. each such demand describes the specific purpose for which the Shareholders' Meeting is proposed; and
- 22.6.2. 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 per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders' Meeting.
- 22.7. Every Shareholders' Meeting shall be held at such place as the Board determines from time to time. 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.
- 22.8. 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 an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution shall require to be adopted with the approval of at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution. [S10.11(a)] For so long as the Company 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.
- 22.9. A Special Resolution that is required to be considered by Shareholders at a meeting is subject to a minimum notice period of 15 (fifteen) Business Days, save as otherwise lawfully permitted. [S10.11(a)]
- 22.10. An Ordinary Resolution that is required to be considered by Shareholders at a meeting is subject to a minimum notice period of 15 (fifteen) Business Days, save as otherwise lawfully permitted. [S10.11(b)]



- 22.11. Notices of Annual General Meetings and Shareholders Meetings shall be Delivered to all Holders entitled to vote at such meeting who have elected to receive such notice and in accordance with the Companies Act. [S10.11(e)]
- 22.12. Notices shall be sent to the JSE at the same time as notices are sent to Holders. Such notice will also be announced through the official news service of the JSE. [S10.11(f)]
- 22.13. A copy of the annual Financial Statements will be distributed to Holders at least 15 (fifteen) Business Days before the date of any Annual General Meeting at which they are considered. [S10.19]
- 22.14. A Holder entitled to vote, who is Present–
- 22.14.1. is regarded as having received or waived notice of the Shareholders' Meeting if at least the required minimum notice was given;
  - 22.14.2. has a right to –
    - 22.14.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders' Meeting; and
    - 22.14.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
  - 22.14.3. except to the extent set out in clause 22.14.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders' Meeting.
- 22.15. A notice of a Shareholders' Meeting must be in writing, in plain language and must include –
- 22.15.1. the date, time and place for the Meeting, and the Record Date for the Meeting;
  - 22.15.2. the general purpose of the Meeting, and any specific purpose contemplated in clause 22.4, if applicable;
  - 22.15.3. in the case of the Annual General Meeting a copy of the complete Annual Financial Statements for the preceding financial year unless it has distributed them previously;
  - 22.15.4. 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;

22.15.5. a reasonably prominent statement that –

22.15.5.1. 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;

22.15.5.2. a proxy need not be a Holder;

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

22.15.5.4. the proxy may not delegate the authority granted to her/him/it as proxy;

22.15.5.5. 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;

22.15.5.6. participation in the Shareholders' Meeting by Electronic Communication is available, 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.

22.16. A Shareholders' Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 22.17, 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.

22.17. 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 –

22.17.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

22.17.2. the Shareholders' Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.

- 22.18. An immaterial defect in the form or manner of Delivering notice of a Shareholders' Meeting, or an accidental or inadvertent failure in the Delivery 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.
- 22.19. Shareholders Meeting business may be transacted at any Shareholders' Meeting only while a quorum is Present.
- 22.20. The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient Persons Present to exercise, in aggregate, at least 25% (twenty five per cent) 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 [S10.11(h)] the Shareholders' Meeting may not begin unless in addition at least 3 (three) Persons entitled to vote are Present. [S10.11(h)].
- 22.21. A matter to be decided at the Shareholders' Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 22.20, continue to be Present. 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 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.
- 22.22. 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 22.21 cannot be achieved for any one or more matters, the Shareholders' Meeting shall be postponed, without motion, vote or further notice, subject to clause 22.25, for 1 (one) week to the same time on 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.
- 22.23. 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 –
- 22.23.1. held by all of the Persons who are Present at the Shareholders' Meeting at the time; and

22.23.2. 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 Delivered to Holders), as determined at the Shareholders' Meeting.

22.24. A Shareholders' Meeting may not be adjourned beyond the earlier of –

22.24.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or

22.24.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

22.25. No further notice is required to be Delivered by the Company of a Shareholders' Meeting that is postponed or adjourned as contemplated in clause 22.22, unless the location for the Shareholders' Meeting is different from –

22.25.1. the location or time of the postponed or adjourned Shareholders' Meeting; or

22.25.2. a location or time announced at the time of adjournment, in the case of an adjourned Shareholders' Meeting.

22.26. 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 3 (three) Persons with Voting Rights entitled to be exercised at the Shareholders' Meeting, or on that matter, is Present at the Shareholders' Meeting.

22.27. 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 s/he 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.

22.28. At any Shareholders' Meeting a resolution put to the vote shall be decided on a poll, unless before taken it is determined by the chairperson of the Shareholders Meeting that the vote shall be decided on a show of hands.

22.29. Clause 22.28 notwithstanding, it is recorded that a polled vote must be held on a particular matter if before or on the declaration of the result of the show of hands a poll shall be demanded by –

22.29.1. not less than 5 (five) Persons having the right to vote on that matter or, if the matter relates to a resolution in terms of the Listings Requirements, 1 (one) Person;

22.29.2. a Person/s entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total Voting Rights entitled to vote on that matter; or

22.29.3. the chairperson of the Shareholders 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 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.

22.30. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, save that it shall be taken forthwith, 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. 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.

22.31. 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.

- 22.32. Any person entitled to a Share in terms of clause 18 (*Transmission of Securities by Operation of Law*) 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) at least 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 (*Transmission of Securities by Operation of Law*).
- 22.33. 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), 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. 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 which, for clarity, shall be 1 (one) vote for every ordinary Share held.[S10.5(b)] Holders, other than the Holders of ordinary shares and any special shares created for the purposes of Black Economic Empowerment, shall not be entitled to vote on any resolution taken by the company, save for as permitted by the Listings Requirements. In instances that such Holders are permitted to vote at general/annual general meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each share that they hold, provided that their total Voting Right at such a general/annual general meeting may not exceed 24,99% of the total Voting Rights of all Shareholders at such meeting. [S10.5(c)]
- 22.34. 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.
- 22.35. 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.

- 22.36. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in then notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, Shareholders' Meeting before the proxy exercises any rights of the Holder entitled to vote at a Shareholders' Meeting.
- 22.37. 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.
- 22.38. 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.
- 22.39. 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.

## 23. RECORD DATE

- 23.1. The Board shall determine the Record Date in accordance with the Companies Act, the applicable rules of the Central Securities Depository and the Listings Requirements. [S10.15]
- 23.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- 23.2.1. in the case of a Shareholders' Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders' Meeting;
- 23.2.2. in the case of dividends a date subsequent to the declaration date or confirmation of the dividend, whichever is the later; [S10.17(b)]
- 23.2.3. the date of the action or event, in any other case.

23.3. The Company must publish a notice of a Record Date for any matter by –

23.3.1. delivering a copy to each Holder; and

23.3.2. posting a conspicuous copy of the notice –

23.3.2.1. at its principal office;

23.3.2.2. on its web-site, if it has one;

23.3.2.3. on any automated system of disseminating information maintained by the JSE.

**24. ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES**

24.1. The minimum number of Directors shall be 4 (four) and the maximum 24 (twenty four). 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. [S10.16(a)]

24.2. At the Annual General Meeting held in each year 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 3 (three) (shall retire from office. The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot. A retiring Director shall act as a Director throughout the Meeting at which she/he retires. The length of time a Director has been in office shall be computed from the date of her/his last election. 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. [S10.16(h)] If at any Annual General Meeting, the place of any retiring Director is not filled, she/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 her/his place is filled, unless it shall be determined at such Meeting not to fill such vacancy.



### 24.3. Alternate Directors

- 24.3.1. Save in the case of a Board resolution to the contrary, no Director shall be entitled to nominate an Alternate Director for election.
- 24.3.2. Accordingly references to Directors in this clause 24 (*Election Of Directors And Alternate Directors And Vacancies*) shall apply equally to Alternate Directors (save for clause 24.10) but only insofar as an Alternate Director has been nominated pursuant to a Board resolution passed in terms of clause 24.3.1 above.
- 24.3.3. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing her/him as contemplated in clause 24.3.1 during the Director's/s' 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, she/he shall have a separate vote, on behalf of each Director she/he is representing in addition to her/his own vote, if any.
- 24.4. Each of the Directors, other than a Director contemplated in clause 24.9, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), provided that any Shareholder shall have the right to nominate Directors, in accordance with clause 24.6, to serve for a fixed term as a Director. [S10.16(b)]
- 24.5. There are no general qualifications prescribed by the Company for a Person to serve as a 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.
- 24.6. In any election of Directors, the election is to be conducted as
- 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.
- 24.7. No Person shall be elected or appointed as a Director, if she/he is Ineligible or Disqualified and any such election or appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected or appointed as a Director, nor act as a Director.

A Person placed under probation by a court must not serve as a Director unless the order of court so permits.

- 24.8. No election of a Director shall take effect until he/she has delivered to the Company a Written consent to serve.
- 24.9. Any 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 first Annual Shareholders' Meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Shareholders' Meeting. [S10.16(c)]
- 24.10. If the number of Directors falls below 4 (four), the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number of Directors falls below 4 (four) fill the vacancies or call a Shareholders Meeting for the purpose of filling the vacancies. The failure to have 4 (four) Directors during the 3 (three) month period shall not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors or the Company. After the expiry of the 3 (three) month period the remaining Directors shall only be permitted to act for the purposes of filling the vacancies or calling for Shareholders Meetings. [S10.16(d)]
- 24.11. 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 electing Directors.
- 24.12. Notwithstanding anything to the contrary and for so long as the Company is a listed company, life directorships and directorships for an indefinite period are not permissible. [S10.16(k)]

**25. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

- 25.1. A Director or Alternate Director shall cease to hold office as such –
  - 25.1.1. 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);
  - 25.1.2. when her/his term of office contemplated in clauses 24.2 and 24.3 expires;
  - 25.1.3. when she/he dies;

- 25.1.4. when she/he resigns by Written notice to the Company;
- 25.1.5. 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);
- 25.1.6. 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;
- 25.1.7. if she/he is removed by Ordinary Resolution;
- 25.1.8. if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board 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);
- 25.1.9. if she/he files a petition for the surrender of her/his estate or an application for an administration order, or if she/he commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he makes any arrangement or composition with her/his creditors generally;
- 25.1.10. if she/he is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors and is not represented at any such meetings during such 6 (six) consecutive months by an Alternate Director appointed in terms of clause 24.3.1 and the Directors resolve that the office be vacated, provided that the Directors shall have the power to grant any Directors leave of absence for any or an indefinite period;
- 25.1.11. if she/he is otherwise removed in accordance with any provisions of this MOI; and
- 25.1.12. in the case of an Alternate Director, if the Director or Directors in respect of whom the Alternate Director was appointed to act as alternate, for whatsoever reason, cease to hold office as such.

**26. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

26.1. 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 accommodation) 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 accommodation) to and from meetings of the members of the Board committees as determined by a disinterested quorum of Directors. [S10.16(f)] 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.

26.2. 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 major subsidiary of, the Company and in that event, his/her appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors. [S10.16(e)]

**27. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

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

27.2. If the Board adopts a resolution as contemplated in section 45(2) of the Companies Act regarding financial assistance to the Directors / Prescribed Officers and others contemplated in that section, the Company shall Deliver to all Shareholders, notice In Writing of that resolution, and to any trade union representing its employees –

27.2.1. within 10 (ten) Business Days after the Board adopts the resolution, if the total value of all loans, debts, obligations or assistance contemplated in that resolution, together with any previous such resolution during the financial year, exceeds  $1/10^{\text{th}}$  (one tenth) of 1% (one percent) of the Company's net worth at the time of the resolution; or

27.2.2. within 30 (thirty) Business Days after the end of the financial year, in any other case.

**28. GENERAL POWERS AND DUTIES OF DIRECTORS**

- 28.1. Subject to any provision of the Companies Act, the Listings Requirements and this MOI to the contrary, the powers of management granted to the Directors in terms of section 66(1) of the Companies Act are not limited.
- 28.2. The Directors may –
- 28.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
  - 28.2.2. 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.
- 28.3. The Board must appoint a chief executive officer and an executive financial Director, in accordance with the Listings Requirements. Without limiting the foregoing, the Board may from time to time appoint one or more of the Directors to the office of executive director. The appointment of any such Director will be 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. The number of Directors so appointed as executive directors or joint executive directors and/or the holders of any other executive office including a chairperson who holds an executive office, but not a chairperson who is a non-executive Director, shall at all times be less than  $\frac{1}{2}$  (one half) of the number of Directors in office.
- 28.4. The Board may from time to time entrust to and confer upon a chief executive officer 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.

## **29. BOARD COMMITTEES**

- 29.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board, provided that such Board committees perform in terms of charters which have been adopted and approved by the Board and in accordance with the Listings Requirements.
- 29.2. The members of any 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. A Director may be appointed to more than 1 (one) Board committees.
- 29.3. 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.
- 29.4. 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.
- 29.5. 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.
- 29.6. Committees of the Board may consult with or receive advice from any person.
- 29.7. 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.
- 29.8. 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.

## **30. PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES**

- 30.1. For the purposes of this clause 30 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*), "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.

- 30.2. This clause 30 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*) shall not apply to a Director in respect of a decision that may generally affect –
- 30.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) were applicable unless the Directors are acting pursuant to an authorisation given by the Holders for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or
- 30.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 30 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*) to apply.
- 30.3. 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 issued Securities of the Company, that Director may not –
- 30.3.1. approve or enter into any agreement in which the Director or a Related Person has a Personal Financial Interest; or
- 30.3.2. 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.
- 30.4. 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 30.2 prevail), 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.
- 30.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director holds a position which conflicts with, or which may cause

him to act in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

30.6. If a Director (whilst the circumstances contemplated in clause 30.2 are not applicable), 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 -

30.6.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;

30.6.2. must disclose to the meeting any Material Information relating to the matter, and Known to the Director;

30.6.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

30.6.4. if Present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 30.6.2 or 30.6.3;

30.6.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 30.6.2 or 30.6.3;

30.6.6. while absent from the meeting in terms of this clause 30.5 -

30.6.6.1. 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

30.6.6.2. 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

30.6.7. 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.

30.7. 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 30.2), 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.

30.8. 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 30.2), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –

30.8.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 30 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*); or

30.8.2. 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.

### 31. PROCEEDINGS OF DIRECTORS

31.1. A Director authorised by the Board –

31.1.1. may, at any time, summon a meeting of the Directors; and

31.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors.

31.2. 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.

31.3. If all of the Directors –

31.3.1. acknowledge actual receipt of the notice;

31.3.2. are Present at a meeting of the Directors; or

31.3.3. 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.

31.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

- 31.5. 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.
- 31.6. The quorum for a Directors' meeting shall be 3 Persons unless otherwise determined by the Directors from time to time.
- 31.7. The Directors may elect a chairperson of their meetings and determine the period for which she/he is to hold office; but if no such chairperson is elected, or if at any meeting the 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. [S10.16(i)]
- 31.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 31.9. In the case of a tied vote the chairperson may cast a deciding vote except in circumstances where the quorum of directors is 2 (two) Persons and only 2 (two) directors are Present at the meeting. [S10.16(i)]
- 31.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 31.10.1. any declaration given by notice or made by a director as required by clause 30 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*);
- 31.10.2. every resolution adopted by the Board.
- 31.11. Resolutions adopted by the Board –
- 31.11.1. must be dated and sequentially numbered; and
- 31.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 31.12. 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, are/is evidence of the proceedings of that

meeting, or adoption of that resolution, as the case may be, without the necessity for further proof of the facts stated.

- 31.13. A round robin resolution 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. [S10.16(j)] One or more Alternate Directors shall be entitled to sign a round robin resolution if one or more Directors are not present in South Africa to sign, and without his/their vote/s the requisite majority cannot be achieved. For the purposes hereof a round robin resolution means a resolution passed other than at a meeting of Directors, in respect of which, subject to clause 31.10, all the Directors who may at the time be present in South Africa being not less than a majority of Directors, voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them.

## 32. **PRESCRIBED OFFICERS**

- 32.1. 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.
- 32.2. A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

## 33. **APPOINTMENT OF SECRETARY**

- 33.1. The Directors must appoint the secretary from time to time, who –
- 33.1.1. shall be a permanent resident of South Africa and remain so while serving as secretary; and
  - 33.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and
  - 33.1.3. is not a Director of the Company;
  - 33.1.4. need not be a full-time salaried employee of the Company;
  - 33.1.5. may be a juristic Person subject to the following –

- 33.1.5.1. every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
  - 33.1.5.2. at least 1 (one) employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 33.1.1 and 33.1.2;
- 33.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of clause 33.1.3.
- 33.3. If at any time a juristic person or partnership holds office as company secretary of the Company –
  - 33.3.1. the juristic person or partnership must immediately notify the Directors if the juristic person or partnership no longer satisfies the requirements of clause 33.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
  - 33.3.2. the Company is entitled to assume that the juristic person or partnership satisfies the requirements of clause 33.1.3, until the Company has received a notice contemplated in clause 33.3.1; and
  - 33.3.3. any action taken by the juristic person or partnership in performance of its functions as company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of clause 33.1.3 at the time of that action.
- 33.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 33.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted

in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

### 34. DISTRIBUTIONS

#### 34.1. The Company –

34.1.1. may make Distributions from time to time, provided that –

34.1.1.1. any such Distribution –

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

34.1.1.1.2. has been authorised by the Board, by resolution, [S10.17(a)] and, save in the case of –

34.1.1.1.2.1. a *pro rata* payment to all Shareholders (except one which result in Shareholders holding Shares in an unlisted entity which requires the sanction of an Ordinary Resolution); or

34.1.1.1.2.2. cash dividends paid out of retained income; or

34.1.1.1.2.3. capitalisation issues; or

34.1.1.1.2.4. scrip dividends incorporating an election to receive either capitalisation Shares or cash, [S10.7]

it has been sanctioned by Ordinary Resolution. For clarity if any underlying Securities are unlisted when Distributed, sanction by Ordinary Resolution shall be required;

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

- 34.1.1.3. 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; and
    - 34.1.1.4. no obligation is imposed, if it is a distribution of capital, that the Company is entitled to require it to be subscribed again;
  - 34.1.2. must before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 34.1.1,
- and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 34.1.1.3, failing which it must again comply with the foregoing.
- 34.2. 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 34.1.1.1, 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.
- 34.3. All unclaimed –
  - 34.3.1. monies (including but not limited to Distributions other than dividends) due to Holders shall be held in trust indefinitely until lawfully claimed; [S10.17(c)]
  - 34.3.2. dividends (but not including monies referred to in clause 34.3.1 above) remaining unclaimed for a period of not less than 3 (three) years from the date on which they become payable may be forfeited by resolution of the Directors for the benefit of the Company. [S10.17(c)]
- 34.4. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any appropriate third party from time to time.
- 34.5. Notwithstanding anything to the contrary contained herein, if any Holder is entitled to an aggregate dividend of R30.00 (thirty rand) or less in respect of all Certificated Securities held by such Holder on the relevant Record Date for the purposes of receiving of the dividend, then the Board shall be entitled to direct that such Holder's dividend (unless such Holder delivers a Written notice to the Company contrary prior to the date of payment of the dividend) be paid to a charitable organisation nominated by the Board from time to time.
- 34.6. Subject to clause 34.5, all Distributions payable in cash to Holders shall be paid by way of EFT and unless otherwise requested by a Holder in Writing, shall not be paid by cheque.

- 34.7. Every cheque or EFT shall be paid at the risk of the Holder.
- 34.8. 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 Security held by such Holder or joint Holders.
- 34.9. When such EFT is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 34.10. A Distribution may also be paid in any other way determined by the Board and if the directives of the Board in that regard are complied with, the Company shall not be liable for any loss or damage which a Holder may suffer as a result thereof.
- 34.11. Without detracting from the ability of the Company to issue capitalisation Shares, any Distribution may be paid wholly or in part –
- 34.11.1. by the distribution of specific assets;
  - 34.11.2. by the issue of Securities or of Shares, debentures or securities of any other company;
  - 34.11.3. in cash; or
  - 34.11.4. in any other way which the Board or the Company in general meeting may at the time of declaring the Distribution determines.
- 34.12. Payments to Holders shall be made in accordance with the Listings Requirements and capital shall not be repaid to Holders upon the basis that it may be called up again. [S10.8]

### 35. 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.

### 36. ODD LOT OFFERS

If, upon the undertaking of any odd-lot offer made by the Company in accordance with the Listings Requirements, there are Holders holding less than 50 (fifty) ordinary Shares ("odd lots"), then, unless such Holders have either elected to retain their odd lots or to sell their odd lots in accordance with the terms of the odd lot offer made by the Company, such Holders shall be deemed to have agreed to sell their odd lot holdings and the Company shall cause the odd lots of such Holders to be

sold on behalf of such Holders on such basis as the Directors may determine and the Company shall account to such Holders for the proceeds attributable to them.

### 37. **ELECTRONIC SETTLEMENTS OF SECURITY TRANSACTIONS**

Notwithstanding anything to the contrary herein contained, but subject to the Companies Act, the rules of Strate Limited (a company registered and incorporated in South Africa and the electronic settlement system for transactions that take place on the JSE and off-market trades) or any company which replaces it, the Listings Requirements, the rules of any other exchange upon which the Securities of the Company may be quoted or listed from time to time and any other applicable legislation, all Securities transactions may be settled totally electronically.

### 38. **NOTICES**

- 38.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by telegram, telex or 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.
- 38.2. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –
  - 38.2.1. 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
  - 38.2.2. confirms that same can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.
- 38.3. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the Regulations (which is included as **Annexure C** for easy reference but which does no form part of this MOI for purposes of interpretation).
- 38.4. 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.

38.5. 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.

38.6. 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. 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 clause 2 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.

38.7. 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.

38.8. 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.

### 39. INDEMNITY

39.1. For the purposes of this clause 39 (*Indemnity*), "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.

39.2. The Company may –

- 39.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction was based on strict liability;
  - 39.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 39.2.3. directly or indirectly indemnify a Director for –
    - 39.2.3.1. any liability, other than in respect of –
      - 39.2.3.1.1. any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
      - 39.2.3.1.2. any fine contemplated in clause 39.2.1;
    - 39.2.3.2. any expenses contemplated in clause 39.2.2, irrespective of whether it has advanced those expenses, if the proceedings –
      - 39.2.3.2.1. are abandoned or exculpate the Director; or
      - 39.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 39.2.3.1.
- 39.3. The Company may purchase insurance to protect –
- 39.3.1. a Director against any liability or expenses contemplated in clause 39.2.2 or 39.2.3; or
  - 39.3.2. the Company against any contingency including but not limited to –
    - 39.3.2.1. any expenses –
      - 39.3.2.1.1. that the Company is permitted to advance in accordance with clause 39.2.2; or
      - 39.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 39.2.3.2; or

39.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 39.2.3.1.

39.4. The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

**40. REPURCHASES OF SECURITIES**

The Company is authorised to repurchase its Securities subject to compliance with the Companies Act and the Listings Requirements.

**41. FINANCIAL ASSISTANCE**

The Board may 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 Securities of the Company or a related or inter-related company, subject to section 44 of the Companies Act.

**42. 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.

**43. SOCIAL AND ETHICS COMMITTEE**

43.1. The Board shall appoint 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.

43.2. 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.

43.3. The social and ethics committee has the following functions –

43.3.1. to monitor the Company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –

43.3.1.1. social and economic development, including the Company's standing in terms of the goals and purposes of –

43.3.1.1.1. the 10 (ten) principles set out in the United Nations Global Compact Principles; and

43.3.1.1.2. the OECD recommendations regarding corruption;

43.3.1.1.3. the Employment Equity Act; and

43.3.1.1.4. the Broad-Based Black Economic Empowerment Act;

43.3.1.2. good corporate citizenship, including the Company's –

43.3.1.2.1. promotion of equality, prevention of unfair discrimination, and reduction of corruption;

43.3.1.2.2. contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and

43.3.1.2.3. record of sponsorship, donations and charitable giving;

43.3.1.3. the environment, health and public safety, including the impact of the Company's activities and of its products or services;

43.3.1.4. consumer relationships, including the Company's advertising, public relations and compliance with consumer protection laws; and

43.3.1.5. labour and employment, including –

43.3.1.5.1. the Company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and

- 43.3.1.5.2. the Company's employment relationships, and its contribution toward the educational development of its employees;
    - 43.3.2. to draw matters within its mandate to the attention of the Board as occasion requires;
    - 43.3.3. to report, through one of its members, to the Shareholders at the Annual General Meeting on the matters within its mandate.
  - 43.4. A social and ethics committee of a company is entitled to –
    - 43.4.1. require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;
    - 43.4.2. request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;
    - 43.4.3. attend any Shareholders' Meeting;
    - 43.4.4. receive all notices of and other communications relating to any Shareholders' Meeting; and
    - 43.4.5. be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the committee's functions.
  - 43.5. 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.
44. **CORPORATE ACTIONS [S10.9]**
- The following corporate actions shall be undertaken only in accordance with the Companies Act and the Listings Requirements –
- 44.1. an issue of Shares for cash and options and convertible Securities granted or issued for cash;
  - 44.2. a repurchase of Securities; and
  - 44.3. alteration of Share capital, authorised Shares and rights attaching to a class/es of Shares.

## **Annexure A – 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;<sup>1</sup>

**"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 No. 26 of 2005);

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

**"Banks Act"** means the Banks Act, 1990 (Act No. 1194 of 1990);

**"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 No. 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, 2004 (Act No. 36 of 2004);

**"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;

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<sup>1</sup> Regulation 25(3) contains requirements as to what the accounting records must include.

**"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 No. 61 of 1973), other than as an external company as defined in that Act; or
  - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of **Annexure B**;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

**"Competition Act"**, means the Competition Act, 1998 (Act No. 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;

**"effective date"**, with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

**"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 No. 25 of 2002);

**"employee share scheme"** has the meaning set out in section 95(1)(c);

**"exchange"** when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

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

**"ex officio director"** means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

**"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);

**"incorporator"**, when used—

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or



- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"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, could 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, 2004 (Act No. 36 of 2004);

"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;

"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 No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"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);

**"rules"** and **"rules of a company"** means any rules made by a company as contemplated in section 15(3) to (5);

**"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;

**"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;

**"wholly-owned subsidiary"** has the meaning determined in accordance with section 3(1)(b).

**Annexure B – 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 of the Companies Act, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 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 No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

### Annexure C – 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                                     | <p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>   | <p>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.</p> <p>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.</p> <p>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.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p> |
| Any natural Person                             | <p>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;</p> <p>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;</p> <p>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.</p> | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>  |
| A company or similar body corporate            | <p>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;</p> <p>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</p>   | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>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</p>  |

| Person to whom the document is to be delivered | Method of delivery  | Date and Time of Deemed delivery   |
|--|---|--|
|  | business.   | 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.<br><br>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.<br><br>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;<br><br>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.<br><br>On the date and at the time recorded on a receipt for the delivery.   |

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Annexure A – Definitions in the Companies Act

Annexure B – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)

Annexure C – Prescribed methods of delivery in the Regulations

|   |   |
|---|---|
| <b>Disposal of a subsidiary or business</b> | <p>All unvested Allocations will be pro-rated based on the period from the Allocation Date to the effective date of the disposal relative to the full Vesting period.</p> <p>Such pro-rated unvested Allocations as calculated above will remain in the Plan (in other words no accelerated vesting) and will Vest in the normal course to the Participant at the normal Vesting Date and in accordance with the performance of the Company against any Performance Criteria.</p> |
| <b>Death</b>                                | <p>All Performance Criteria are waived and it will be assumed that the targeted performance has been met. All unvested or unexercised Allocations immediately Vest on the date of death. The executor of the deceased estate is informed that he/she has 12 (twelve) months from the date of death to Exercise these Allocations.</p>   |

