

THE COMPANIES ACT, NO. 71 OF 2008

(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

AFRICAN PHOENIX INVESTMENTS LIMITED

("the Company")

**A PUBLIC COMPANY DULY REGISTERED AND INCORPORATED WITH LIMITED LIABILITY UNDER THE
COMPANY LAWS OF THE REPUBLIC OF SOUTH AFRICA**

REGISTRATION NUMBER: 1946/021193/06

REGISTRATION DATE: 30 MARCH 1946

TABLE OF CONTENTS

1	INTERPRETATION	1
2	JURISTIC PERSONALITY	5
3	LIMITATION OF LIABILITY.....	5
4	POWERS OF THE COMPANY	5
5	RESTRICTIVE CONDITIONS	6
6	SHARES.....	6
7	CERTIFICATED AND UNCERTIFICATED SECURITIES	8
8	SECURITIES REGISTER	10
9	TRANSFER OF SECURITIES	12
10	TRANSMISSION OF SECURITIES	14
11	DEBT INSTRUMENTS.....	14
12	CAPITALISATION SHARES	15
13	BENEFICIAL INTERESTS IN SECURITIES.....	15
14	FINANCIAL ASSISTANCE	15
15	ACQUISITION BY THE COMPANY OF ITS OWN SHARES	15
16	SINGLE SHAREHOLDER'S AUTHORITY TO ACT.....	16
17	RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS	17
18	SHAREHOLDERS' MEETINGS	18
19	SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION	22
20	VOTES OF SHAREHOLDERS.....	23
21	PROXIES AND REPRESENTATIVES	25
22	SHAREHOLDERS' RESOLUTIONS.....	28
23	SHAREHOLDERS ACTING OTHER THAN AT A MEETING.....	28
24	COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS	29
25	SINGLE DIRECTOR'S AUTHORITY TO ACT.....	33
26	DIRECTORS' MEETINGS	34
27	DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE	35
28	MANAGING DIRECTOR	36
29	ALTERNATE DIRECTORS	37
30	INDEMNIFICATION OF DIRECTORS	37
31	BORROWING POWERS.....	38
32	COMMITTEES OF THE BOARD.....	38
33	ANNUAL FINANCIAL STATEMENTS	39
34	COMPANY SECRETARY.....	40
35	DISTRIBUTIONS	40
36	ACCESS TO COMPANY RECORDS	43

37	NOTICES	44
38	AMENDMENT OF MEMORANDUM OF INCORPORATION	45
39	WINDING UP	46
40	NON-REDEEMABLE, NON-CUMULATIVE, NON-PARTICIPATING PREFERENCE SHARES ("THE PREFERENCE SHARES")	46
41	DEFINITIONS FOR CLAUSE 40	51

1 INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and similar expressions bear corresponding meanings –

1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;

1.1.2 "**Board**" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;

1.1.3 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

1.1.4 "**Central Securities Depository**" has the meaning set out in section 1 of the Financial Markets Act;

1.1.5 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;

1.1.6 "**Company**" means the Company named on the first page of this document, duly incorporated under the registration number endorsed thereon;

1.1.7 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;

1.1.8 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

1.1.9 "**Financial Markets Act**" means the Financial Markets Act, No 19 of 2012, including any amendment, consolidation or re-enactment thereof;

1.1.10 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;

1.1.11 "**Office**" means the registered office of the Company;

1.1.12 "**Participant**" has the meaning set out in section 1 of the Financial Markets Act;

1.1.13 "**Profits**" includes revenue and capital profits both realised and unrealised;

- 1.1.14 **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.15 **"Republic"** or **"South Africa"** means the Republic of South Africa;
- 1.1.16 **"Securities"** means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.17 **"Securities Register"** means the register contemplated in section 50(1) of the Act and referred to in clause 8 hereof;
- 1.1.18 **"Share"** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.19 **"Shareholder"** means the holder of a Share and who is entered as such in the Securities Register, subject to the provisions of section 57(1);
- 1.1.20 **"Shareholders' meeting"** or **"meeting of Shareholders"** or any other derivation thereof (howsoever termed) with respect to any particular matter concerning the Company, means a meeting of those holders of the Company's issued Securities who are entitled to exercise voting rights in relation to that matter;
- 1.1.21 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;
- 1.1.22 **"Sub-register"** means the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Act;
- 1.1.23 **"Tribunal"** means the Companies Tribunal established in terms of the Act;
- 1.1.24 **"Uncertificated Securities"** has the meaning set out in section 1 of the Financial Markets Act; and
- 1.1.25 **"Uncertificated Securities Register"** means the record of uncertificated securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which this Memorandum of Incorporation is lodged with the Commission for filing;
- 1.2.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –

- 1.2.3.1 a provision of any Shareholders agreement contemplated in section 15(7), the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.3.2 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.3.3 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.4 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.5 an expression which denotes —
 - 1.2.5.1 any gender includes the other genders;
 - 1.2.5.2 a natural person includes a juristic person and *vice versa*;
 - 1.2.5.3 the singular includes the plural and *vice versa*; and
 - 1.2.5.4 figures in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.6 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.7 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.8 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses;
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations;
- 1.2.10 references to Shareholders represented by proxy shall include Shareholders represented by an agent appointed under a general or special power of attorney and references to Shareholders

present or acting in person shall include corporations represented or acting in the manner prescribed in the Act; and

1.2.11 references to a decision or determination or proposal to or resolution of the Shareholders (or any other derivation thereof (howsoever termed), shall be restricted to refer only to a decision, determination or proposal to or resolution of those holders of the Company's issued Securities who are entitled to exercise voting rights in relation to that matter;

1.3 Any reference in this Memorandum of Incorporation to –

1.3.1 "**days**" shall be construed as Gregorian calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;

1.3.2 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;

1.3.3 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.

1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

1.5 Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.

1.6 Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.

1.7 Any reference herein to "**this Memorandum of Incorporation**" or any to other agreement or document shall be construed as a reference to this Memorandum of Incorporation or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

2 JURISTIC PERSONALITY

- 2.1 The Company is a pre-existing Company as defined in the Act and, as such, continues to exist as a public Company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 2.2 The Company is incorporated in accordance with and governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this Memorandum of Incorporation in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- 2.2.3 the other provisions of this Memorandum of Incorporation; and
- 2.2.4 its Rules, if any.
- 2.3 The Company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed shall be signed by any person or persons authorised so to do by resolution of the Directors.
- 2.4 Without derogating from the powers of the Company in clause 4 and its legal capacity, the main business of the Company is to carry on the business of holding or dealing in investments and as otherwise described in the Company's investment policy, as amended, updated and approved by way of ordinary resolution of the Shareholders from time to time.

3 LIMITATION OF LIABILITY

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

4 POWERS OF THE COMPANY

- 4.1 Subject to the provisions of clause 5 (to the extent applicable), the Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

4.2 Except to the extent that clause 5 provides otherwise, the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

5 RESTRICTIVE CONDITIONS

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or prohibit the amendment of any particular provision hereof as contemplated in section 15(2)(c).

6 SHARES

6.1 The Company is authorised to issue –

6.1.1 2 000 000 000 ordinary par value Shares of R0,025 each, of the same class, each of which ranks *pari passu* in respect of all rights and the holder shall be entitled:

6.1.1.1 in respect of each ordinary Share to have the voting rights contemplated in clause 20.1; and

6.1.1.2 participate proportionally in any distribution made by the Company; and receive proportionally the net assets of the Company upon its liquidation;

6.1.2 20 000 000 non-redeemable, non-cumulative, non-participating preference par value Shares of a par value of R0,01, of one or more classes of non-redeemable, non-cumulative, non-participating preference Shares. The Shares in each such class of non-redeemable, non-cumulative, non-participating preference Shares shall rank *pari passu* with the other non-redeemable, non-cumulative, non-participating preference Shares of such class in respect of all rights and be subject to the preferences, rights, limitations and other terms associated with each such class as contemplated in this Memorandum of Incorporation,

which Shares were created prior to 1 May 2011 and the Company does not, for the time being, elect to convert any of the shares into shares with no par value as contemplated in the Act.

6.2 Any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.

6.3 The Board may, subject to clause 6.2, resolve to issue Shares of the Company at any time, but only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.

- 6.4 Preference Shares may be issued and existing Shares may be converted into preference Shares on the basis that they are, or at the option of the Company are liable, to be redeemed on such terms and in such manner as shall be prescribed in this Memorandum of Incorporation or the resolution authorising or effecting such issue or conversion.
- 6.5 The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may not be changed in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Act and may be changed (unless otherwise provided by the terms of issue of the Shares of that class) only by –
- 6.5.1 an amendment of this Memorandum of Incorporation by special resolution of the Shareholders; or
- 6.5.2 the consent in writing of the holders of not less than three-fourths of the issued Shares of that class, or with the sanction of a resolution passed in the same manner as a special resolution of the Company but at a separate meeting of the holders of the Shares of that class; and
- 6.5.3 if any such resolution is proposed at any general meeting of the Company, the holders of the Shares of such class shall be entitled to vote in respect of such resolution at such general meeting, provided that, the voting provisions in clause 18.2 shall be of application.
- 6.6 The Board shall not have the power to –
- 6.6.1 increase or decrease the number of authorised Shares of any class of Shares; or
- 6.6.2 consolidate and reduce the number of the Company's issued and authorised Shares of any class;
- 6.6.3 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital;
- 6.6.4 reclassify any classified Shares that have been authorised but not issued; or
- 6.6.5 classify any unclassified Shares that have been authorised but not issued; or
- 6.6.6 determine the preferences, rights, limitations or other terms of any Shares,
- and such powers shall only be capable of being exercised by the Shareholders by way of ordinary resolution of the Shareholders.
- 6.7 Each Share issued by the Company has associated with it an irrevocable right of the Shareholders to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share.

- 6.8 Subject to any relevant provisions of this Memorandum of Incorporation and the statutes and without prejudice to any special rights previously conferred on the holders of any existing Shares or classes of Shares in the Company, any Shares whether in the initial or in any increased capital may be issued with such preferred, deferred, or other special rights or restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time determine.
- 6.9 Notwithstanding any other provision of this Memorandum of Incorporation, the Board may only issue unissued Shares if such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such Shares are issued for the acquisition of assets by the Company, provided that the Shareholders may at a general meeting, by ordinary resolution, authorise the Directors to issue Shares of the Company at any time and/or grant options to subscribe for Shares as the Directors in their discretion think fit.
- 6.10 Except to the extent that any right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

7 CERTIFICATED AND UNCERTIFICATED SECURITIES

- 7.1 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.
- 7.2 Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.
- 7.3 The provisions of the Act dealing with:
- 7.3.1 Securities as evidenced by a certificate or uncertificated;
 - 7.3.2 Securities Register and numbering;
 - 7.3.3 registration and transfer of certificated Securities;
 - 7.3.4 registration of uncertificated Securities;
 - 7.3.5 transfer of uncertificated Securities; and

- 7.3.6 substitution of certificated or uncertificated Securities,
being unalterable provisions of the Act, shall be of full application to the Company and any transfer or transmission of Securities shall further be subject to clauses 9 and 10.
- 7.4 However, as the Company is a pre-existing Company (as defined in the Act), and having regard to the provisions of item 6(4) of Schedule 5 to the Act, the failure of any Share certificate to satisfy the provisions of section 51(1) to 51(4) of the Act is not a contravention of that section (nor this Memorandum of Incorporation) and does not invalidate that Share certificate.
- 7.5 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.
- 7.6 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –
- 7.6.1 immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and
- 7.6.2 within 10 business days (or 20 business days in the case of a holder of Securities who is not resident within the Republic) prepare and deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.
- 7.7 Each Shareholder shall be entitled to one Share certificate for all the Shares in any one class registered in his name, or to several Share certificates, each for a part of such Shares. Every Share certificate shall specify the number of Shares in respect of which it is issued.
- 7.8 A Share certificate for Shares registered in the names of two or more persons shall be delivered to the person first named in the certificated Securities Register as a holder thereof and delivery of a Share certificate for a Share to such person first named shall be a sufficient delivery to all joint holders of that Share.
- 7.9 In the case of any Share registered in the names of two or more persons as joint holders, the person first named in the certificated Securities Register shall, save as may otherwise be provided for

herein, be the only person recognised by the Company as having any title to such Share and to the Share certificate therefore.

- 7.10 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Share, the sole remaining joint holder or the first named of two or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such Share.
- 7.11 Should any Share certificate be worn out or defaced then upon production thereof to the Company the same may be cancelled and a new Share certificate in lieu thereof be issued, and if any Share certificate be lost or destroyed then upon proof thereof to the satisfaction of the Directors and on such indemnity being given and after such advertisement (if any) of the loss or destruction as the Directors deem adequate at the expense of the party claiming the new Share certificate, a new Share certificate in lieu thereof may be given to the party entitled to such lost or destroyed Share certificate. In case of loss or destruction of a Share certificate, the Shareholder to whom the new Share certificate is given shall repay to the Company all expenses incidental to the investigation by the Company of the evidence of such destruction or loss and to such indemnity and issuing such new Share certificate.
- 7.12 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

8 SECURITIES REGISTER

- 8.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 8.2 As soon as practicable after the issue or transfer of any Securities, as the case may be, the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued, or which have been transferred –
- 8.2.1 the total number of Uncertificated Securities;
- 8.2.2 with respect to Certificated Securities –
- 8.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued or transferred;
- 8.2.2.2 the number of Certificated Securities issued or transferred to each of them;
- 8.2.2.3 the number of, and prescribed circumstances relating to, any Securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;

- 8.2.2.4 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding and the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and
- 8.2.2.5 any other prescribed information.
- 8.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 7.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –
- 8.3.1 forms part of the Securities Register; and
- 8.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 8, any details referred to in clause 8.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 8.4 The Securities Register or Uncertificated Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 8.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 8.6 A certificate evidencing any Certificated Securities of the Company –
- 8.6.1 must state on its face –
- 8.6.1.1 the name of the Company;
- 8.6.1.2 the name of the person to whom the Securities were issued or transferred; and
- 8.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
- 8.6.2 must be signed by 2 persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 8.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 8.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 8.8 If, as contemplated in clause 8.5, all the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

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

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

provided that in terms of Schedule 5 of the Act, if the Company is a pre-existing Company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of clauses 8.6 to 8.8 is not a contravention of the Act and does not invalidate that certificate.

8.9 The Company or the Directors on behalf of the Company, may cause to be kept in any foreign country a branch register or registers of Securities holders resident in such foreign country and the Directors may, subject to the provisions of the Act and applicable law in that foreign country, make and vary such regulations as they may think fit with regard to the keeping of any such register.

9 **TRANSFER OF SECURITIES**

9.1 The transfer of any Share shall be implemented in accordance with the provisions of the Act.

9.2 The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.

9.3 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

9.4 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.

9.5 Every instrument of transfer shall be delivered to the Transfer Office where the registrar of transfers relating to the Share comprised therein is for the time being kept or at such other place as the Directors may prescribe, accompanied (unless the Directors either generally or in any other particular case resolve) by –

9.5.1 the certificate issued in respect of the Certificated Securities to be transferred;

- 9.5.2 such other evidence as the Directors, or other person in charge of such register, may require proving the title of the transferor, or his or her right to transfer the Certificated Securities.
- 9.6 All authorities to sign transfer deeds granted by holders of Securities for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company or its registered office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.
- 9.7 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide.
- 9.8 The Directors may decline to register any transfer of a certificated Share, unless –
- 9.8.1 the instrument of transfer is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it; and
- 9.8.2 the instrument of transfer is in respect of only one class of share.
- 9.9 If the Directors refuse to register a transfer they shall within 30 days after the date on which the instrument of transfer was lodged, send to the transferee notice of refusal.
- 9.10 Any instrument of transfer which the Directors may decline to register (unless the Directors shall resolve otherwise) shall be returned on demand to the person who lodged it.
- 9.11 The transfer of Uncertificated Securities may be effected only –
- 9.11.1 by a Participant or Central Securities Depository;
- 9.11.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and
- 9.11.3 in accordance with section 53 and the rules of the Central Securities Depository.
- 9.12 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.

10 TRANSMISSION OF SECURITIES

- 10.1 The executor of the estate of a deceased shareholder or holder of other Security shall be the only person recognised by the Company as having any title to the Security. In the case of a Security registered in the names of 2 or more holders, the survivor or survivors, or the executor of any deceased Shareholder shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register of the Company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security Holder of the Company.
- 10.2 Subject to the provisions of clause 10.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made: provided that in respect of a transfer other than to himself –
- 10.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 10.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.
- 10.3 The Directors may decline to register any transfer of any Securities to a minor or to a person of unsound mind or to any trustee, curator, executor, administrator or other person in any representative capacity on good cause.
- 10.4 The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a duly certified copy of such agent's authority be produced and filed with the Company.

11 DEBT INSTRUMENTS

The Board may, if so authorised by way of ordinary resolution of the Shareholders –

- 11.1 authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2); and

- 11.2 grant special privileges associated with any debt instruments to be issued by the Company, as set out in section 43(3),

and, save as provided in this clause 11, the authority of the Board in such regard is not limited or restricted by this Memorandum of Incorporation.

12 CAPITALISATION SHARES

The Board shall not, save to the extent authorised by the Shareholders by means of ordinary resolution, have the power or authority to –

- 12.1 approve the issuing of any authorised Shares as capitalisation Shares; or
- 12.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 12.3 resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share, as set out in section 47.

13 BENEFICIAL INTERESTS IN SECURITIES

The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1).

14 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 such Securities, as set out in section 44, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

15 ACQUISITION BY THE COMPANY OF ITS OWN SHARES

- 15.1 In accordance with and subject to the provisions of section 48 and subject to the further provisions of this clause 15 –
- 15.1.1 the Board may determine that the Company acquire a number of its own Shares; and
- 15.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –
- 15.1.2.1 not more than 10%, in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all the subsidiaries of the Company, taken together; and

- 15.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.
- 15.2 Any decision by the Company to acquire its own Shares must satisfy the requirements of section 46 and, accordingly, the Company may not acquire its own Shares unless –
- 15.2.1 the acquisition –
- 15.2.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 15.2.1.2 the Board, by resolution, has authorised the acquisition;
- 15.2.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition; and
- 15.2.3 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 said acquisition.
- 15.3 A decision of the Board referred to in clause 15.1.1 –
- 15.3.1 must be approved by a special resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or prescribed officer of the Company, or a person related to a Director or prescribed officer of the Company; and
- 15.3.2 is subject to the requirements of sections 114 and 115 if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued Shares of any particular class of the Company's Shares.
- 15.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –
- 15.4.1 Shares held by one or more subsidiaries of the Company; or
- 15.4.2 convertible or redeemable Shares.
- 15.5 The Company is entitled to apply its Share premium account for the payment of the premium over the par value of the Shares so acquired in terms of this clause 38 and section 48 of the Act.

16 SINGLE SHAREHOLDER'S AUTHORITY TO ACT

- 16.1 If, at any time, as contemplated in section 57(2), the Company has only 1 Shareholder –

- 16.1.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this Memorandum of Incorporation; and
- 16.1.2 the provisions of clauses 17 (Record Date for Exercise of Shareholder Rights), 18 (Shareholders' Meetings), 19 (Shareholders' Meetings by Electronic Communication), 20 (Votes of Shareholders), 22 (Shareholders' Resolutions) and 23 (Shareholders Acting Other Than at a Meeting) shall not apply to the Company.
- 16.2 If at any time every Shareholder is also a Director —
- 16.2.1 any matter that is required to be referred by the Board to the Shareholders for decision may be decided by the Shareholders at any time after being referred by the Board, without notice or compliance with any other internal formalities, provided that —
- 16.2.1.1 every such person was present at the Board meeting when the matter was referred to them in their capacity as Shareholders;
- 16.2.1.2 sufficient persons are present in their capacity as Shareholders to satisfy the quorum requirements set out in clause 18.4.1;
- 16.2.1.3 a resolution adopted by those persons in their capacity as Shareholders has at least the support that would have been required for it to be adopted as an ordinary resolution or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 16.2.2 when acting in their capacity as Shareholders, those persons are not subject to the provisions of sections 73 to 78 relating to the duties, obligations, liabilities and indemnification of Directors.

17 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

- 17.1 The Board may set a record date for the purpose of determining which Shareholders are entitled to —
- 17.1.1 receive notice of a Shareholders' meeting;
- 17.1.2 participate in and vote at a Shareholders' meeting;
- 17.1.3 decide any matter by written consent or by Electronic Communication;
- 17.1.4 exercise pre-emptive rights, as contemplated in section 39 of the Act;
- 17.1.5 receive a distribution; or
- 17.1.6 be allotted or exercise other rights.

- 17.2 A record date determined by the Board –
- 17.2.1 may not be earlier than the date on which the record date is determined or more than 10 business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and
- 17.2.2 must be published to the Shareholders in a manner that satisfies any prescribed requirements.
- 17.3 If, at any time, the Board fails to determine a record date for any action or event, the record date shall be –
- 17.3.1 in the case of a meeting, the latest date by which the Company is required to give Shareholders notice of that meeting; or
- 17.3.2 in any other case, the date of the relevant action or event.

18 SHAREHOLDERS' MEETINGS

18.1 Calling of Shareholders' Meetings

- 18.1.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.
- 18.1.2 Subject to clause 16.1 and to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –
- 18.1.2.1 at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or
- 18.1.2.2 whenever required in terms of the Act to fill a vacancy on the Board; or
- 18.1.2.3 when required in terms of clause 18.1.3 or by any other provision of this Memorandum of Incorporation.
- 18.1.3 The Board shall call a meeting of Shareholders if 1 or more written and signed demands calling for such a meeting are delivered to the Company and –
- 18.1.3.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 18.1.3.2 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% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

18.1.4 If at any time there shall not be within the Republic, sufficient Directors capable of acting to form a quorum, any Director or any two ordinary Shareholders of the Company may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

18.2 **Annual General Meetings**

18.2.1 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders –

18.2.1.1 initially, no more than 18 months after the date of its incorporation;

18.2.1.2 thereafter, once in each calendar year, but no more than 15 months after the date of the previous annual general meeting,

provided that any such annual general meeting shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation.

18.2.2 Each annual general meeting of the Company contemplated in clause 18.2.1 shall provide for at least the following business to be transacted –

18.2.2.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;

18.2.2.2 the election of Directors, to the extent required by the Act or by this Memorandum of Incorporation;

18.2.2.3 the appointment of an auditor and an audit committee for the following financial year; and

18.2.2.4 any matters raised by the Shareholders, with or without advance notice to the Company.

18.2.3 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act.

18.3 **Location and Notices of Meetings**

18.3.1 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

18.3.2 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 business days' notice.

18.4 **Quorum and Adjournment of Meetings**

18.4.1 The quorum requirement for a Shareholders' meeting to begin or for a matter to be considered are as set out in section 64(1) without variation and, accordingly –

18.4.1.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

18.4.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda,

provided that, if the Company has more than 2 Shareholders, a meeting may not begin, or a matter begin to be debated, unless –

18.4.1.3 at least 3 Shareholders are present at the meeting; and

18.4.1.4 the requirements of clauses 18.4.1.1 and 18.4.1.2 are satisfied.

18.4.2 The time periods allowed in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 hour after the appointed time for a meeting to begin, the requirements of clause 18.4.1 –

18.4.2.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 week;

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

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

18.4.2.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 18.4.1 may extend the 1 hour limit allowed in clause 18.4.2 for a reasonable period on the grounds that –

18.4.2.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or

- 18.4.2.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 18.4.1.
- 18.4.3 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders, or an immaterial defect in the manner or form of giving notice of any such meeting, shall not invalidate any resolution passed at any such meeting.
- 18.4.4 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 18.4.2 unless the location for the meeting is different from –
- 18.4.4.1 the location of the postponed or adjourned meeting; or
- 18.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 18.4.5 If at the time appointed in terms of clause 18.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 18.4.1 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 18.4.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.
- 18.4.7 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.
- 18.5 **Conduct of Meetings**
- 18.5.1 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 18.5.2 If there is no such chairperson, or if at any meeting he or she is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 18.5.3 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- 18.5.4 The chairperson of a Shareholders' meeting may —
- 18.5.4.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
- 18.5.4.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 18.5.5 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless —
- 18.5.5.1 it is brought to the attention of the chairperson at the meeting; and
- 18.5.5.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 18.5.6 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised —
- 18.5.6.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or
- 18.5.6.2 at the meeting or adjourned meeting at which the result of the poll was announced,
- and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 18.5.7 Even if he is not a Shareholder —
- 18.5.7.1 any Director; or
- 18.5.7.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof),
- may attend and speak at any general meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

19 SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION

- 19.1 The Company may conduct a Shareholders' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and

the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

- 19.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or
- 19.1.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 19.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

20 VOTES OF SHAREHOLDERS

- 20.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –
 - 20.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and
 - 20.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder, or if the share capital is divided into shares of no par value, shall be entitled to 1 vote in respect of each Share held; and
 - 20.1.3 the holders of Shares other than ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as specifically provided for in this Memorandum of Incorporation or the Act, and where such holders of shares are entitled to vote, their voting rights shall be limited as set out in clause 20.2 below.
- 20.2 If clause 20.1.3 applies, the holders of such other Shares, including holders of preference shares (“Affected Shareholders”) shall be entitled to vote at the meeting of Shareholders as contemplated in clause 20.1.2, provided that the votes of the Shares of that class held by the Affected Shareholders (“Affected Shares”) shall:
 - 20.2.1 not carry any special rights or privileges; and

- 20.2.2 the Affected Shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Affected Shares held by him and in respect of which he is entitled to vote bears to the aggregate amount of the nominal value of all shares issued by the Company (and which carry the right to vote on the matter at hand),
- provided that the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% of the total voting rights of all Shareholders (including the votes of the Affected Shareholders) at such meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 20.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote by –
- 20.3.1 at least 5 persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 20.3.2 a person who is, or persons who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% of the voting rights entitled to be voted on that matter; or
- 20.3.3 the chairperson of the meeting.
- 20.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 20.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 20.5 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled which shall be that proportion of the total votes in the Company which the aggregate amount of the nominal value of the shares held by him (and in respect of which he is entitled to vote) bears to the aggregate amount of the nominal value of all the shares issued by the Company (and which carry the right to vote on the matter at hand) or if the share capital is divided into Shares of no par value, shall be entitled to one vote in respect of each share he holds.

- 20.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 20.7 A poll demanded on the election of a chairperson (as contemplated in clause 18.5.2) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 20.8 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.
- 20.9 In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.
- 20.10 Where there are joint registered holders of any Share, any 1 of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.
- 20.11 The board of any Company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –
- 20.11.1 the person so authorised may exercise the same powers of the authorising Company, entity or person as it could have exercised if it were an individual holder of Shares; and
- 20.11.2 the authorising Company, entity or person shall lodge a resolution of the directors of such Company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

21 PROXIES AND REPRESENTATIVES

- 21.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –

21.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder;
or

21.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60,

provided that a Shareholder may appoint more than 1 proxy to exercise voting rights attached to different Securities held by the Shareholder, where each such proxy is appointed only in respect of a specified portion of the Shares held by the Shareholder in the Company.

21.2 A proxy appointment –

21.2.1 must be in writing, dated and signed by the Shareholder; and

21.2.2 remains valid for –

21.2.2.1 1 year after the date on which it was signed; or

21.2.2.2 any longer or shorter period expressly set out in the appointment,

unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act, except at an adjourned meeting or on a poll demanded at a meeting or adjourned meeting in cases where the original meeting (which was adjourned) was held within the validity period applicable to that proxy.

21.3 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting.

21.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –

21.4.1 a Shareholder has the right to appoint 2 or more persons concurrently as proxies as set out in section 58(3)(a) ("**Concurrent Proxies**"), provided that the instrument appointing such Concurrent Proxies clearly states the order in which the votes of the Concurrent Proxies are to take precedence in the event that both or all of the Concurrent Proxies are present, and vote, at the meeting concerned;

21.4.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);

21.4.3 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights; and

21.4.4 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7),

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

21.5 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time and shall be deemed to confer authority to demand a poll—

"I/We _____

being a Shareholder of _____ Limited do hereby appoint

_____ or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at _____ on _____ and at any adjournment thereof as follows:—

	In favour of	Against	Abstain
Special Resolution 1
Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

SIGNED this _____ day of _____ in the year of _____ .

SHAREHOLDER'S SIGNATURE

(Note -- A Shareholder entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a Shareholder of the Company)."

22 **SHAREHOLDERS' RESOLUTIONS**

- 22.1 For an ordinary resolution to be approved it must be supported by more than 60% of the voting rights exercised on the resolution, as provided in section 65(7).
- 22.2 For a special resolution to be approved it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9).
- 22.3 No matters, except those matters set out in section 65(11) and any other matter required by the Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution of the Company.
- 22.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

23 **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 23.1 In accordance with the provisions of section 60 of the Act, a resolution that could be voted on at a Shareholders' meeting (including in respect of the election of Directors) may instead be –
- 23.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 23.1.2 voted on in writing by such Shareholders within a period of 20 business days after the resolution was submitted to them.
- 23.2 A resolution contemplated in clause 23.1 –
- 23.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 23.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 23.3 Within 10 business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause 23, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

24 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

24.1 Number of Directors

In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee, or a social and ethics committee, the Board must comprise at least 3 Directors and the Shareholders shall be entitled by ordinary resolution to determine such maximum number of Directors as they from time to time shall consider appropriate.

24.2 Election and Appointment of Directors

24.2.1 The Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such an election, being the Shareholders of the Company and the holders of any other Securities of the Company to the extent that the terms on which such Securities were issued confer such rights.

24.2.2 In any election of Directors –

24.2.2.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled; and

24.2.2.2 in each vote to fill a vacancy –

24.2.2.2.1 each vote entitled to be exercised may be exercised once; and

24.2.2.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate,

provided only that, in the event that the Company only has 1 Shareholder, the above provisions of this clause 24.2.1 will not apply and the election of Directors shall take place in such manner as the Shareholder shall determine.

24.2.3 The Company shall be entitled to have appointed or *ex officio* Directors as contemplated in section 66(4).

24.2.4 In addition to the Directors elected in accordance with the above provisions of this Memorandum of Incorporation, and provided that such elected Directors comprise at least 50% of the number of Directors –

24.2.4.1 each Shareholder shall be entitled, for every 20% (twenty percent) of the voting rights of the Company held by such Shareholder, to appoint 1 director to the Board;

- 24.2.4.2 a Shareholder who has appointed a Director in terms of this clause 24.2.4 may remove its nominee from the Board and replace such nominee so removed or who has otherwise ceased to be a Director; and
- 24.2.4.3 the appointment or removal of a Director, by a Shareholder in terms of this clause 24.2.4 shall be effected by notice to the Company and will be operative immediately upon receipt by the Company of such notice and a written consent by such person to serve as a Director as contemplated in section 66(7)(b), provided that such notice and consent shall be accompanied by a written acknowledgement by such Director that he shall be deemed *ipso facto* to have resigned from office as such forthwith upon him being required to cease holding office as a Director in terms of clause 24.2.4.2, which written acknowledgement shall irrevocably appoint the Shareholder who appointed him as his agent to sign all such documents and to do all such things as are necessary or required to give effect to and implement his resignation, and shall further confirm that such Director shall have no claims against either the Company, or the Shareholders, arising from or relating to such resignation.
- 24.2.5 Notwithstanding the provisions of clause 24.2 and subject to the provisions of the Act, the Company may by ordinary resolution remove any Director, including a Director appointed by a Shareholder in terms of clause 24.2.4.1 before the expiration of his period of office by ordinary resolution.
- 24.3 **Eligibility and Rotation**
- 24.3.1 Apart from satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company, however this provision may from time to time be varied by the Company by an ordinary resolution taken by Shareholders.
- 24.3.2 The elected Directors shall rotate in accordance with the following provisions of this clause 24.3.2 –
- 24.3.2.1 at the annual general meeting of the Company contemplated in clause 18.2.1.1, 1/3 of all the elected Directors shall retire from office, and at each subsequent general meeting referred to in clause 18.2.1.2, 1/3 of the elected Directors for the time being, or if their number is not 3 or a multiple of 3, the number nearest to 1/3 , but not less than 1/3 , shall retire from office, provided that if an elected Director is appointed as managing Director or as an employee of the Company in any other capacity, the contract under which he is appointed may provide that he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of Directors;

- 24.3.2.2 the elected Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 24.3.2.3 a retiring Director shall be eligible for re-election;
- 24.3.2.4 the Board shall provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance.
- 24.3.2.5 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto;
- 24.3.2.6 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the retiring Director shall, if willing, continue in office until the dissolution of the general meeting in the next year, and so on from year to year until his place is filled, unless he is unwilling, whereupon the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 18.4.2 to 18.4.5 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

24.4 **Certain Powers of the Directors**

- 24.4.1 The Board has the power to –
- 24.4.1.1 fill any vacancy on the Board on a temporary basis, as set out in section 68(3) (and subject to section 70); and
- 24.4.1.2 exercise all powers and perform any of the functions of the Company, as set out in section 66(1),
- unless the powers of the Board in this regard are limited or restricted by this Memorandum of Incorporation.
- 24.4.2 The Board shall implement its investment policy in accordance with the terms thereof and may make use of financial gearing in its underlying investments should its investment policy as amended from time to time, provide for the Company to do so.
- 24.4.3 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and

with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the Shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them. Any reference to a power of attorney herein shall include any other form of delegation including the right to sub-delegate.

- 24.4.4 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 24.4.5 The management of the Company shall be vested in the Directors who, in addition to the powers and authorities conferred upon them hereunder and in terms of the Act, may exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by the Act, expressly directed or required to be exercised or done by the Company in general meeting (including without derogating from the generality of the foregoing or from the rights of the Shareholders), the power to resolve that the Company be wound up) but subject nevertheless to such management and control not being inconsistent with the provisions of this Memorandum of Incorporation or with any resolution passed at any general meeting of the Shareholders.
- 24.4.6 The Directors may authorize the payment of any donation by the Company to such religious, educational, charitable, public or other bodies, funds, associations or persons as may seem to them advisable or desirable in the interests of the Company and limited in aggregate to 1% profit after tax in any one financial year.
- 24.4.7 The Directors may delegate or allocate any of their powers to an executive officer or other committee consisting of such member or members of their body or any other person/s they think fit. Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Directors.
- 24.4.8 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting

as aforesaid, or that any of them were disqualified from or had vacated office, be valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

24.4.9 The Directors in office may act notwithstanding any vacancy in their body, but the remaining Directors must as soon as possible, and in any event not later than three months from the date that the number of Directors falls below the minimum, fill the vacancy or call a general meeting for the purposes of filling the vacancy. After the expiry of the three month period, and so long as their number is reduced below the minimum number fixed in accordance with this Memorandum of Incorporation, the Directors may act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

24.5 **Directors' Interests**

24.5.1 A Director may be employed or hold any other office or place of profit under the Company or any subsidiary of the Company in conjunction with the office of Director, (except that of auditor) for such period and on such terms as to appointment, remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise, as a disinterested quorum of the Directors may determine.

24.5.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any Company promoted by the Company or in which the Company may be interested as Shareholder or otherwise and (except insofar as otherwise decided by the Directors), provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

24.5.3 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or to their knowledge any person who is a related person to them) has a personal financial interest in any matter to be considered by the Board.

25 **SINGLE DIRECTOR'S AUTHORITY TO ACT**

If at any time the Company has only 1 Director, as contemplated in section 57(3), that Director may, subject to any restrictions or limitations imposed in terms of section 66(1), exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities, and the provisions of sections 71(3) to (7), 73 and 74 shall not apply in respect of the governance of the Company.

26 DIRECTORS' MEETINGS

- 26.1 Save as may be provided otherwise herein, the Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 26.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 minutes of the time appointed for holding the meeting, the Directors present shall choose 1 of their number to be chairperson of such meeting.
- 26.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 26.4 The Board has the power to –
- 26.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 26.4.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 26.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4), provided that –
- 26.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any 2 Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors;
- 26.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 26.4.3.1.

26.4.4 subject to clause 26.5.1, proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5),

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

26.5 The quorum requirement for a Directors' meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clauses 26.5.1 and 26.5.5, and accordingly –

26.5.1 if the Company has failed to give the required notice for the convening of any meeting of the Board or there is any other defect in the giving of such notice the meeting may, subject to any quorum requirements, proceed provided that each Director (whether or not in attendance at the meeting) in writing acknowledges actual receipt of the notice and in writing waives any rights he or she might otherwise have enjoyed as a result of such short or defective notice;

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

26.5.3 each Director has 1 vote on a matter before the Board;

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

26.5.5 in the case of a tied vote –

26.5.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; and

26.5.5.2 the matter being voted on fails.

26.6 Resolutions adopted by the Board –

26.6.1 must be dated and sequentially numbered; and

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

26.7 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 evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

27 **DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

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

- 27.2 Any Director who —
- 27.2.1 serves on any executive or other committee; or
- 27.2.2 devotes special attention to the business of the Company; or
- 27.2.3 goes or resides outside South Africa for the purpose of the Company; or
- 27.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,
- may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.
- 27.3 The Directors may also be paid all their travelling and other expenses properly and necessarily incurred by them in connection with —
- 27.3.1 the business of the Company; and
- 27.3.2 attending meetings of the Directors or of committees of the Directors of the Company.
- 27.4 The Board may, as set out in and subject to the requirements of section 45, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

28 **MANAGING DIRECTOR**

- 28.1 The Directors may from time to time appoint 1 or more of their body to the office of managing Director or joint managing Directors of the Company, or to be the holder of any other executive office in the Company, including the office of chairperson for such term and at such remuneration as they may think fit (subject only to the requirements of section 66(8) and (9)), and may revoke such appointment subject to the terms of any agreement entered into in any particular case, provided that the period of office of a managing Director appointed in terms of an agreement shall be for a maximum period of 5 years at any one time. A Director so appointed shall be subject to retirement in the same manner as the other Directors except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.
- 28.2 The managing Director or joint managing Directors, as the case may be, shall be eligible for reappointment at the expiry of any period of appointment. Subject to the provisions of any contract between himself and the Company, a managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

- 28.3 A Director appointed in terms of the provisions of clause 28 to the office of managing Director of the Company, or to any other executive office in the company, may be paid in addition to the remuneration payable in terms of clause 27, such remuneration (not exceeding a reasonable maximum in each year) in respect of such office as may be determined in accordance with a special resolution of Shareholders of the Company.
- 28.4 The Directors may from time to time entrust to and confer upon a managing Director, for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with 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, withdraw, alter or vary all or any of such powers.
- 28.5 A managing Director appointed pursuant to the provisions of this clause 28 shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Directors in terms hereof he shall be deemed to derive such powers directly from this clause.

29 ALTERNATE DIRECTORS

- 29.1 Any Director shall have the power to nominate another person approved by the Board to act as alternate Director in his place during his absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company.
- 29.2 The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms of this Memorandum of Incorporation, or if the Director who appointed him ceases to be a Director, or gives notice to the Company Secretary that the alternative Director representing him shall have ceased to do so. An alternate Director shall look to the Director who appointed him for his remuneration and he shall have no claim against the Company for his remuneration.

30 INDEMNIFICATION OF DIRECTORS

- 30.1 The Company may –
- 30.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);
- 30.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or

30.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),
and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

30.2 The provisions of clause 30.1 shall apply *mutatis mutandis* in respect of any former Director, alternate director, prescribed officer or member of any committee of the Board, including the audit committee.

31 **BORROWING POWERS**

31.1 Subject to the provisions of clause 31.2 and the other provisions of this Memorandum of Incorporation, the Board may from time to time –

31.1.1 borrow for the purposes of the Company such sums as they think fit; and

31.1.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities (subject to clause 6), mortgage or charge upon all or any of the property or assets of the Company.

31.2 The Board shall procure (but as regards subsidiaries of the Company only insofar as by the exercise of voting and other rights or powers of control exercisable by the Company they can so procure) that the aggregate principal amount at any one time outstanding in respect of moneys so borrowed or raised by –

31.2.1 the Company; and

31.2.2 all the subsidiaries for the time being of the Company (excluding moneys borrowed or raised by any of such companies from any other of such companies but including the principal amount secured by any outstanding guarantees or suretyships given by the Company or any of its subsidiaries for the time being for the indebtedness of any other Company or companies whatsoever and not already included in the aggregate amount of the moneys so borrowed or raised),

shall not exceed the aggregate amount at that time authorised to be borrowed or secured by the Company or the subsidiaries for the time being of the Company (as the case may be).

32 **COMMITTEES OF THE BOARD**

32.1 The Board may –

32.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or

- 32.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
- 32.2 If and for as long as it is required to do so in terms of the Act, and unless the Company is exempted from doing so by the Tribunal in terms of section 72(5), the Board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 and the Regulations.
- 32.3 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

33 ANNUAL FINANCIAL STATEMENTS

- 33.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
- 33.1.1 the Act;
- 33.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 33.1.3 this Memorandum of Incorporation.
- 33.2 The Company shall each year prepare annual financial statements within 6 months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 33.3 The Company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 33.4 The annual financial statements of the Company shall be prepared and audited in accordance with the provisions of section 30 of the Act. Not less than 15 business days before the date of the Annual General Meeting, a summarised form of the financial statements to be presented at such meeting and directions for obtaining a copy of the complete annual financial statements for the preceding financial year shall be made available to every shareholder.
- 33.5 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall satisfy, as to form and content, the financial reporting standards of IFRS and, subject to and in accordance with IFRS –

- 33.5.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 33.5.2 show the Company's assets, liabilities and equity, as well as its income and expenses and any other prescribed information;
- 33.5.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 33.5.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

34 **COMPANY SECRETARY**

- 34.1 The Company must appoint a Company secretary.
- 34.2 The Company secretary must have the requisite knowledge of, or experience in respect of, relevant laws and be a permanent resident of the Republic.
- 34.3 The Board must fill any vacancy in the office of Company secretary within 60 business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

35 **DISTRIBUTIONS**

- 35.1 Subject to the provisions of the Act, and particularly section 46, the Company may make a proposed distribution if such distribution –
 - 35.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
 - 35.1.2 is authorised by resolution of the Board.
- 35.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable or specifically provided in the resolution declaring such payment.
- 35.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 35.4 The Board may from time to time declare and pay to the Shareholders such interim distributions as the Directors consider to be appropriate.
- 35.5 All unclaimed distributions may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, provided that distributions unclaimed for a period of 3 years from

the date on which they were declared may be declared forfeited by the Board for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.

35.6 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by electronic transfer for credit to an account nominated in writing by the Shareholder or by cheque or warrant sent by post and addressed to —

35.6.1 the holder at his registered address; or

35.6.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the Share, at his registered address; or

35.6.3 such person and at such address as the holder or joint holders may in writing direct.

35.7 Every such cheque or warrant shall —

35.7.1 be made payable to the order of the person to whom it is addressed; and

35.7.2 be sent at the risk of the holder or joint holders.

35.8 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid or for the loss or misdirection of any electronic transfer.

35.9 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.

35.10 When such cheque or warrant is paid or the making of such electronic transfer to whomsoever effected, it shall discharge the Company of any further liability in respect of the amount concerned.

35.11 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 Shareholder may suffer as a result thereof.

35.12 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part —

35.12.1 by the distribution of specific assets; or

35.12.2 by the issue of Shares, debentures or securities of the Company or of any other Company; or

35.12.3 in cash; or

- 35.12.4 in any other way which the Board may at the time of declaring the distribution determine.
- 35.13 Where any difficulty arises in regard to such distribution, the Board may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 35.14 The Board may —
- 35.14.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and
- 35.14.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Board deems expedient.
- 35.15 The Board of the Company may hold in trust (or pay to another entity to hold in trust) small cash dividends or other cash distributions, due to any Shareholders of the Company who hold the Company's Securities in certificated form, without interest if, in the discretion of the Board, the payment of such dividends or other distributions would be uneconomical for any such Shareholders and/or for the Company. Such retained amounts shall be added to subsequent dividends payable to affected Shareholders and the accumulated amounts shall be released to an affected Shareholder where the aggregate of the accumulated amount due to such Shareholder exceeds minimum amount of R25,00 or such other amount as proposed by the Board from time to time. Such retained amounts shall also be released to affected Shareholders who specifically request payment or where such affected Shareholders' shareholdings are transferred out of the Company's certificated Securities Register.
- 35.16 The Board may, before declaring or recommending any dividend or other distribution, set aside out of the amount available for dividends, such sums as they think proper as a reserve fund or an addition thereto. The Board may divide the reserve fund into such special funds as they think fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the same upon such investments (other than Shares of the Company) as they may select without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not.
- 35.17 The reserve fund shall, at the discretion of the Board, be applicable for the equalisation of dividends or other distributions or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company or for any of the objects or powers of the Company, or for any other purpose to which the Profits of the

Company may be properly applied, and the Board may at any time divide among the Shareholders by way of bonus, or special dividends, any part of the reserve funds which they in their discretion may determine not to be required for the purposes aforesaid.

36 ACCESS TO COMPANY RECORDS

36.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –

36.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof, and any Rules of the Company;

36.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);

36.1.3 all –

36.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 years after the date of any such meeting; and

36.1.3.2 annual financial statements required by the Act for a period of 7 years after the date on which each such statements were issued;

36.1.4 notice and minutes of all Shareholders' meetings, including –

36.1.4.1 all resolutions adopted by them, for 7 years after the date each such resolution was adopted; and

36.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;

36.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 years after the date on which each of such communications was issued; and

36.1.6 the Securities Register of the Company.

36.2 A person not contemplated in clause 36.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

36.3 A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26, and in accordance with the rules of the Central Securities Depository. Within 5 business days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details referred to in section 50(3)(b) at the close of business on the day on which the request for inspection was made.

37 NOTICES

37.1 All notices (including a Share Certificate) intended or required to be given by the Company to any Shareholder of the Company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.

37.2 Each Shareholder of the Company –

37.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and

37.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication (and by doing so the Shareholder concerned shall be deemed to have confirmed that notices sent to such address can conveniently be printed by that Shareholder within a reasonable time and at a reasonable cost as contemplated in section 6(10)).

37.3 Any Shareholder who has not named any such address, shall be deemed to have waived his right to be served with a notice.

37.4 Any Shareholder whose address in the Securities Register is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.

37.5 Save as determined in this Memorandum of Incorporation or in the Act, no Shareholder other than a registered Shareholder whose address appears in the Securities Register as being in South Africa, shall be entitled to receive any notice from the Company.

37.6 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.

37.7 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

37.8 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.

37.9 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

38 AMENDMENT OF MEMORANDUM OF INCORPORATION

38.1 Subject to section 17(1) of the Act and Schedule 1, this Memorandum of Incorporation may only be altered or amended by way of a special resolution of the Shareholders in accordance with section 16(1)(c) of the Act, except if such amendment is in compliance with a court order as contemplated in section 16(1)(a) of the Act.

38.2 The Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

38.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail; and

38.2.2 filing a notice of the alteration.

38.3 An amendment of this Memorandum of Incorporation will take effect from the later of –

38.3.1 the date on, and time, at which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and

38.3.2 the date, if any, set out in the said notice of amendment, save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the commission.

38.4 Amendments, for the avoidance of doubt, shall include, but shall not be limited to:

38.4.1 the creation of any class of Shares;

- 38.4.2 the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
- 38.4.3 the conversion of one class of Shares into one or more other classes;
- 38.4.4 an increase in the number of authorised Shares in a class;
- 38.4.5 a consolidation of securities;
- 38.4.6 a sub-division of securities; and/or
- 38.4.7 the change of the name of the Company.

39 **WINDING UP**

- 39.1 If the Company shall be wound up, whether voluntarily or otherwise, the liquidator may with the sanction of a special resolution, realise all assets of the Company and divide among the Shareholders *in specie* any part of the assets of the Company, and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the Shareholders as the liquidator with the like sanction shall think fit, and if thought expedient any such division so sanctioned may be otherwise than in accordance with the legal rights of the Shareholders of the Company and in particular any class may be given preferential or special rights or may be excluded altogether or in part.

40 **NON-REDEEMABLE, NON-CUMULATIVE, NON-PARTICIPATING PREFERENCE SHARES ("THE PREFERENCE SHARES")**

The following are rights, privileges, restrictions and conditions which attach to the preference Shares:

- 40.1 Subject to clauses 40.2 and 40.3, each preference Share will rank as regards to dividends and a repayment of capital on the winding-up of the Company prior to the ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Shares.
- 40.2 Each preference Share shall confer on the holder of the preference Share the right to a return of capital on the winding-up of the Company, in an amount equal to the aggregate of the par value paid up thereon and a premium (calculated by dividing the total premium paid up in respect of all preference Shares issued of the same class then in issue by the total number of such preference Shares of such class then in issue) together with an amount equal to all arrear dividends in respect of such Share (as contemplated in clause 40.5.3) calculated to the date of repayment, in priority to any payment in respect of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Share.

40.3 Each preference Share will confer on the holder of the preference Share the right to receive out of the Profits of the Company a non-cumulative preference cash dividend which shall be determined in the manner set out in clause 40.4 in priority to any payment of dividends to the holder of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Shares provided that such right shall be subject to the Company declaring such dividend in the manner set out in this Memorandum of Incorporation and in accordance with the Act.

40.4 The preference dividend shall be calculated:-

40.4.1 in accordance with the following formula:-

$$A = \frac{B \times C \times D}{365}$$

WHERE:-

A = the preference dividend per preference Share;

B = the preference dividend rate, in respect of the relevant period for which the dividend is calculated as specified in clause 40.4.2 below;

C = the number of days of the relevant period for which the dividend is calculated as specified in clause 40.4.2 below; and

D = the deemed capital value of the preference Share as defined in clause 41.3;

40.4.2 in respect of each preference Share, each period referred to in "C" above shall:

40.4.2.1 commence on the issue date of that preference Share if there were no other preference Shares of the same class in issue on the day preceding that issue date; or

40.4.2.2 in all other cases (including in respect of an issue of a preference Share at a time when there were other preference Shares of the same class in issue on the day preceding its issue date), commence on the date following the previous preference dividend date for preference Shares of that class;

and end on (and include) the next succeeding preference dividend date for preference Shares of that class;

40.5 the preference dividends shall, if declared:-

40.5.1 accrue on the preference dividend date (being the last day of the relevant period contemplated in clause 40.4.2 in respect of which such dividend is calculated) in arrear;

- 40.5.2 be payable on such preference dividend date; and
- 40.5.3 failing payment by such relevant preference dividend date, be considered to be in arrear.
- 40.6 If a preference dividend is not declared by the Company in respect of the period to which such preference dividend relates, the preference dividend shall not accumulate and will accordingly never become payable by the Company whether in preference to payments to any other class of Shares in the Company or otherwise. The Company will not declare an ordinary dividend for the period in question unless the preference dividend for such period has been declared in full.
- 40.7 If there is an amendment or amendments to the Income Tax Act that results in the preference dividends being taxable in the hands of the preference Shareholders and which results in payment of the preference dividends becoming a deductible expense for the Company, provided such amendment is uniformly applicable to all corporate taxpayers and not only because of the particular circumstances of the Company or any holder of the preference Shares, the percentage of the prime rate used to calculate the adjusted prime rate and accordingly the preference dividend rate will be increased by the Company. Such increase will be limited to the extent that the Company incurs less cost in paying preference dividends, which cost savings it would not have obtained but for such amendments to the Income Tax Act. If such amendments to the Income Tax Act do not result in the Company incurring lesser costs in paying preference dividends, then, notwithstanding that such amendment may result in a decrease in the after-tax returns of any preference Shareholder on its holding of preference Shares, no change shall be made to the percentage of the prime rate used to calculate the adjusted prime rate and accordingly the preference dividend rate. The Company shall be entitled to require its auditors to verify whether it is obliged to increase such percentage of the prime rate in accordance with this clause 40.7. The auditors, in deciding whether such increase is required in terms of this clause 40.7, shall act as experts and not as arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Company and all preference Shareholders. The costs of such auditors in making such determination shall be borne and paid by the Company.
- 40.8 Notwithstanding clause 40.7, the preference dividend per preference Share payable to preference Shareholders, after the dividend tax law change becomes effective, shall be increased (“grossed-up”), which gross-up will be equal to the taxation saving benefit, from time to time, that the Company will receive per such preference Share as a result of the dividend tax law change becoming effective (and taking into consideration any other taxes (including income tax) and amendments to the tax legislation which diminishes any such benefit from time to time). Such adjustment shall:

- 40.8.1 only be made in respect of tranches of preference Shares issued before the dividend tax law change becomes effective or to tranches where it is agreed in respect of such issue that such adjustment shall be applicable;
- 40.8.2 only take into account such after-tax saving benefits which are attributable to dividends on the preference Share concerned and not to dividends on other Shares;
- 40.8.3 be applied uniformly in respect of each preference Share in such tranche and shall not be determined with reference to the particular circumstances of any particular holder of any of the preference Shares; and
- 40.8.4 be achieved by adjusting the preference dividend rate.
- 40.9 The preference Shares shall not confer on any holder thereof the right to any participation in the Profits or assets of the Company (including, but not limited to the right to participate in any of the surplus assets on the winding-up of the Company) except as set out in clauses 40.2, 40.3, 40.4, 40.5 and 40.7 (including clause 40.8).
- 40.10 Notwithstanding any provisions to the contrary contained herein, at any time after the issue of any preference Shares and for so long as such preference Shares remain issued:-
- 40.10.1 the literal terms of the preference Shares may not be varied;
- 40.10.2 no Shares in the capital of the Company ranking, as regards rights to dividends or, on a winding-up as regards return of capital, in priority to the preference Shares, shall be created or issued, without the prior sanction of a resolution passed at a separate class meeting of the holders of the preference Shares in the same manner *mutatis mutandis* as a special resolution. Nothing in clause 40.10 shall oblige the Company to obtain such sanction from the preference Shareholders should the Company wish to issue further preference Shares (whether of the same class as the preference Shares or not) ranking *pari passu* with the preference Shares. In this regard, a preference Share of a different class shall not be deemed to rank ahead of the preference Shares merely due to the rights attaching to those preference Shares differing from the rights attaching to the preference Shares (including without limiting the generality of the foregoing, rights differing as to the coupon rate applicable to the dividend, the date of payment of dividends, any adjustment in accordance with clause 40.7 (including clause 40.8), the redemption of the preference Shares, the redemption amount payable on redemption, the conversion of the preference Shares and whether the preference Shares are cumulative or non-cumulative).
- 40.11 The Company shall not be entitled at any time after the date of issue of a class of preference Shares listed on the JSE to create any further Shares in its authorised Share capital (whether of the same class as such preference Shares or not) ranking *pari passu* or in priority to such preference Shares

without the prior sanction of a resolution passed at a separate class meeting of the holders of the preference Shares in the same manner *mutatis mutandis* as a special resolution.

- 40.12 The Company shall be obliged to give the preference Shareholders notice, in terms of the Companies Act, of any meeting of preference Shareholders. At every meeting of preference Shareholders, the provisions of this Memorandum of Incorporation relating to general meetings of Shareholders shall apply, *mutatis mutandis*, except that a quorum at any such class meeting shall be three holders of preference Shares entitled to vote, personally present, or if any such preference Shareholder is a body corporate, represented at that meeting, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of this Memorandum of incorporation relating to adjourned general meetings shall apply *mutatis mutandis*.
- 40.13 The holders of the preference Shares shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the preference Shares, unless any one or more of the following circumstances prevail at the date of the meeting:-
- 40.13.1 the preference dividend, or any part thereof, remains in arrear and unpaid as determined in accordance with clause 40.5.3 after a period of seven days has elapsed from the relevant preference dividend date; and/or
- 40.13.2 a resolution of the Company is proposed which directly affects any of the rights attached to the preference Shares or the interests of the holders of the preference Shares, including, but not limited to, a resolution for the winding-up of the Company or for the reduction of its capital, in which event the preference Shareholders shall be entitled to vote only on such resolution; and/or
- 40.13.3 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole or the greater part of the assets of the Company.
- 40.14 At every general meeting of the Company at which holders of the preference Shares as well as other classes of shares are present and entitled to vote, a preference Shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the shares held by him bears to the aggregate amount of the nominal value of all shares issued by the Company, provided that, the restrictive voting provisions contained in clause 20.2 shall be of application.
- 40.15 Notwithstanding that the preference Shares are non-redeemable, should the Shareholders of the Company, by special resolution, resolve to vary the rights attaching to the preference Shares so as to make the preference Shares, or any of them, redeemable, the Company shall be entitled, but not obliged, to utilise all or part of the Share premium account (subject to the Act) in providing for any premium payable on the redemption of such preference Shares.

41 DEFINITIONS FOR CLAUSE 40

For purposes of clause 40:-

- 41.1 “average prime rate”, in respect of any period contemplated in clause 40.4.2 for which a preference dividend is to be calculated, means the daily average of the prime rate which prevailed from (and including) the first day of that period until (and including) the applicable preference dividend calculation date for that period;
- 41.2 “business day” means any other day other than a Saturday, Sunday or statutory public holiday in the Republic;
- 41.3 “deemed capital value” means the deemed value of each preference Share for the purposes of calculating the preference dividend, being an amount determined by the Directors on the first allotment date, notwithstanding the issue price of each preference Share which may vary because of a difference in the premium at which the preference Shares may be issued from time to time;
- 41.4 “the first allotment date” means the date when the first allotment and issue of the preference Share/s, which are subject to the provisions of clause 40, takes place;
- 41.5 “Income Tax Act” means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 41.6 “issue price” in respect of any of the preference Shares means the aggregate of the par value of a preference Share plus the premium at which such preference Share was allotted and issued;
- 41.7 “preference dividend” means a non-cumulative, non-participating, preference cash dividend, calculated in accordance with clause 40.4;
- 41.8 “preference dividend calculation date” means the date immediately preceding the date of the declaration of a preference dividend by the Company, if such preference dividend is declared, provided that if any such calculation date is not a business day then such calculation date shall be the immediately preceding day which is a business day;
- 41.9 “preference dividend date” means such dates in each year, being approximately six months apart, as may be determined by the Directors of the Company in their sole discretion, and which shall be set by the Directors irrespective of whether or not a preference dividend is or will be declared for the approximate six-month period in question;
- 41.10 “preference dividend rate” means, subject to clause 40.7 or 40.8, as the case may be, a rate that will not exceed a percentage, determined by the Directors on the first allotment date, of the average prime rate;

41.11 “preference Shares” means and includes each tranche of non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each issued by the Company being:

41.11.1 the 20 000 000 non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each in the Share capital of the Company Issued by the Company on or about 23 March 2005; and

41.11.2 each other tranche of non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each in the Share capital of the Company issued by the Company from time to time,

on the basis that the Company shall, when and where necessary and appropriate, classify such tranches into classes of preference Shares by appropriate references derived from the letters of the alphabet so as to differentiate between classes of preference Share issued based on, for instance, such Shares bearing a different preference dividend rate (as defined in clause 41.10) or the dividends of such Shares being calculated with reference to a different deemed capital value per preference Share (as defined in clause 41.3) or for any other appropriate reason. The Company may classify any two or more such tranches of preference Shares by the same reference where appropriate, notwithstanding their different issue dates, and thereafter all such preference Shares bearing the same reference shall be treated as the same class of preference Shares.

41.12 “prime rate” means the publicly quoted basic rate of interest from time to time (expressed as a percentage per year) quoted by The Standard Bank of South Africa Limited (“SBSA”) as being its prime overdraft rate as certified by any manager of SBSA, whose appointment and/or designation need not be proved. A certificate from any manager of SBSA as to the prime rate at any time shall constitute *prima facie* proof thereof;

41.13 “dividend tax law change” means the amendment to the Income Tax Act contemplated in section 56 of the Revenue Laws Amendment Act 60 of 2008 in terms of which a new dividends tax had replaced the secondary tax on companies and as a result of which the liability for tax on dividends has shifted from the Company (being the party liable for secondary tax on companies under the current tax regime) to the individual preference Shareholders.