



**RAUBEX  
GROUP**  
MEMORANDUM OF  
INCORPORATION





MEMORANDUM OF INCORPORATION OF RAUBEX GROUP LIMITED

Registration number 2006/023666/06  
referred to herein as "the Company"

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## Interpretation

(a) In this Memorandum of Incorporation:

- (i) "**Board**" means the board of directors for the time being of the Company;
- (ii) "**CSD**" means the Central Securities Depository as defined in section 1 of the Securities Services Act;
- (iii) "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended from time to time;
- (iv) "**Companies Regulations**" means the Companies Regulations promulgated from time to time by the Minister in terms of the Companies Act, as amended from time to time;
- (v) "**CSDP**" means a depository institution accepted by a CSD as a "participant" in terms of the [electronic securities depository] operated by JSE Limited in the Republic of South Africa;
- (vi) "**ECTA**" means the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time;
- (vii) "**JSE**" means the JSE as defined in the JSE Listings Requirements;
- (viii) "**JSE requirements**" means all rules, regulations, requirements and rulings of the JSE, including, without limitation, the Listings Requirements of the JSE, provided that any requirements in relation to such JSE requirements shall only apply for as long as any of the securities of the Company are listed on the relevant stock exchange;
- (ix) "**King III Code**" means the King Code of Governance for South Africa 2009;
- (x) "**King III Report**" means the King Report on Governance for South Africa 2009;
- (xi) "**legal representative**" in relation to any shareholder or securities holder, means a representative contemplated by article 15.4;
- (xii) "**Listings Requirements**" means, in relation to securities of the Company listed on the JSE and for so long as they are so listed, the JSE Listings Requirements and in relation to any of the securities listed on any other exchange and for so long as they are so listed, the requirements and rules of any other stock exchange upon which any of the securities of the Company may be listed at the relevant time;
- (xiii) "**MOI**" meaning this Memorandum of Incorporation, including the Schedules attached hereto, as amended from time to time;
- (xiv) "**CEO**" means the chief executive officer and/or managing director of the Company for the time being;
- (xv) "**ordinary shares**" means the ordinary shares in the capital of the Company, ranking *pari passu* in all respects, with the rights, privileges benefits and conditions attaching thereto as described in Schedule Two (Authorised securities of the Company);
- (xvi) "**ordinary shareholders**" means the registered holders for the time being of ordinary shares;
- (xvii) "**publish**" or "**deliver**" means, in relation to any document that is required to be published or delivered to shareholders in terms of this MOI, that the document in question is prepared in plain language and, if applicable, in the prescribed form, in accordance with section 6(4) and (5), and is delivered to each shareholder at the address of the shareholder (either its business or postal or residential address, or by email) as recorded in the securities register of the Company (regulation 32(2)(a), articles 24.2 and 44.1);

- (xviii) a reference to an "**article**" by number refers to the corresponding article in this MOI;
  - (xix) a reference to a "**regulation**" by number refers to the corresponding regulation in the Companies Regulations;
  - (xx) a reference to a "**schedule**" by number refers to the corresponding schedule attached to this MOI;
  - (xxi) a reference to a "**section**" by number refers to the corresponding section of the Companies Act;
  - (xxii) words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in or particular part of the Companies Act shall when used in this MOI in a similar context bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;
  - (xxiii) the provisions of this MOI shall be interpreted in the same way as those provisions of the Companies Act which form part of the constitution of the Company in terms of the section 19(1)(c) are interpreted;
  - (xxiv) each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravening any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the modified part or remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or not contravening the Companies Act or is not void;
  - (xxv) words signifying the singular shall include the plural, and *vice versa*; and
  - (xxvi) words signifying one gender include the other genders.
- (b) The schedules attached to this MOI form part of this MOI.
  - (c) The standard forms of Memorandum of Incorporation for a public company referred to in Regulation 15(1) shall not apply to the Company.
  - (d) This MOI is in a form unique to the Company, as contemplated by section 13(1)(a)(ii).

### **Adoption of MOI**

This MOI was adopted by special resolution of the shareholders.

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## 1. CATEGORISATION: PUBLIC COMPANY

The Company is a profit company, being a public company in terms of section 8(2)(d) of the Companies Act:

- 1.1 the Company may offer its securities to the public; and
- 1.2 the transferability of the securities of the Company listed or to be listed on the JSE, is not restricted.

## 2. CONSTITUTION OF THE COMPANY

- 2.1 The Company is, in terms of section 19(1)(c) read with section 15(2), governed by:
  - 2.1.1 the unalterable and alterable provisions of the Companies Act which have not been altered in terms of this MOI; and
  - 2.1.2 the unalterable and alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions with respect to such provisions set out in this MOI; and
  - 2.1.3 the other provisions of this MOI.
- 2.2 This MOI does not necessarily refer to or address any of the provisions of the constitution of the Company contemplated by article 2.1.1. The persons bound by this MOI in terms of section 15(6), being for the time being the Company and each shareholder, director and prescribed officer of the Company and each member of a Board committee, or in terms of section 57(1) including any person who is entitled to exercise any voting rights in relation to the Company, are required to familiarise themselves with the relevant provisions of the Companies Act including those contemplated by article 2.1.1 and the provisions of this MOI, as this MOI read together with the provisions of the Companies Act contemplated by article 2.1.1 forms the constitution of the Company (section 15(1), (2) and (6) read with section 19(1)(c)).

## 3. CONFLICTS WITH THE COMPANIES ACT

### 3.1 Notification of conflicts

Any person bound by this MOI who has formed the view or forms the view or otherwise becomes aware that any provision of this MOI or any agreement entered into by the Company contravenes or is or has become inconsistent with any provision of the Companies Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2) or otherwise, shall within 10 (ten) business days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency (section 15(1)).

### 3.2 No obligation to act inconsistently with the Companies Act

- 3.2.1 Notwithstanding anything to the contrary contained elsewhere in this MOI, no person bound by this MOI shall be required, obliged or entitled in terms of this MOI to do or omit to do something in terms of this MOI to the extent that it is inconsistent with or contravenes any provision of the Companies Act.
- 3.2.2 Any person bound by the MOI who has complied with article 3.1 and has done something or has failed to do something to the extent necessary so as not to be inconsistent with or contravene any provision of the Companies Act or to avoid personal liability under section 218(2) or otherwise in terms of the Companies Act, but as a result thereof has contravened any provision of this MOI which is void or is declared void by a court in terms of section 218(1), shall not for that reason alone be liable or responsible therefor under or in terms of this MOI with respect to any claim by any person bound by this MOI and entitled under or in terms of this MOI to do so, arising out of or in connection with any such act or omission (sections 15(6) and 218).

### 3.3 Board must address inconsistencies

If any provision of the Companies Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Companies Act in terms of article 3.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of this MOI or otherwise, the Board shall expeditiously:

- 3.3.1 assess that amendment to the Companies Act and/or that inconsistency or contravention;
- 3.3.2 obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and
- 3.3.3 propose amendments to the agreement in question or propose the special resolutions required to appropriately amend the MOI, as the case may be, as necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

#### 4. **AMENDING THE MOI**

##### 4.1 **By special resolution**

Without limiting or detracting from any other provision in the Companies Act providing for the amendment of this MOI, any provision of this MOI may be amended by separate special resolutions of each class of shareholders in terms of section 16(1)(c), subject to prior approval by the JSE. Amendment, for the avoidance of doubt, shall include, but shall not be limited to:

- 4.1.1 the creation of any class of shares;
- 4.1.2 the variation of any preferences, rights, limitations and other terms attaching to any class of shares;
- 4.1.3 the conversion of one class of shares into one or more other classes;
- 4.1.4 an increase in the number of securities of a class;
- 4.1.5 a consolidation of securities;
- 4.1.6 a sub-division of securities; and/or
- 4.1.7 the change of the name of the Company.

##### 4.2 **By the Board**

- 4.2.1 The board of a company, or an individual authorised by the Board, may alter the Company's rules, or its MOI, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the documents, by:
  - 4.2.1.1 publishing a notice of the alteration, in any manner required or permitted by the MOI or the rules of the Company; and
  - 4.2.1.2 filing a notice of the alteration (section 17(1)).

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

- 5.1 Subject to article 5.2, the Company has all the legal capacity and powers of an individual, in terms of and subject to section 19(1)(b).
- 5.2 The purposes, powers and capacity of the Company are, in terms of section 19(1)(b)(ii) read with section 15(2)(b), subject to the restrictions, limitations and qualifications set out in Schedule One (Restrictive conditions).

#### 6. **CONSTRUCTIVE NOTICE**

- 6.1 The Board shall, whenever the Company or any of its representatives engages with a third party, assess if and when a third party should be provided with a copy of (or an extract from) a document relating to the Company which has been filed with the Commission or is accessible for inspection at an office of the Company, so that such third party must be regarded as having received actual notice of the contents of such document (or extract from such document) (section 19(4)).
- 6.2 The Board shall ensure that the Company's Notice of Incorporation and/or any applicable Notice of Amendment from time to time amending this MOI prominently and specifically draws attention to article 5.2 and Schedule One (Restrictive conditions) as amended and updated from time to time, in terms of section 19(5) and section 13(3), so that all persons must be regarded as having received notice and knowledge of the contents of article 5.2 and Schedule One (Restrictive conditions) as amended and updated from time to time (even if they do not have actual knowledge of such contents).

## **7. NAME OF THE COMPANY**

### **7.1 Provision of the name by the Company**

The Board shall ensure that the Company provides its full registered name or registration number to any person on demand in terms of section 32(1)(a).

### **7.2 No misstatements by the Company**

The Board shall ensure that the Company does not misstate its name or registration number in a manner likely to mislead or deceive any person, as contemplated in section 32(1)(b).

### **7.3 Persons acting on behalf of the Company**

Any person bound by this MOI must not use the name or registration number of the Company in a manner likely to convey an impression that the person is acting or communicating on behalf of the Company, unless the Company has authorised that person to do so, as contemplated by section 32(3)(a).

### **7.4 False forms of the name**

Any person bound by this MOI must not use a form of name for any purpose if, in the circumstances, the use of that form of name is likely to convey a false impression that the name is the name of the Company or the name of another company, as contemplated by section 32(3)(b).

### **7.5 Use of the Company name**

The Board shall ensure that the Company has its name and registration number mentioned in legible characters in all notices and other official publications of the Company, including such notices and publications in electronic format as contemplated in ECTA, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all letters, delivery notes, invoices, receipts and letters of credit of the Company, as contemplated by section 32(4).

## **8. RULES**

8.1 The Board shall not have the power or authority to make, amend or appeal rules in terms of section 15(3) to (5).

8.2 The ordinary shareholders by special resolution may make or amend or repeal any rules as may be recommended and proposed from time to time by the Board.

8.3 The notice convening a general meeting for this purpose, shall be accompanied in each instance by:

8.3.1 a written confirmation from the Board that any such new rule or proposed amendment of any rule constitutes only a necessary or incidental rule relating to the governance of the Company in respect of matters not addressed by the Companies Act or the MOI; and

8.3.2 a written explanation by the Board explaining the reason for and the effects of such new rule, or amendment or repeal of a rule, as the case may be.

8.4 Any rules made, amended or repealed by the ordinary shareholders as contemplated by this article read with section 15(3) must be filed with the Commission by the Board not earlier than 10 (ten) business days immediately after the date of passing of the special resolution approving the new rule, or the amendment or repeal of a rule.

8.5 The Board shall be responsible for preparing, or causing to be prepared, and recommending and proposing to the shareholders, such rules as are required by this MOI to be prepared (including but not limited to the rules contemplated in articles 9.3.2, 9.8.5.5, 27.7 and 32.1.1).

## **9. FINANCIAL AFFAIRS**

### **9.1 registered office**

The registered office of the Company from time to time shall be at such location within the Republic of South Africa as the Board may from time to time determine (section 23(3)).

## 9.2 Company records and accounting records

All company records contemplated by section 24, and all accounting records contemplated by section 28 and regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the Company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine (section 25 and 28(2)).

## 9.3 Access to company records, accounting records and other information

9.3.1 No person shall have any right to inspect or make copies of any accounting records or document of the Company, other than a director of the Company in the discharge of his or her services as director or a person who is granted the right to do so in terms of the Companies Act or other legislation or laws binding on the Company, or as authorised by the Board, or otherwise as permitted in terms of this article 9.3 (section 26 and regulation 23).

9.3.2 The Board shall ensure that adequate and sufficient safeguards and controls are in place (and constituted as rules in terms of article 8) and applied to ensure that persons who are entitled in terms of section 26(1) (namely any person who holds or has a beneficial interest in any securities issued by the Company), read with this article 9.3 and regulation 23, shall on proper application have access to the Company records contemplated by section 24, in terms of and subject to section 26. Such safeguards and controls must address, separately, appropriate measures to properly identify persons who are legally entitled to, and to verify the entitlement of any such persons applying to the Company for, access in terms of section 26, including application by:

9.3.2.1 a registered shareholder, or a registered holder of other securities;

9.3.2.2 an owner of securities (whether or not a registered shareholder or a registered holder of other securities);

9.3.2.3 a holder of a beneficial interest in securities (whether or not the owner and/or the registered shareholder or registered holder of the securities in question); or

9.3.2.4 any representative of one or more of the aforementioned (including any representative, proxy, agent or nominee).

9.3.3 Registered shareholders (even if they are nominees) may be treated by the Company as constituting persons who hold or have a beneficial interest in securities issued by the Company for purposes of section 26(1), or to the extent necessary registered shareholders will be treated as being entitled in terms of section 26(6) to access to the Company records on the same basis provided for in, and subject to, section 26(1).

9.3.4 The Board may from time to time in its discretion, grant any person, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Company, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No. 2 of 2000, as amended, provided further that the confidential information of the Company is adequately safeguarded and protected (section 26(3)).

## 9.4 Financial year of the Company

9.4.1 The financial year of the Company, or any changes to the financial year, shall be such period or adjusted period as the Board may from time to time determine, subject to section 27(4).

9.4.2 The Company must notify the Commissioner of any change in its financial year end (regulation 25(1)).

## 9.5 Annual financial statements

9.5.1 Each year the Company shall prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide any required notice of an annual general meeting of the Company (section 30(1) and article 22.6).

9.5.2 A copy of the relevant annual financial statements must be delivered to shareholders at least 15 (fifteen) business days before the scheduled date of an annual general meeting at which they will be considered.

## 9.6 **Audit of annual financial statements**

The annual financial statements of the Company are required in terms of section 30(2)(a) of the Companies Act to be audited.

## 9.7 **Annual returns**

9.7.1 The Company shall file with the Commission an annual return in the prescribed form with the prescribed fee, and within the prescribed time, in compliance with section 33(1) read with regulation 30.

9.7.2 The annual return of the Company shall include the prescribed information to the extent it applies to the Company, and the audited annual financial statements of the Company (section 33(1)(a) and (b)).

9.7.3 In the absence of a company secretary for the time being (whose duty to do so is prescribed in article 9.8.3.5 read with section 88(2)(g)), the financial manager of the Company (or in his/her absence at any time for whatever reason any other person nominated for this purpose by the Board) shall be the person responsible for the Company's compliance with the requirements of Chapter 2 Part C (Transparency, accountability and integrity of companies), and Chapter 3 (Enhanced Accountability and Transparency) of the Companies Act, for purposes of section 33(3).

## 9.8 **Extended accountability requirements in Chapter 3**

### 9.8.1 **Application of Chapter 3 to the Company**

9.8.1.1 The Company, being a public company, is required in terms of section 34(2) to comply with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Companies Act.

9.8.1.2 The Company must:

9.8.1.2.1 appoint a person to serve as company secretary in the manner and for the purposes set out in article 9.8.3;

9.8.1.2.2 appoint a person to serve as an auditor, in the manner and for the purposes set out in article 9.8.4; and

9.8.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in article 9.8.5,

provided that no person who is ineligible (other than by virtue of being a juristic person) or disqualified from serving as a director of the Company in terms of section 69(7) or (8) or article 26.6 shall be appointed as the Company secretary, auditor or a member of the audit committee.

9.8.2 Register of company secretary and auditor

9.8.2.1 The Company must, in accordance with section 85, establish or cause to be established, and maintain, a register of its company secretaries and auditors.

9.8.2.2 Within 10 (ten) business days of appointing a company secretary or auditor, or of termination of such an appointment, the Company must file with the Commission a notice of the appointment or termination, as the case may be (section 85(3)).

9.8.3 Company secretary

9.8.3.1 The Company may appoint a person as a company secretary on such terms and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that if the Company appoints a company secretary, the Company must appoint a person:

9.8.3.1.1 who has the requisite knowledge of, or experience in, relevant laws; and

9.8.3.1.2 who is a permanent resident of the Republic; and

9.8.3.1.3 who is preferably not a director of the Company (see paragraph 98 of the King III Report).

- 9.8.3.2 Without in any way limiting or excluding any other grounds for removing a person as the Company secretary, any person who is the Company secretary for the time being who:
- 9.8.3.2.1 in the reasonable opinion of the Board, does not have the requisite knowledge of, or experience in relevant laws; or
  - 9.8.3.2.2 ceases to be a permanent resident of the Republic; or
  - 9.8.3.2.3 ceases to be a person eligible or qualified to serve as a director of the Company as contemplated in the proviso in article 9.8.1.2; or
  - 9.8.3.2.4 becomes a director of the Company,
- shall cease to be the Company secretary on delivery to that person in the discretion of the Board of a notice by the Board terminating the appointment as company secretary, which notice from the Board if it is to be given shall be given within 60 (sixty) days of the Board forming its opinion or becoming aware of any of the circumstances contemplated in this article 9.8.3.2.
- 9.8.3.3 A juristic person or partnership complying with the requirements set out in section 87 may be appointed by the Company to hold the office of company secretary.
- 9.8.3.4 The Company secretary shall be accountable to the Board (section 88(1)).
- 9.8.3.5 The duties of the Company secretary shall be the duties as specified in writing by the Board from time to time, and shall include as a minimum the statutory duties described in section 88(2).
- 9.8.3.6 If the office of Company secretary becomes vacant for any reason, the Company shall fill that vacancy by the appointment of another person as company secretary.

#### 9.8.4 Auditors

- 9.8.4.1 The Board shall be responsible for the appointment of a person (or firm), timeously nominated by the statutory audit committee in terms of section 94(7) (a) if so nominated, and approved by ordinary resolution of the ordinary shareholders at the annual general meeting of the Company if so approved, as the auditors for the Company, on such terms and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that any registered auditors appointed by the Company must be independent of the Company as contemplated by section 94(8), and subject to and in compliance with the requirements and criteria as to auditors and their appointment set out in section 90, 91, 92 and 94(9), and any timeous determination by the statutory audit committee of the fees to be paid to the auditors and the auditor's terms of engagement in terms of section 94(7)(b) if such determination has been made (section 90).
- 9.8.4.2 If the position of auditors to the Company becomes vacant for any reason, the Board shall fill that vacancy by the appointment of another person (or firm) as the auditors to the Company, following the procedure set out in section 91(3).
- 9.8.4.3 Any auditors of the Company for the time being appointed in terms of Part C (Auditors) of Chapter 3 shall have the rights and restricted functions set out in section 93.

#### 9.8.5 Statutory audit committee

- 9.8.5.1 The Company must, at each annual general meeting of the Company, elect the members of a statutory audit committee (and each of their alternates) to serve on the statutory audit committee, as contemplated by and in compliance with section 94.
- 9.8.5.2 A statutory audit committee of the Company, if and when in existence, shall only have the statutory duties set out in section 94(7).

- 9.8.5.3 Neither the appointment nor the duties of a statutory audit committee of the Company reduce the functions and duties of the Board, except with respect to the appointment, fees and terms of engagement of the auditor (section 94(10)).
- 9.8.5.4 The Company shall pay all expenses reasonably incurred by the statutory audit committee, including, if the statutory audit committee considers it appropriate, the fees of any consultant or specialist engaged by that audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, among other financial constraints, the solvency and liquidity test as applied from time to time with respect to the Company (section 94(11)).
- 9.8.5.5 The members of the statutory audit committee shall hold and conduct their meetings in accordance with the provisions in the rules of the Company (if any) governing the holding and conduct of such meetings, which rules are binding on each director who is a member of the committee in terms of section 15(6)(c)(i).

## 10. CAPITALISATION OF THE COMPANY: AUTHORISED SHARES

### 10.1 Classes of shares

- 10.1.1 The classes of shares of the Company, and the number of shares of each class that the Company is authorised to issue, are set out in Schedule Two (Authorised securities of the Company) attached to this MOI (section 36(1)(a)).
- 10.1.2 The distinguishing designation for each class of authorised share is as described in Schedule Two (Authorised securities of the Company) attached to this MOI. (Section 36(1)(b)(ii))
- 10.1.3 The preferences, rights, limitations and other terms associated with each class of authorised share, is as described in Schedule Two (Authorised securities of the Company) attached to this MOI (section 36(1)(6)(ii)).

### 10.2 Changes to authorised shares

- 10.2.1 The authorisation and classification of shares, the number of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares, as set out in Schedule Two (Authorised securities of the Company), may be changed from time to time, and the changes contemplated in article 10.2.4 may be made from time to time, by an amendment of this MOI (that is, an amendment of Schedule Two attached hereto) only by:
  - 10.2.1.1 a special resolution of the ordinary shareholders at a separate meeting of the ordinary shareholders (and not by the Board in the manner contemplated in section 36(3));
  - 10.2.1.2 if it is proposed to amend in any way the preferences, rights limitations or other terms of any class of shares (whether or not issued), or any proposed amendment will affect the preferences, rights, limitations or other terms of any particular class of shares, then in addition to the special resolution of the ordinary shareholders referred to in article 10.2.1.1, a special resolution of that other class of shareholder, proposed by the Board, at a separate meeting of that class of shareholders, will also be required (sections 37(3)(a) and 65(12));

provided that the rights of shareholders to make such changes is subject to the limitations with regard to par or nominal value shares contemplated by section 35(2) and (6) read with item 6 of Schedule 5 and regulation 31, and subject further to the moratorium during business rescue proceedings contemplated in article 10.5 and section 137(1).

- 10.2.2 Unless otherwise provided for in Schedule Two (Authorised securities of the Company), any right or restriction attached to all or any class of securities shall be deemed not to be directly or indirectly adversely affected by:
  - 10.2.2.1 the creation or issue of any other securities ranking *pari passu* with any such securities already issued by the Company;
  - 10.2.2.2 the re-acquisition by or surrender back to, the Company, or cancellation of, any securities, or of any other class of securities.

- 10.2.3 The Board shall not have the power or authority in terms of section 36(3) to amend all or any of the authorised shares or Schedule Two.
- 10.2.4 Subject to article 10.2.1, and without limiting the rights of the ordinary shareholders and option holders, if any, by special resolution to amend the MOI (and in particular Schedule Two) in any way (including in the ways contemplated in section 36(3)), the ordinary shareholders only (and not the Board) shall have the right to amend Schedule 2 by special resolution, proposed by the Board, to:
- 10.2.4.1 increase or decrease the number of authorised shares of any class of shares that have been authorised but not issued;
  - 10.2.4.2 reclassify any classified shares that have been authorised but not issued;
  - 10.2.4.3 create any new class or classes of authorised but unissued shares;
  - 10.2.4.4 classify any unclassified shares that have been authorised but not issued;
  - 10.2.4.5 consolidate or subdivide all or any shares of different classes of authorised but unissued shares;
  - 10.2.4.6 redesignate any par value or nominal value shares as no par value shares; and/or
  - 10.2.4.7 do all or any combination of the above with respect to any authorised and issued shares.
- 10.2.5 For so long as any securities of the Company are listed on the JSE, the authorised shares of the Company, and any variations thereto, shall be subject to any limitations with respect thereto contained in Schedule 10 of the JSE Listings Requirements, as amended from time to time.

### 10.3 Continued existence of par value shares

- 10.3.1 With respect to any classes of par value or nominal value shares of the Company that were authorised and/or issued immediately before the effective date (1 May 2011) those shares may continue in existence and use, subject to, and the Company shall with respect to such shares comply with, section 35(2) and (6) read with item 6 of Schedule 5 to the Companies Act and regulation 31, as amended from time to time.
- 10.3.2 The Company may voluntarily redesignate any par value or nominal value shares as shares of no par value in accordance with regulation 31, subject to item 6 of Schedule 5 and section 35(6), and subject to article 10.2.4.

### 10.4 Filing a notice of amendment

If the shareholders act pursuant to the authority contemplated in article 10.2.4 above, the Company must file a notice of amendment of this MOI (being an amended Schedule Two) in accordance with section 16(7).

### 10.5 Moratorium during business rescue proceedings

During business rescue proceedings applicable to the Company, the provisions of this article 10 shall be subject to the moratorium provisions of section 137, and in particular section 137(1).

### 10.6 Ratification of *ultra vires* acts

The proposal of any resolution to shareholders in terms of section 20(2) and 20(6) of the Act is prohibited in the event that such a resolution would lead to the ratification of an Act that is contrary to the Listings Requirements; unless otherwise agreed with the JSE.

## 11. ISSUE OF SHARES

### 11.1 Stated capital

- 11.1.1 The Company's stated capital shall be constituted by the aggregate of the issue price of all issued shares (including for purposes hereof the nominal or par value of any shares issued prior to the effective date or issued on or after the effective date as permitted in terms of regulation 31(5)(b), together with any share premium thereon), and otherwise as adjusted in terms of this article 11.1.



- 11.1.2 Capitalisation shares may, in terms of article 11.4, be issued by transferring the amount of the issue price of such capitalisation shares out of reserves or profits to the stated capital (section 47).
- 11.1.3 The Company's stated capital may, as may be determined from time to time by the Board:
  - 11.1.3.1 be increased by transferring an amount from reserves or profits to the stated capital without an issue of shares;
  - 11.1.3.2 be decreased by transferring an amount from stated capital back to reserves or profits; or
  - 11.1.3.3 be decreased by way of a distribution; or
  - 11.1.3.4 be decreased by way of an acquisition by or surrender to the Company of its shares in terms of the Companies Act and/or this MOI.
- 11.1.4 The issue price raised by the original or subsequent issue of authorised but unissued shares and, in accordance with IFRS the fair value relating to equity settled share options exercised shall be considered part of the original stated capital, and shall be subject to the provisions contained in the Companies Act and/or this MOI with reference to such stated capital.

## 11.2 Status of authorised but unissued shares

An authorised share of the Company has no rights associated with it until it has been issued (section 35(4)).

## 11.3 Board's power to issue shares (and options)

- 11.3.1 The Board:
  - 11.3.1.1 after first having ascertained and verified the number of authorised but unissued shares of the Company; and
  - 11.3.1.2 subject to first obtaining the requisite prior shareholder approval by special resolution of the shareholders in terms of section 41, if applicable, or this MOI; and
  - 11.3.1.3 in respect of any issue of shares for cash and options and convertible securities granted or issued for cash, in respect of any shares listed or to be listed on the JSE, in accordance with the JSE Listings Requirements;

may resolve to issue shares of the Company (including options for shares in the Company or other securities convertible into shares of any class, as contemplated by section 42) at any time but only within the classes, and to the extent, that the applicable shares have been authorised by or in terms of article 10 and Schedule Two (Authorised securities of the Company) (section 38(1) and section 42(3)) for the sake of clarity, the Board resolution "to issue" any shares (or options or convertible securities) by itself does not constitute the issuance of the shares (or options or convertible securities). Shares will be deemed to be issued by the Company as provided for in article 11.5.2.
- 11.3.2 The Board may resolve to issue, and may issue, authorised shares only:
  - 11.3.2.1 for adequate consideration to the Company as determined by the Board (subject to and in terms of section 40); or
  - 11.3.2.2 in terms of conversion rights associated with previously issued shares (section 40(1)(b)); or
  - 11.3.2.3 as capitalisation shares as contemplated in section 47 (section 40(1)(c)).
- 11.3.3 The Board may issue options for shares or other securities convertible into shares only for adequate consideration to the Company as determined by the Board (subject to and in terms of section 40 read with section 42).
- 11.3.4 The Company shall not issue any shares (or any options for shares) before the Board has determined the consideration for which, and the terms on which, those shares (or options or other securities convertible into shares) will be issued (section 40(2) read with section 43).

11.3.5 Notwithstanding article 12, ordinary shareholders in general meeting may authorise the Board (generally or specifically) to issue unissued securities and/or grant options to subscribe for unissued securities as the Board in its discretion deems fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements to the extent applicable.

#### **11.4 Issue of capitalisation shares**

Capitalisation shares may be issued by the Board as provided for in article 11.1.2 read with section 47, provided that they shall first be offered to affected holders or all shareholders, as the case may be, in terms of and subject to article 12 (section 47(1)).

#### **11.5 Timing of issuance of shares**

Subject to section 40(5) to (7), when the Company has received in full the consideration approved by the Board for the issuance of any shares:

11.5.1 those shares are fully paid (section 40(4)(a)); and

11.5.2 the Company must issue those shares and cause the name of the holder to be entered on the Company's securities register in accordance with sections 49 to 51 (section 40(4)(b)). For the sake of clarity, at the time when the Company has received in full the consideration approved by the Board for the issuance of shares such shares shall at that time, in the absence of anything to the contrary specified in the resolution to issue such shares as to the timing of the issue, be treated as having been issued by the Company.

#### **11.6 Fully paid up securities may be listed**

The Company may apply for the listing on the JSE of any securities which are fully paid up and freely transferable.

#### **11.7 Certificated or uncertificated shares/securities**

11.7.1 Shares or other securities which are of a class listed on the JSE, shall be issued in the form of "uncertificated" shares or securities unless the person to whom the shares or other securities are to be issued elects, prior to their issue, to have them issued as "certificated" shares or securities (section 49(2)).

11.7.2 Shares or other securities which are not of a class listed or to be listed on the JSE shall be issued in the form of "certificated" shares or securities.

#### **11.8 Entries in the securities register**

The Company shall as soon as practicable after issuing any securities subject to article 11.9, enter or cause to be entered in its securities register, in respect of every class of securities issued:

11.8.1 the total number of those securities that are held in uncertificated form; and

11.8.2 with respect to certificated securities, the names and addresses of the persons to whom the certificated securities were issued and the number of certificated securities issued to each of them, and such other information that is required to be entered into the certificated securities register in terms of section 50(2) (section 50(2) and regulation 32).

#### **11.9 Provision of information to the Company**

A person to whom securities have been issued or transferred shall, in order for that person's name to be entered in the securities register with the Company or the records to be administered and maintained by a participant or CSD as the Company's uncertificated securities register in terms of section 50(3), provide to the Company or the participant or CSD, as the case may be, all the information relating to that person which is required to be included in the securities register including the uncertificated securities register in terms of the Companies Act and the Companies Regulations or in terms of this MOI (regulations 32 to 34).

#### **11.10 Registered shareholders and other securities holders**

A person:

11.10.1 acquires the rights associated with any particular securities of the Company when that person's name is entered in the Company's securities register as a person to whom those securities have been issued (section 37(9)(a)); and

11.10.2 ceases to have the rights associated with any particular securities of the Company when the transfer to another person, re-acquisition by the Company, or surrender to the Company of those securities has been entered in the Company's securities register (section 37(9)(b)).

#### 11.11 **Alteration of shareholders' rights (business rescue)**

When, in terms of a proposed business rescue plan, shares of a particular class of shares in the Company are to be issued other than *pro rata* to existing shareholders of that class in the proportion of their shareholdings in the Company in that class immediately prior to that issue, or shares of a new class are to be issued other than *pro rata* to the ordinary shareholders in the proportions of their ordinary shareholdings in the Company immediately prior to that issue, such proposed business rescue plan shall in terms of this article be regarded as an alteration of the rights of the holders of shares in each class of issued shares for purposes of section 152(3)(c), and the relevant proposed business rescue plan will in terms of this article need to be approved by the applicable class(es) of shareholders in terms of sections 152(3)(c) and will be subject to the provisions of the JSE Listings Requirements.

#### 11.12 **Rights offer (exclusion of non-residents)**

11.12.1 Any *pro rata* offer of any securities to any persons shall be subject to the possible exclusion of any persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer.

#### 11.13 **No lien on listed shares**

The Company shall not have any lien whatsoever on any issued shares of the Company which are, or are to be, listed on the JSE.

#### 11.14 **Odd-lot offers**

11.14.1 For purposes hereof:

11.14.1.1 "**odd lot**" means any total holding by a shareholder of less than 100 shares (or such other number as may be permitted by the JSE), or any total holding by a securities holder of less than 100 securities (or such other number as may be permitted by the JSE);

11.14.1.2 "**odd-lot offer**" means an offer by the Company to the holders of odd-lots in terms of which the holders of the odd-lots may elect to sell their odd-lot, and subject to the JSE Listings Requirements to the extent applicable, may or may not provide that the holders may elect to retain their odd-lot holding.

11.14.2 The Company may make and implement odd-lot offers in accordance with the JSE requirements or as otherwise permitted by the JSE; and if it does so and any shareholder or securities holder who qualifies to participate in that odd-lot offer does not elect any of the election alternatives (namely to retain their odd-lots, to sell their odd-lots or to increase their holdings to that number of shares or securities so as to eliminate their odd-lot holding) in accordance with the terms of the odd-lot offer, such holder (and any person with a beneficial interest in such odd-lots) shall be deemed to have agreed to sell odd-lots, and the Company shall be entitled (on implementation of the odd-lot offer) to cause the odd-lots to be sold on behalf of such persons on such terms and conditions as the Board may determine; provided that the Company shall account to the registered holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such odd-lots.

11.14.3 Whenever shares or other securities are to be offered or issued by the Company *pro rata* to any persons, such offer and issue shall be subject to any rounding off of entitlements to avoid odd-lots of such securities.

#### 11.15 **Fractions**

If, on any issue of shares or other securities, or on any consolidation or sub-division of shares or other securities, or on any other transaction with the Company, shareholders or other securities holders would, but for the provisions of this article, become entitled to fractions of shares or other securities, all allocations of such shares or other securities shall be rounded up or down

based on standard rounding convention (i.e. allocations will be rounded up to the nearest whole number if they are equal to or greater than 0.5, or rounded down to the nearest whole number if they are less than 0.5) resulting in the allocations of whole shares or other securities and no fractional entitlement.

## 12. RIGHTS OF PRE-EMPTION WITH RESPECT TO ISSUES

### 12.1 Issues with respect to an existing class of issued shares

12.1.1 If the Company proposes to issue (including as capitalisation shares) shares of any class of shares of which some have already been issued or to issue any options exercisable for shares of that class or any securities convertible into shares of that class as contemplated by section 42 (such options and securities being referred to as "**affected securities**"), other than:

12.1.1.1 affected securities to be issued in terms of pre-existing options or conversion rights (which have previously been issued after following the applicable procedure in this article 12); or

12.1.1.2 affected securities to be issued in terms of section 40(5) to (7); or

12.1.1.3 affected securities to be issued for the acquisition of assets,

then each person already holding issued affected securities in the class of affected securities proposed to be issued (collectively referred to as "**affected holders**") has the right, before any other person who is not an affected holder in that class, to be offered and within 10 (ten) business days of the date such offer is made to subscribe for, or in the case of capitalisation shares accept, that number of the affected securities proposed to be issued which in relation to the total number of affected securities proposed to be issued bears the (as close as possible) same ratio (as determined by the Board) as the number of affected securities in that class registered in that affected holder's name bears to the aggregate total number of issued affected securities in that class, calculated as at the date the offer was made.

12.1.2 The offer to each of the affected holders in the class concerned shall, in order to be valid, stipulate only the issue price or in the case of capitalisation shares deemed issue price per affected security in compliance with article 11.3, the number and class of affected securities which are being offered to the affected holders concerned, the total number of affected securities proposed to be issued, and the identity of any third person to whom it is proposed that any excess affected securities not taken up by the affected holders in terms of this article and article 12.5 will be offered in terms of article 12.6.

### 12.2 Issue with respect to a new class of shares

12.2.1 If the Company proposes to issue (including as capitalisation shares) shares of any new class of shares not previously issued, or to issue any options for shares of that new class or any securities convertible into shares of that new class (referred to as "**new affected securities**") other than:

12.2.1.1 new affected securities to be issued in terms of section 40(5) to (7); or

12.2.1.2 new affected securities to be issued for the acquisition of assets,

then each ordinary shareholder holding issued ordinary shares has the right, before any other person who is not an ordinary shareholder of the Company, to be offered and within 10 (ten) business days of the date such offer is made to subscribe for or in the case of capitalisation shares accept, a percentage of the new affected securities proposed to be issued equal to the voting power of that ordinary shareholder's general voting rights, calculated as at the date the offer was made.

12.2.2 The offer to each of the ordinary shareholders concerned in terms of this article shall in order to be valid, stipulate only the issue price or in the case of capitalisation shares deemed issue price per new affected security in compliance with article 11.3, the number of new

affected securities which are being offered to the ordinary shareholder in question, the total number of new affected securities proposed to be issued, and the identity of any third person to whom it is proposed that the excess new affected securities not taken up by ordinary shareholders will be offered in terms of article 12.6.

### 12.3 **Delivery of offer and acceptance period**

An offer made by the Company in terms of article 12.1 or 12.2 shall be delivered to each affected holder or shareholder to whom the offer is to be made ("**recipient**"), and, when made by the Company, be irrevocable and open for acceptance by the recipient concerned by notice of acceptance in writing delivered to the Board so as to be received by the Board within 7 (seven) business days of the offer being delivered to the recipient concerned ("**acceptance period**").

### 12.4 **Acceptance of the offer**

A recipient receiving an offer in terms of article 12.1 or article 12.2 shall be entitled to accept the offer in respect of the number of affected securities or new affected securities of the class that recipient has been offered as specified in the offer ("**offered securities**") or fewer than that number, or to specify if that recipient wishes to subscribe for or accept a greater number of shares (or options) in addition to the number of securities that recipient has been offered ("**excess securities**"), by notice of acceptance delivered by the accepting recipients to the Board within the acceptance period in terms of article 12.3.

### 12.5 **Allocation of excess securities**

12.5.1 Any number of offered securities not accepted by a recipient shall be re-allocated by the Board among other recipients, who have delivered a notice of acceptance to the Board specifying a wish to take up excess securities, *pro rata* among them as nearly as possible (as determined by the Board) in the applicable proportions contemplated by articles 12.1 and 12.2, as the case may be, in each case up to and not exceeding the number of excess securities specified in their respective notice(s) of acceptance.

12.5.2 If all the offered securities with respect to a particular class of shares (other than with respect to ordinary shares) offered by the Company in terms of article 12.1 are not taken up and subscribed for by the affected holders to whom the offer was made in terms of article 12.1, the Board shall then offer the excess securities which had not been accepted by the recipients to the ordinary shareholders of the Company, on the same basis changed as is necessary as provided for in article 12.2, 12.3, 12.4 and 12.5.1.

### 12.6 **Offer of remaining shares (options) to third party**

12.6.1 If all the offered securities offered by the Company in terms of article 12.1 or 12.2 or 12.5.2 are not taken up and subscribed for by all or any of the recipients to whom the offer was made, the Board shall be authorised to then offer the remaining offered securities which had not been accepted within the applicable acceptance period referred to in article 12.3 to any other person or persons approved of by the Board.

12.6.2 Any offer to such approved person contemplated by article 12.6.1 must be made within the 60 (sixty) days immediately following the expiry of the applicable acceptance period, at the same issue price per offered security and on the same terms and conditions as were offered to the recipients in terms of articles 12.1 or 12.2 or 12.5.2, as the case may be.

### 12.7 **Pre-emption provisions to apply again**

If, after having followed the procedures in articles 12.1 to 12.6, any of the remaining offered securities have not been subscribed for or accepted, and issued to, the approved person(s) as provided for in article 12.6 within the applicable 60 (sixty) day period, or such extended period as may be necessary to allow for any statutory or regulatory approvals to be obtained, if any, then such remaining offered securities shall not be issued except after again following the applicable pre-emption provisions of article 12.

## 12.8 Issue of shares during a business rescue

Except to the extent that an approved business rescue plan provides otherwise (including a business rescue plan approved in terms of article 11.11) a pre-emptive right of a shareholder of the Company as contemplated in section 39 and this article 12, does not apply with respect of an issue of shares by the Company in terms of the approved business rescue plan (section 152(7)).

## 12.9 Commission and brokerage

12.9.1 The Company may pay to any person:

12.9.1.1 a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally); or

12.9.1.2 a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally);

for any securities issued or to be issued by the Company, provided that, for so long as any securities of the Company are listed on the JSE, any such commission shall not exceed 10% of the consideration payable by that person to the Company for such subscription by that person for any securities.

12.9.2 Any such commission or brokerage may be calculated on the price at which the securities are issued, and may with the prior sanction of an ordinary resolution of the ordinary shareholders, be satisfied in whole or in part in fully paid shares.

## 13. BORROWINGS BY THE COMPANY

### 13.1 Borrowings

The Company may borrow without restriction, on such terms and subject to such conditions including as to the provision of security by the Company and/or others, as the Board in its discretion may from time to time determine.

### 13.2 Securities other than shares (debt instruments)

The Board may authorise and issue any securities which are not shares, including any debt instruments, upon such terms and subject to such conditions as approved by the Board (section 43).

## 14. FINANCIAL ASSISTANCE

### 14.1 For the subscription of options or securities

The Board may authorise the Company to provide financial assistance for the purpose of, or in connection with, the subscription for any option or securities, as contemplated in section 44, subject to and in accordance with section 44.

### 14.2 To directors or prescribed officers

The Board may authorise the Company to provide loans or other financial assistance to persons as contemplated in section 45, subject to and in accordance with section 45.

### 14.3 Other financial assistance

The Company may provide any financial assistance whatsoever to any person without restriction (subject to sections 44 and 45) on such terms and subject to such conditions as the Board in its discretion may from time to time determine.

## 15. SECURITIES REGISTER

### 15.1 Maintenance of a securities register

The Company shall, in accordance with sections 24(4)(a) and 50, establish or cause to be established a register of its issued securities in the prescribed form and maintain its securities register in accordance with the prescribed standards (regulations 32, 33 and 34).

## 15.2 Provision of information to the Company

- 15.2.1 Each shareholder or other securities holder shall be responsible for providing the Company with:
- 15.2.1.1 all the information relating to that holder required for purposes of keeping and maintaining and updating the securities register, including the name, business address, residential address, postal address and available e-mail address of that holder (section 50(2)(b)(i) and (iv) read with regulation 32(2)(a), and article 33.1); and
  - 15.2.1.2 at the election and in the discretion of the shareholder or other securities holder, the banking details of that holder, for purposes of any electronic transfers of any distributions to that holder, which banking details shall be maintained by the Company in a separate bank account register and shall not form part of the securities register.

## 15.3 Joint holders of securities

- 15.3.1 In the case of any security registered in the names of two or more persons as joint holders, the person first-named in the securities register shall, save as is provided in article 15.3.2, 15.4 or 15.4.4:
- 15.3.1.1 be the only person recognised by the Company as having any title to such security and to delivery of the related certificate of title;
  - 15.3.1.2 be the only person entitled to claim any distribution from the Company with respect to such securities; and
  - 15.3.1.3 be the only person entitled to receive notices or other communications from the Company,  
and delivery of the certificates or notices or communications, or the payment or distribution of distributions to such person first-named in the securities register, shall be deemed to be effective and proper delivery, distribution or payment, as the case may be, to all the joint holders of the securities in question.
- 15.3.2 Upon the death, sequestration, insolvency, placing under business rescue or placing under curatorship by reason of insanity or prodigality of any one of the joint holders of any security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, may be the only person recognised by the Company in the discretion of the Board, as having any title to such security.
- 15.3.3 Where two or more persons are registered as the holders of any security they shall be deemed to hold that security jointly and:
- 15.3.3.1 the joint holders of any security shall be liable jointly and severally in respect of any obligation or liability arising out of or in connection with the holding of that security;
  - 15.3.3.2 any one of such joint holders may give effectual receipts or acknowledgements of receipt, for and on behalf of all joint holders, with respect to all or any distributions or payments on accounts of distributions payable or distributable in relation to such security; and
  - 15.3.3.3 any one of the joint holders of any voting securities may vote either personally or by proxy in respect of such securities as if he was solely entitled thereto, and if more than one of such joint holders is present at any meeting, either personally or by proxy, or if more than one such joint holders votes on a round-robin resolution in terms of section 60(1)(b), then the joint holder who tenders a vote and whose name stands in the register before the other joint holders who are present in person or by proxy at the meeting or who have also voted on the round-robin resolution in terms of section 60(1)(b), shall be entitled to vote in respect of that voting security and whose vote shall be required to be taken into account by the Company (to the exclusion of the other joint holders).

#### 15.4 Recognition of legal representatives

- 15.4.1 The parent or legal guardian of a shareholder or other securities holder who is a minor, the executor or administrator of a shareholder or other securities holder who is deceased, the trustee of a shareholder or other securities holder who is an insolvent, the business rescue practitioner of a company in business rescue proceedings which is a shareholder or other securities holder, or the *curator bonis* of any shareholder or other securities holder who is mentally incapacitated or prodigal, or any person duly appointed by competent authority to represent or act for any shareholder or other securities holder shall, subject to the provisions of article 15.2 regarding joint holders on confirmation by the Board that it is satisfied with the proof of such person's status, authority and entitlement with respect to the securities in question, be the only person recognised by the Company as having any title to any shares or other securities registered in the name of such shareholder or other securities holder, including for voting purposes.
- 15.4.2 Where there are several parents, legal guardians, executors, administrators, trustees, business rescue practitioners, *curator bonii*, or other duly appointed representatives, as the case may be, in relation to a shareholder, such shall be treated as joint holders in terms of article 15.3.
- 15.4.3 A legal representative shall be entitled to:
- 15.4.3.1 be registered as a shareholder *nomine officii* in respect of any security registered in the name of any shareholder whom he or she represents; and
- 15.4.3.2 transfer any such securities to himself or herself, or to any other person, provided that the Board shall in any such case have the same rights to decline or suspend registration with respect to such securities as they would have had in the case of a transfer of the securities by the securities holder represented by that legal representative.
- 15.4.4 Subject to any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any legal representative recognised by the Company in terms of articles 15.3 or 15.4 as having any title to any securities (and any person who obtains title to any securities by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the status, authority and entitlement in which that person claims to act under this article or as to that person's title to any securities, and subject to the transfer provisions in this MOI, transfer such securities to that person or to any other person.
- 15.4.5 A person who submits proof of his appointment as a legal representative, may at the discretion of the Board be entered in the securities register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a shareholder or other securities holder.

#### 15.5 Recognition of beneficial holders

- 15.5.1 The Company shall be entitled (but not required or obliged, even if given notice of it, except as required by law or as ordered by a court of competent jurisdiction) to recognise or have any regard to any one or more persons who is or are not a registered securities holder in respect of any securities as the person or persons having title (including joint title) to such securities or holding or having any beneficial right or any other interest (including any joint beneficial right or other interest) in or to such securities and/or in or to any rights, preferences, privileges or benefits attaching to any such securities, on such terms and subject to such conditions and for such period(s) as the Board in its discretion may from time to time determine.
- 15.5.2 To the extent required by the Companies Act, the Company shall maintain records of disclosures of beneficial interests made to the Company as contemplated in article 31.
- 15.5.3 The Board may, in its discretion, record in the securities register of the Company that any security is held in trust or by a nominee, and may disclose in the securities register for whom that security is held.
- 15.5.4 Notwithstanding anything to the contrary contained in this MOI or any agreement binding on the Company, the Company shall be under no obligation to verify the existence of the beneficial holder (or registered holder) in respect of any securities, or to verify the legal



status of any person who holds a security as a trustee or nominee, or to ensure the carrying out by the trustee or nominee of any trusts or mandates (whether express or implied) in respect of any such security.

## 16. CERTIFICATES EVIDENCING SECURITIES

- 16.1 Securities may be issued in the form of “certificated” securities (section 49(2)(a)).
- 16.2 A certificate evidencing any securities of the Company must comply with the formalities and content prescribed by section 51 and may otherwise be in such form as the Board prescribes from time to time.
- 16.3 The certificate evidencing any securities of the Company must state on its face any restriction on the transfer of the securities evidenced by that certificate (section 51(1)(a)(iv)).
- 16.4 The Board shall in respect of the issue of any security authorise two persons to issue and sign certificates of title to such security (section 51(1)(b)).
- 16.5 Every person who becomes a registered securities holder shall be entitled on the initial issue or transfer of securities to that securities holder to the initial certificate(s) evidencing such securities free of charge, but for every subsequent certificate the Board may make such charge as from time to time the Board may think fit.
- 16.6 The Company shall as soon as reasonably practicable within the 2 (two) business days after the issue of any securities or the lodgement of the documents required for registration of a transfer referred to in article 18.6 of any securities, have ready for delivery the relevant certificate(s) of title.
- 16.7 Every person to whom securities are issued or transferred and whose name is entered in the securities register shall be entitled to one certificate for all the securities in any class registered in his name, or to several certificates, each for a part of such securities.
- 16.8 A securities certificate complying with the provisions of section 51 is proof that the named securities holder owns the securities specified in the certificate, in the absence of evidence to the contrary (section 51(1)(c)).
- 16.9 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed “**Duplicate Certificate**” on payment to the Company of such reasonable fee, if any, and on such terms and subject to such conditions, if any, as to evidence of entitlement and indemnity of the Company and its directors, as the Board in its discretion may determine.
- 16.10 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the securities register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that security.

## 17. UNCERTIFICATED SECURITIES

### 17.1 Evidence of uncertificated securities

- 17.1.1 In terms of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each person for whom any uncertificated securities are held in an uncertificated securities register. The Company shall not issue certificates or statements evidencing or purporting to evidence title to uncertificated securities of the Company.
- 17.1.2 A person who is entitled to and wishes to inspect an uncertificated securities register may do so only through the Company in terms of section 52(2) read with section 26 and article 9.3.

### 17.2 Substitution of certified or uncertificated securities

- 17.2.1 A registered holder of uncertificated securities may withdraw all or part of the uncertificated securities held by the person in an uncertificated securities register, and obtain a certificate in respect of those withdrawn securities, by notifying the applicable CSDP or the CSD only (and not the Company), in terms of section 54(1).
- 17.2.2 If the Company receives from the CSDP or CSD concerned only (not from the registered holder of uncertificated securities) a notice to provide the relevant certificate in respect of any withdrawn uncertificated securities in terms of section 54(1)(a), the Company shall make

the necessary entries in the securities register of the Company, and prepare and deliver the relevant certificate, in terms of section 54(2):

- 17.2.2.1 against receipt by the Company of any fee charged by the Company from time to time in terms of section 54(3); and
- 17.2.2.2 against the holder of the securities in question providing to the Company the necessary information required by the Company in terms of article 15.2.

## **18. TRANSFER OF SECURITIES**

### **18.1 Shares are movable property**

A share issued by the Company is movable property, transferrable in any manner provided for or recognised by the Companies Act or other legislations (section 35(1)).

### **18.2 Effect of a transfer of securities**

A person:

- 18.2.1 acquires the rights associated with any particular issued securities of the Company when that person's name is entered into the Company's securities register as a person to whom those securities have been issued or transferred (section 37(9)(a)); and
- 18.2.2 ceases to have the rights associated with any particular securities of the Company when the transfer to another person, re-acquisition by the Company, or surrender to the Company of those securities has been entered in the Company's securities register (section 37(9)(b)).

### **18.3 Restriction of transfer of non-listed certificated securities**

The right of any person to request the Company to register in the securities register of the Company the transfer from or to that person of any certificated shares of any class of shares or any other certificated securities which are not listed on the JSE or any other exchange may be limited or restricted only to the extent provided for in respect of that class of shares or securities, as specified in the case of non-listed certificated shares in article 18.4 and in the case of other issued non-listed securities, if any, as specified in Schedule Two (Authorised securities of the Company) (section 36(1)(b)(ii) or section 36(1)(d) and article 1.2).

### **18.4 Board's power to decline to register a transfer**

- 18.4.1 This article applies only to the transfer of non-listed certificated shares. On receipt by the Company of the documents required for registration of a transfer referred to in article 18.6 with respect to any non-listed certificated shares, the Company shall cause the transfer of such shares to be registered in the securities register of the Company in accordance with the applicable proper instrument of transfer, unless the Board within 10 (ten) business days of receipt of the documents required for registration of transfer unanimously resolves that such transfer shall not be so registered.
- 18.4.2 Until a transfer has been registered in terms of article 18.4.1, the transferor shall be deemed to remain the holder of and shall remain the registered shareholder in respect of such non-listed certificated shares until the name of the transferee is entered in the securities register in respect thereof.

### **18.5 Proper instrument of transfer of certificated shares**

The instrument of transfer of any certificated shares (whether or not listed) shall be in writing in the usual common form, or in such form as the Board may from time to time in writing determine, and shall specify the name of the transferor, the name of the transferee and the number of shares being transferred, and shall be signed by or on behalf of the registered shareholder as transferor and signed by or on behalf of the transferee. An instrument of transfer that complies with these requirements shall constitute a "proper instrument of transfer" for the purposes of section 51(6)(a) and this article 18.

### **18.6 Documents required for registration of transfer of certificated securities**

- 18.6.1 Any person wishing the Company to register the transfer of any certificated securities shall deliver to the Company for registration:

- 18.6.1.1 a proper instrument of transfer in respect of such securities; and
- 18.6.1.2 the original certificate (or a duplicate certificate issued pursuant to article 16.9) of the shares or other securities to be transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the shares or other securities.

18.6.2 The instrument of transfer, original or duplicate share certificate or other securities certificate and such other documentary evidence contemplated in article 18.6.1.2 shall be held by and remain in the custody of the Company at its registered office.

#### **18.7 Mandates to sign instruments of transfer**

18.7.1 All mandates or authorities to sign instruments of transfer granted by registered shareholders or other securities holders or by their legal representatives for the purpose of transferring certificated shares or other certificated securities, which have been lodged, produced or exhibited with or to the Company, shall be held by and remain in the custody of the Company at its registered office.

18.7.2 Such mandates or authorities shall, as between the Company and the registered shareholder or other securities holders and their legal representatives, be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the registered shareholder or other securities holder or legal representatives as transferor pursuant to such mandate or authority to be acted upon, until express written notice of its revocation signed by or on behalf of the registered shareholder or other securities holder or legal representative is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the mandate or authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.

#### **18.8 Transfer of uncertificated securities**

A transfer of uncertificated securities of the Company shall be effected in terms of section 53 read with the rules of a CSD.

### **19. THE COMPANY OR A SUBSIDIARY ACQUIRING THE COMPANY'S SHARES**

19.1 Subject to and in accordance with section 48 and article 19.2, and in accordance with the JSE Listings Requirements to the extent applicable, the Board may determine that:

19.1.1 the Company will acquire a number of its own shares;

19.1.2 a subsidiary of the Company may acquire a number of its own shares; and

19.2.3 the Company will acquire a number of shares of its holding company(ies).

19.2 If the Company acquires shares in its holding company(ies), or if a subsidiary of the Company acquires shares in the Company, no voting rights attached to those shares may be exercised while the shares are held by the subsidiary company in question and while that company remains a subsidiary of the Company whose shares it holds (section 48(2)(b)(iii)).

19.3 The Company may, and the Board shall be entitled to, require adequate security from any person with respect to that person's contingent obligation to return to the Company the amount paid by the Company, as contemplated by section 48(6). For purposes hereof, adequate security includes but is not limited to the deposit of the amount payable by the Company with respect to the acquisition of its own shares in an escrow account for the whole or part of the 2 (two) year period contemplated in section 48(6), as determined by the Board.

19.4 If the acquisition by the Company involves the acquisition of more than 5% of any class of the issued shares of any particular class of shares of the Company, then the acquisition must meet the requirements for a scheme of arrangement set out in section 114 and 115 (section 48(8)(b) read with section 114(1)(e)).

19.5 The Company, or a subsidiary of the Company, may acquire shares of the Company, as provided for in section 48.

## 20. DISTRIBUTIONS

- 20.1 The rights of shareholders (whether in the same class or different classes of shareholders), to or in respect of any distribution (if and when declared), is as set out in Schedule Two (Authorised shares of the Company) (section 37(5)(c) and (d)(1)).
- 20.2 The Company shall not declare or make a distribution except a distribution:
- 20.2.1 in compliance with section 46;
  - 20.2.2 in accordance with the rights of registered shareholders to or in respect of distributions as set out in Schedule Two (Authorised shares of the Company); and
  - 20.2.3 in respect of distribution to securities holders holding securities listed on the JSE, payments to such securities holders must be provided for in accordance with the JSE Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.
- 20.3 With respect to the declaration of a dividend:
- 20.3.1 the Board may conditionally authorise and conditionally declare a dividend, at any time, in terms of section 46(1)(a)(ii) subject to the sanctioning of that dividend by ordinary resolution of the ordinary shareholders in general meeting; or
  - 20.3.2 the ordinary shareholders by ordinary resolution in general meeting may declare a dividend, at any time, provided that dividend is not more than the dividend previously recommended and conditionally authorised by the Board in terms of section 46(1)(a)(ii), the condition being that the dividend (or part thereof) be declared by the ordinary shareholders.
- 20.4 The Board may at any time declare a distribution, subject to article 20.2 and, in the case of declaring a dividend, subject further to article 20.3.
- 20.5 Distributions shall be declared payable or distributable to shareholders registered as such on the record date with respect to such payment or distribution determined by the Board in terms of article 22.4.2, or if a record date has not been determined by the Board, then determined in terms of article 22.4.3, provided that such record date in the case of the payment of any dividend be a date subsequent to the date of sanctioning of the dividend or declaring the dividend by the ordinary shareholders as contemplated by article 20.3.
- 20.6 Distributions payable in monetary form, shall be declared in the currency of the Republic of South Africa.
- 20.7 Distributions not paid to the applicable shareholders on the applicable record date for payment shall not carry interest as against the Company.
- 20.8 Any distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways, subject to the provisions of the Companies Act, as the Board may at the time of authorising the distribution determine and direct. If as a result of the declaration of a distribution any registered shareholders become entitled to fractions of any specific assets of the Company, the Board may sell the assets represented by such fractions and after deducting the expenses of such sale distribute the balance of the proceeds of the sale amongst the shareholders entitled to the fractions in proportion to their entitlement.
- 20.9 All cash distributions (including dividends) payable to a shareholder may be paid by cheque or electronic funds transfer or otherwise, as the Board may at the time of authorising the distribution determine and direct. Payment may be sent by post to any of the address(es) of a shareholder as registered in the securities register or, in the case of joint shareholders, to any of the registered address(es) of that one of them first named in the securities register in respect of such joint shareholdings; and the posting of such cheque or delivery of an irrevocable instruction to the Company's bank to effect payment by electronic transfer into the bank account recorded in the bank account register of the Company (if any) specified by the shareholder, or in the case of joint shareholders into the bank account nominated by the shareholder whose name stands first in the securities register in respect of the share, shall be a good discharge by the Company of its obligations to pay such cash distribution to the shareholder entitled thereto.

- 20.10 For the purpose of this article, any notice of a new registered address or a change of registered address or any notice of new bank account details or a change of bank account details or any instruction as to payment being made at any other address or into any other bank account, not reflected in the securities register or the bank account register of the Company at the time of sanctioning or declaration of the distribution by the ordinary shareholders, which is received by the Company between the time of such sanctioning or declaration of the distribution by the ordinary shareholders and the applicable record date for payment of the distribution, and which would have the effect of changing the currency in which such payment would be made, shall become effective only after such time of payment.
- 20.11 Every payment of a distribution made by cheque through the post or by electronic transfer shall be made at the risk of the shareholders. The Company shall not be responsible for the loss in transmission of any cheque or other document sent through the post either to a registered address of any shareholder or to any other address requested by a shareholder or for the loss or misdirection of any electronic transfer.
- 20.12 Any unclaimed distributions payable or distributable to a shareholder may be invested or otherwise made use of by the Board, as it deems fit, for the benefit of the Company, at the risk of the shareholders, until it is claimed by the shareholder entitled to the distribution in question at any time before that distribution (in the case of dividends only) has been declared forfeit in terms of article 20.13.
- 20.13 Distributions comprising dividends which are unclaimed for a period of not less than 3 (three) years from the record date for payment or distribution of such dividends may be declared forfeit by the Board for the benefit of the Company. For so long as any securities of the Company are listed on the JSE, all other distributions which are not dividends must be held in trust by the Company indefinitely, but subject to the laws of prescription, until lawfully claimed by the shareholder entitled to such distribution, or until the Company is finally wound up, and the Company may before then use or apply such distributions, at the risk of the shareholders, as contemplated in article 20.12.

## 21. RESERVE FUND

- 21.1 The Board may, before authorising any dividends set aside out of the amount available for dividends such sum as it thinks proper as a reserve fund or as an addition thereto.
- 21.2 The Board may divide the reserve fund into such special funds as it thinks fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the assets 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.
- 21.3 The reserve fund shall, at the discretion of the Board, be available for the equalisation of dividends 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 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 and/or distributions, any part of the reserve funds which it, in its discretion, may determine not to be required for such purposes.

## 22. SHAREHOLDERS' MEETINGS

### 22.1 Person entitled to attend, speak and vote at meetings

In relation to the Company, and for purposes of this MOI, no person other than a registered shareholder (or its authorised representatives or proxies in terms of article 22.2 and 22.3 or its legal representative in terms of article 15.4), in respect of a class of shares held by that registered shareholder as reflected in the securities register, shall be entitled to attend, speak and vote at a meeting of that class of shareholders (sections 1 and 57(1)).

## 22.2 Authorised representation of shareholders at meetings

- 22.2.1 The board of a company that is a shareholder of the Company in respect of a class of shares may (in order for that shareholder to be personally present) authorise any individual to act as the representative of that shareholder at any meeting of that class of shareholders (section 57(5)).
- 22.2.2 The governing body of any other person or group of persons (not being an individual), including but not limited to the trustees for the time being of a trust or the general partner of an *en commandite* partnership or the managing partner(s) of a partnership or the managing members of a close corporation etc, that is a shareholder of the Company in respect of any class of shares may (in order for that shareholder to be personally present) authorise any individual to act as the representative of that shareholder at any meeting of that class of shareholders.
- 22.2.3 A person authorised to act as a representative of a shareholder, as contemplated by article 22.2.1 or 22.2.2, may exercise the same powers as the authorising shareholder could have exercised as if it were the shareholder (section 57(6)).
- 22.2.4 The Company shall be entitled to disregard any authorisation of a person as the representative of the shareholder in question, and to disregard the vote of any representative or purported representative, if:
- 22.2.4.1 the authorisation is not in writing signed by or on behalf of the shareholder; or
  - 22.2.4.2 the authorisation does not specify the name of the shareholder and the names of the members of the board or other governing body of the shareholder and confirm the power and authority of that board or other governing body to appoint and authorise a representative of the shareholder to attend, speak and vote at the meeting of shareholders of the Company in question (either as a general authority or as a specific authority); or
  - 22.2.4.3 a copy of the written authorisation has not been received by the Company at the registered office of the Company marked for the attention of the Board (or received at such other location and/or received by such other person on behalf of the Company, and/or received by such other means or medium, as may be specified in the notice convening the meeting or proposing the round-robin resolution), not less than 48 hours before the appointed time for the beginning of the meeting or, if the meeting is adjourned, the appointed time for the resumption of the adjourned meeting.
- 22.2.5 Any person who is a representative or purported representative specified in a written authorisation which may be disregarded, or the voting of whom may be disregarded, as contemplated by article 22.2.4, shall not be entitled to attend, participate in, or speak or vote at the meeting of shareholders in question or by way of round-robin resolution, and shall forthwith remove himself or herself from the meeting in question at the request of the chairman of the meeting.
- 22.2.6 A vote given by a representative in accordance with the terms of the written authorisation authorising that representative shall be valid notwithstanding the previous revocation of the authority, unless notice in writing of the revocation has been received by the Company before the commencement of the meeting of shareholders concerned or before the representative has voted on the round-robin resolution in question in terms of section 60(1)(b), as the case may be.

## 22.3 Proxies

- 22.3.1 At any time, a shareholder may, in respect of any class of shares held by that shareholder, subject to compliance with article 22.3.2, appoint any individual, including an individual who is not a shareholder of the Company, as a proxy to:
- 22.3.1.1 participate in, and speak and vote at, a meeting of that class of shareholders, on behalf of the shareholder (section 58(1)(a)); or

- 22.3.1.2 give or withhold written consent on behalf of the shareholder to a decision to be taken by that class of shareholder by round-robin resolution in terms of article 24 (section 58(1)(b)),
- provided that the shareholder may appoint more than one proxy to exercise voting rights attached to different shares of that class of shares held by that shareholder (section 58(3 (a)).
- 22.3.2 In order for the appointment by a shareholder of a proxy to be valid, both the appointment and the proxy form (or instrument appointing a proxy), must comply with the requisite formalities, and with the requirements as to content, set out in section 58 read with this article 22.3.
- 22.3.3 If the Company invites shareholders to appoint proxies, which it may (but is not obliged to) do, then the Company must in relation to such invitation comply with the requisite formalities and requirements as to the content of such proxy forms, as prescribed in section 58(8) read with this article 22.3.
- 22.3.4 If a shareholder requests a "standard" proxy form from the Company, the Board shall prepare or cause to be prepared a standard form proxy, subject to and in compliance with section 58(9) and article 22.3.2.
- 22.3.5 The following limitations with respect to the appointment and authority of a proxy shall apply (section 58(3)):
- 22.3.5.1 a shareholder of the Company may not appoint two or more persons concurrently as proxies (section 58(3)(a));
- 22.3.5.2 a proxy may not delegate the proxy's authority to act on behalf of a shareholder to another person unless the instrument appointing the proxy permits this (section 58(3)(b)); and
- 22.3.5.3 a copy of the instrument appointing a proxy must be delivered to the registered office of the Company marked for the attention of the Board (or delivered to such other location and/or person on behalf of the Company and/or delivered by such other means or medium, as may be specified in the notice convening the meeting or proposing the round-robin resolution), to be received by the Company not less than 48 hours before the appointed time for the beginning of the meeting or, if the meeting is adjourned the appointed time for the resumption of the adjourned meeting (section 58 (3)(c)).
- 22.3.6 The Company shall be entitled to disregard any proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:
- 22.3.6.1 the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 or is inconsistent with or contravenes any provision of article 22.3 in any way); or
- 22.3.6.2 the shareholder (if applicable, through its authorised representative contemplated by article 22.2) other than one represented by a legal representative contemplated by article 15.4 chooses at any time to exercise all or some of the voting rights attached to the shares registered in the name of the shareholder (section 58(4)(a)); or
- 22.3.6.3 the authority of the proxy has been revoked by the shareholder (if applicable, through its authorised representative contemplated by article 22.2 or through its legal representative contemplated by article 15.4) in terms of section 58(4)(b) and (c); or
- 22.3.6.4 the vote of the proxy is not in accordance with the express directions as to voting the shares in question specified in the applicable proxy form or instrument appointing the proxy (section 58(7)).
- 22.3.7 Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the voting of whom may be disregarded, as contemplated by article 22.3.6, shall not be entitled to attend, participate in, or speak or vote at the meeting of shareholders in question or by way of round-robin resolution in terms

of section 60, and shall forthwith remove himself or herself from the meeting in question at the request of the chairman of the meeting.

- 22.3.8 A vote given by a proxy in accordance with the terms of the proxy form or instrument appointing that proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the authority, unless notice in writing of the death, insanity or revocation has been received by the Company before the commencement of the meeting of shareholders concerned or before the proxy has voted on the round-robin resolution in terms of section 60(1)(a), as the case may be.

#### 22.4 Record dates for determining shareholder rights

- 22.4.1 The Board may in terms of section 59(1) set the applicable record dates for the purposes of determining shareholder rights, in accordance with and as contemplated by section 59 and as per the JSE Listings Requirements, including for purposes of determining that shareholders who are registered on a particular record date will be entitled to:

- 22.4.1.1 receive the notice of a shareholders' meeting (section 59(1)(a)); or
- 22.4.1.2 participate in and vote at a shareholders' meeting (section 59(1)(b)); or
- 22.4.1.3 decide any matter by round-robin resolution (section 59(1)(c)).

- 22.4.2 Each applicable record date determined by the Board:

- 22.4.2.1 shall not be earlier than the date on which the record date is determined by the Board, ie shall not be a "retrospective" record date (section 59(2)(a)(i));
- 22.4.2.2 shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii));
- 22.4.2.3 must be published to every shareholder in terms of section 59(2)(b);
- 22.4.2.4 must, with respect to all transactions by the Company which are governed and regulated by the JSE Listings Requirements, be the record date as set out in the JSE Listings Requirements.

- 22.4.3 If the Board does not determine and publish on the applicable record date in any appropriate communication to shareholders regarding any relevant event, or action, the record date for such event or action shall be as determined in terms of section 59(3).

- 22.4.4 For the sake of clarity, in relation to each shareholders' meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which shareholders shall be entitled to:

- 22.4.4.1 receive the notice of a shareholders' meeting;
- 22.4.4.2 attend and vote at that shareholders' meeting (as it may be adjourned or postponed);
- 22.4.4.3 receive notice of any adjourned or postponed shareholders' meeting (if notice is required to be given); and
- 22.4.4.4 attend and vote at the resumption of the adjourned meeting or the commencement of the postponed meeting.

#### 22.5 Calling a shareholders' meeting

- 22.5.1 The Board or any director of the Company authorised by the Board to do so may call a meeting of any class of shareholders at any time (section 61(1)).

- 22.5.2 The Board must call a meeting of any class of shareholders if demanded by shareholders subject to and in terms of section 61(3).

- 22.5.3 If there are no directors or all of the directors of the Company are incapacitated, the Company hereby authorises the company secretary (or failing him or her, the auditors) for the time being of the Company to call a shareholders' meeting for purposes of and in the circumstances contemplated in section 61(11).

- 22.5.4 All shareholders' meetings that are called for in terms of the JSE Listings Requirements must be convened by the Board for purposes of the shareholders considering and, if deemed



fit, approving the shareholders' resolutions required to be passed by the shareholders in terms of the JSE Listings Requirements (and such shareholders' resolutions may not be submitted to shareholders as a round-robin resolution in terms of section 60 read with article 24).

- 22.5.5 There is no prohibition or restriction in this MOI on the Company from calling any meeting for the purposes of adhering to the JSE Listings Requirements.

## 22.6 Calling an annual general meeting (AGM)

The Company must convene an annual general meeting within the times contemplated by section 61(7), and for the purposes as a minimum specified in section 61(8), and for the purposes of:

- 22.6.1 approval of the remuneration of directors for their services as directors as contemplated by section 66(8) and (9) read with article 26.4.3;
- 22.6.2 approval of the grants of financial assistance to companies related or inter-related to the Company as contemplated by section 45;
- 22.6.3 election of directors as contemplated by article 26.2.3; and
- 22.6.4 any other matter or business determined by the Board.

## 22.7 Location and venue of shareholders' meetings

22.7.1 The Board may determine the location or locations of any shareholders' meeting (including the location or locations of a meeting which has been adjourned) in terms of section 61(9).

22.7.2 With respect to the location(s) and venue(s) of a meeting, the Board may determine that a meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion deems appropriate and practical in any circumstances to address:

- 22.7.2.1 the location and venue where the chairman of the meeting will preside ("**the main meeting place**");
- 22.7.2.2 the numbers of persons attending at any particular location or venue;
- 22.7.2.3 the safety of persons attending at any particular location or venue;
- 22.7.2.4 the facilitations of attendance of persons at any particular location or venue;
- 22.7.2.5 the entitlement of persons to attend at any particular location or venue;
- 22.7.2.6 the electronic participation of persons in the meeting in terms of article 22.8;

and may from time to time vary any such arrangements and/or make new arrangements in their place.

22.7.3 A shareholder who in person or as represented attends a shareholders' meeting physically at the various locations and venues shall be deemed to be present at the meeting in question, and counted towards the quorum, while so attending.

## 22.8 Electronic participation at shareholders' meetings

22.8.1 Every meeting of shareholders must be reasonably accessible within the Republic of South Africa for electronic participation by shareholders, irrespective of the physical location of the meeting (section 61(10) and 63(2)).

22.8.2 Shareholders (or if applicable their representatives or proxies) may participate in all or part of a meeting (including the meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense (sections 63(2)(b) and 63(3)(b)).

22.8.3 The electronic communication employed by the Company must ordinarily enable all participants in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting (section 63(2)).

22.8.4 A resolution adopted by shareholders, some or all of whom were connected electronically, where:

- 22.8.4.1 shareholders connected electronically remained connected for the duration of that part of the meeting during which the resolution was discussed;

- 22.8.4.2 the subject matter of the resolution has been discussed; and
  - 22.8.4.3 the chairman of the meeting or any other person present in person or electronically at the meeting certifies in writing that the aforementioned requirements have been met,
- shall be deemed to have been passed on the date on which the resolution was adopted.
- 22.8.5 Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the shareholders were connected and participated electronically in terms of this article 22.8, the Company shall:
- 22.8.5.1 deliver to each shareholder a copy of the resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be (section 60(4)); and
  - 22.8.5.2 insert a copy of the resolution and statement referred to in article 22.8.5.1 in the minute book of the Company.
- 22.8.6 A shareholder who in person or as represented participates in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

## 22.9 Notice of shareholders' meetings

- 22.9.1 A notice of a meeting of shareholders must be delivered contemporaneously:
- 22.9.1.1 to each registered shareholder registered as such as of the applicable record date for delivery of that notice (determined in terms of article 22.4 read with section 59(1)(a)) of the class of shareholder entitled to vote on any of the resolutions to be considered at the meeting; and
  - 22.9.1.2 to the auditors for the time being of the Company in terms of section 93(1)(c) (ii); and
  - 22.9.1.3 if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a shareholder contemplated in article 22.9.1.1 (section 58(6)); and
  - 22.9.1.4 to the JSE (and announced through SENS, as defined in the JSE Listings Requirements);
- in form and content as prescribed in section 62(3), at least 15 (fifteen) business days before the date on which the meeting is to begin (section 62(1)(b)). Any failure to comply with articles 22.9.1.2, 22.9.1.3 or 22.9.1.4 shall not affect the validity of the general meeting.
- 22.9.2 If there is an invitation by the Company to shareholders to appoint one or more persons named by the Company as a proxy, or if the Company intends to supply a form or instrument for appointing a proxy, then the invitation and/or instrument must accompany the notice calling the shareholders' meeting in question and must be delivered to all shareholders entitled from time to time to receive notice of the meeting (sections 58(8)(a) and 59(1)(a) and article 22.3.3).
- 22.9.3 The notice of a meeting (or of an adjourned meeting):
- 22.9.3.1 must inform shareholders of the availability of participation in the meeting (and in any postponement or adjournment of the meeting) by electronic communication and must provide the necessary information to enable shareholders (or their proxy or proxies) to access the available medium or means of electronic communication for the meeting and as it may be postponed or adjourned (section 63(3)(a) and article 22.8);
  - 22.9.3.2 should, for the sake of clarity, specify the record date determining which shareholders are entitled to receive the notice of the meeting (sections 59(1)(a) and 59(2)(b));
  - 22.9.3.3 must comply with the requirements set out in section 62(3) as to formalities and content (including specifying the record date for determining which shareholders

are entitled to attend, participate in and vote at the meeting (sections 59(1)(b) and 59(3)(b));

22.9.3.4 must specify whether any proposed resolution is to be voted on by polling (article 23.4); and

22.9.3.5 should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) should the meeting be postponed or adjourned (article 22.4.4).

#### **22.10 Chairman of a shareholders' meeting**

22.10.1 The chairman of the Board for the time being shall be entitled to chair shareholders' meetings (as postponed, adjourned or otherwise delayed or interrupted). If, however, there is no chairman of the Board or if he has notified his inability or unwillingness to attend a shareholders' meeting or if at any meeting he is not present within the 10 (ten) minutes after the appointed time for the meeting to begin or resume, then the directors present at the shareholders meeting shall choose another director of the Company to chair the meeting. If no director of the Company is present or if none of the directors present are willing to chair the meeting, then the shareholders present or represented at the meeting may choose any person who is present to chair the meeting.

22.10.2 The provisions of article 22.10.1 shall apply again, changed as is necessary, in respect of the commencement or resumption of any meeting as postponed, adjourned or otherwise delayed or interrupted.

#### **22.11 Identification of attendees before a shareholders' meeting**

22.11.1 A person wishing to attend or speak at or participate in or vote at a shareholders' meeting (as a shareholder personally or as an authorised representative or as a proxy for a shareholder, or as the legal representative of a shareholder as contemplated in article 15.4, or as the auditor or representative of the auditor for purposes of article 22.11.4) must for purposes of identification present reasonably satisfactory identification and evidence of their authority or entitlement to represent the shareholder in question or to attend the meeting, to the chairman of the meeting 30 (thirty) minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned meeting to resume, as the case may be, stipulated in the notice of the meeting or adjourned meeting in question (section 63(1)(a)).

22.11.2 The chairman of the meeting must be reasonably satisfied that the right of any person to participate and vote at the meeting has been reasonably verified (section 63(1)(a)).

22.11.3 If the identification process is not completed by the appointed time for that meeting to begin or adjourned meeting to resume (as specified in the notice of that meeting or adjourned meeting if applicable), then the commencement of the meeting or resumption of the adjourned meeting, as the case may be, shall be delayed until the identification process is complete.

22.11.4 The auditors for the time being of the Company shall be entitled to attend any shareholders meeting and be heard on any part of the business of the meeting that concerns the auditor's duties or functions (section 93(1)(c)(i) and (iii)).

#### **22.12 Quorum**

22.12.1 A shareholders' meeting may not begin until sufficient shareholders are present or represented at the meeting to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting (section 64(1)(a)).

22.12.2 A matter to be decided at the meeting may not begin to be considered unless sufficient shareholders are present or represented at the meeting to exercise, in aggregate at least 25% of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda (section 64(1)(b)).

22.12.3 If the Company has more than 2 (two) shareholders of any class of shareholders then a shareholders' meeting of that class may not begin, or a matter begin to be debated, unless

at least 3 (three) shareholders of that class are present or represented at the meeting and the requirements of articles 22.12.1 and 22.12.2 are satisfied (section 64(3)).

22.12.4 For purposes of counting a quorum at any time a shareholder who is personally present or represented at the meeting at that time, or who participates in person or through a representative electronically in terms of article 22.8 at that time, shall be counted towards the quorum at that time.

22.12.5 For purposes of any shareholders' resolution required to be passed in terms of the JSE Listings Requirements, once a quorum has been established for purposes of that resolution, all the shareholders of the quorum must be present at the meeting for that matter and discussion on and passing of that resolution.

### **22.13 Automatic postponement of a meeting**

22.13.1 If within one hour of the appointed time for a meeting to begin a quorum is not present then the meeting is automatically postponed (without any motion, vote or further notice) for one week (section 64(4)(a)).

22.13.2 The one-hour limit specified in article 22.13.1 may be extended for a reasonable period by the chairman of the meeting in the circumstances contemplated in section 64(5).

### **22.14 Automatic adjournment of a meeting**

If at the time a matter will begin to be considered at a meeting, a quorum (determined in terms of article 22.12.2) is not present with respect to that matter and there is no other business on the agenda, the meeting is automatically adjourned (without any motion or vote) for one week (section 64(4)(b)(ii)).

### **22.15 Voluntary postponement of a particular matter to later in the meeting**

If at the time a particular matter will begin to be considered at the meeting, a quorum (determined in terms of article 22.12.2) is not present with respect to that matter, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion or vote) to a later time in the meeting (section 64(4)(b)(i)).

### **22.16 Further notice required for postponed/adjourned meeting**

The Company shall not be required to give further notice of a meeting that is postponed or adjourned unless:

22.16.1 the location for the meeting is different from:

22.16.1.1 the location of the postponed or adjourned meeting (section 64(7)(a)); or

22.16.1.2 the location announced at the time of adjournment, in the case of an adjourned meeting (section 64(7)(b)); or

22.16.2 it is necessary to inform registered shareholders of the availability of participation in the postponed or adjourned meeting by electronic communication as contemplated by article 22.9.3.1; or

22.16.3 the meeting has been adjourned "until further notice" as contemplated in article 22.19.3.2.

### **22.17 Deemed quorum at a postponed or adjourned meeting**

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements (determined in terms of article 22.12.1) are not met, then those registered shareholders present in person or by proxy at the meeting including those participating electronically in terms of article 22.8, will be deemed to constitute a quorum (section 64(8)).

### **22.18 Continuing quorum during meeting**

Subject to article 22.12.15 (Special resolutions in terms of the JSE Listings Requirements), after a quorum has been established for a meeting or for a matter to be considered at a meeting, other than the special resolutions referred to in article 22.12.15, the meeting may continue or the matter may be considered, so long as at least one registered shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present or represented at the meeting (section 64(9)).

## 22.19 **Adjournment of a meeting by shareholders**

- 22.19.1 A shareholders' meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights:
- 22.19.1.1 held by all of the shareholders who are present or represented at the meeting at the time (section 64(1)(a)); and
  - 22.19.1.2 that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be (section 64(10) (b)).
- 22.19.2 Any voting on a motion by shareholders for an adjournment in terms of this article 22.19 shall be decided on a show of hands, unless the chairman of the meeting or shareholders demand a poll in terms of article 23.7.
- 22.19.3 Any such adjournment by motion of shareholders at a meeting may be either:
- 22.19.3.1 "to a fixed time and place", in which event no further notice need be given to shareholder of the adjourned meeting (sections 64(10) and 64(11)(a)(i)); or
  - 22.19.3.2 "until further notice", as agreed at the meeting, in which event a further notice of the adjourned meeting must be given to all the shareholders at the applicable record date for the giving of such notice (section 64(11)(a)(ii) and (b) and section 59(1)(a)).

## 22.20 **Limit on period of adjournment**

A shareholders' meeting may not be adjourned beyond the earlier of:

- 22.20.1 a date that is 30 (thirty) business days after the record date determining which shareholders are entitled to attend and vote at the meeting (section 64(12)(a) and (13)); or
- 22.20.2 a date that is 15 (fifteen) business days after the date on which the adjournment occurred (section 64(12)(b) and (13)).

## 22.21 **Business at adjourned meeting**

No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting which was adjourned.

## 22.22 **Directors to be present at shareholders meetings**

Each director of the Company shall be present for the entire duration of each shareholders' meeting, unless shareholders (or their representatives or proxies) on a show of hands request one or more or all the directors to withdraw and leave the meeting or any part of the meeting, in which event such director(s) as have been requested to leave shall leave the meeting for the period as requested.

## 22.23 **Procedures at shareholders' meetings**

Subject to the provisions of the Companies Act and this MOI, the chairman for the time being of any shareholders' meeting shall determine the procedures to be followed at that meeting.

## 23. **SHAREHOLDERS VOTING (BY SHOW OF HANDS OR POLLING)**

- 23.1 At a meeting of shareholders, voting may either be by show of hands or by polling (section 63(4)).
- 23.2 If voting on a particular matter is by a show of hands, any person, being a shareholder or its representative or proxy/ies, who is present at the meeting and is entitled to exercising voting rights, has one vote irrespective of the number of votes that person would otherwise be entitled to exercise (section 63(5)).
- 23.3 If voting on a particular matter is by polling, any person, being a shareholder or its representative or proxy/ies, who is present at the meeting and is entitled to exercise voting rights, has the number of votes determined in accordance with the voting rights associated with the shares registered in the name of the shareholder in question which that person is entitled to exercise (section 63(6)).

- 23.4 All questions, matters and resolutions arising at or submitted to any meeting of shareholders shall be decided by a simple majority of the votes cast (unless a different majority is required in terms of the Companies Act or this MOI) and shall in the first instance be decided by a show of hands (unless voting by a poll with respect to the resolution in question is specified in the notice calling the meeting, or a poll is demanded or required on that resolution in terms of the Companies Act or this MOI).
- 23.5 The person who is the chairman of the meeting will not in his capacity as chairman have a casting vote in addition to any vote he may have by virtue of being a shareholder.
- 23.6 If voting on a resolution is on a show of hands, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact. The chairman of the meeting is not required to record the number of votes (on a show of hands) and percentage of votes cast at the meeting in favour of and against the proposed resolution, or any abstentions.
- 23.7 In addition to the shareholders' right to demand a poll on any resolution in terms of section 63(7) at any meeting of shareholders, a poll on any resolution may also be demanded by:
- 23.7.1 the chairman of the meeting; or
- 23.7.2 not less than 5 (five) shareholders (or their representatives or proxies) having the right to vote at the meeting on that resolution,
- provided that (except in terms of section 63(7)) a poll may not be demanded on the question of the election of a chairman for the meeting, and provided further that only the chairman of the meeting (or the shareholders in terms of section 63(7)) may demand a poll on the question of any adjournment of the meeting.
- 23.8 If a poll is demanded as provided for in this article 23, it shall be taken immediately if any other resolution is already required to be taken by poll in terms of the notice convening that meeting, or if not then in such manner and at such place and time, either immediately or after an interval or adjournment not exceeding 7 (seven) days, as the chairman of the meeting directs. The demand for a poll may be withdrawn.
- 23.9 Scrutineers shall be appointed by the chairman to count the votes on a poll and to declare the result of the poll, and their declaration, which shall be announced by the chairman of the meeting for the time being, (as postponed or adjourned, delayed or interrupted) at the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. No objection to the admission or rejection of a vote shall be valid unless it is made to the chairman of the meeting at the meeting at which the vote in question is cast. In case of any dispute as to the admission or rejection of a vote, the chairman of the meeting for the time being shall determine the dispute and the determination of the chairman made in good faith shall be final and conclusive.
- 23.10 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 23.11 On a poll, a shareholder (or his representative or proxy) entitled to more than one vote is in relation to the Company free to vote, in his discretion, all or any of his shares the same way or differently or to abstain from voting in respect of all or any of his shares, as he chooses.
- 23.12 When there are joint holders of any shares any one of such persons may vote as provided for in article 15.3.3.3.

## 24. ROUND-ROBIN RESOLUTIONS OF SHAREHOLDERS

- 24.1 A resolution that could be voted on at a shareholders' meeting (other than any business that is required by the Companies Act or this MOI to be conducted at and voted on at an annual general meeting of the Company (section 60(5)) or that is required in terms of the JSE Listings Requirements to be voted on at a shareholders' meeting including a resolution for an election of directors (section 60(3)) or an election of the members of a statutory audit committee (article 9.8.5.1), may instead of being voted on at a meeting be:
- 24.1.1 submitted (by the Board proposing the resolution) for consideration by the shareholders entitled to exercise voting rights in relation to the resolution as if the applicable record date (section 60(1)(a) read with section 59(1)(c)); and

- 24.1.2 voted on in writing by shareholders entitled to exercise voting rights in relation to the resolution (or their representatives or proxies) within 20 (twenty) business days after the resolution was submitted to them (section 60(1)(b) read with section 59(1)(c)).
- 24.2 A resolution contemplated in article 24.1 will have been adopted as an ordinary resolution or special resolution, as the case may be, for purposes of the Companies Act if it has been supported in writing by that number of shareholders entitled to exercise voting rights that are sufficient in number for it to have been adopted as an ordinary resolution or special resolution, as the case may be, at a properly constituted shareholders' meeting and, if so adopted, will have the same effect as if it had been approved by voting at a meeting (section 60(2)).
- 24.3 A round-robin resolution of shareholders shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date the resolution was submitted to shareholders for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the shareholders voting in favour of the resolution (or if that or any other written approval is undated, the date on which such written approval was communicated to the Company) within the 20 (twenty) business days referred to in article 24.1.2, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed as an ordinary resolution, or special resolution, as the case may be.
- 24.4 Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Company shall:
- 24.4.1 deliver to each shareholder a copy of the resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be (section 60(4)); and
- 24.4.2 insert a copy of the resolution and statement referred to in article 24.4.1 in the minute book of the Company.

## 25. SHAREHOLDERS' RESOLUTIONS

- 25.1 Every resolution of shareholders is either:
- 25.1.1 an ordinary resolution in terms of the Companies Act (section 65(1) read with section 65(7));
- 25.1.2 a special resolution in terms of the Companies Act, as required in terms of the Companies Act or as required in terms of this MOI (section 65(1) read with section 65(9), (11) and (12)); or
- 25.1.3 a resolution of shareholders in terms of the JSE Listings Requirements, as required and as determined in terms of the JSE Listings Requirements.
- 25.2 The Board may propose any resolution to be considered by shareholders and may determine whether that resolution will be considered and voted on at a meeting of shareholders or by round-robin resolution in terms of article 24 (section 65(2)).
- 25.3 Any 2 (two) or more shareholders may propose a resolution concerning a matter in respect of which they are each entitled to exercise voting rights, and when proposing the resolution may require that the resolution be submitted to shareholders for consideration at a meeting of shareholders called in terms of article 22.5, or at the next scheduled shareholders' meeting, or by round-robin resolution in terms of article 24 (section 65(3)).
- 25.4 Any resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in section 65(4).
- 25.5 The Company is not obliged to file with the Commission any shareholders' resolution (including any special resolution), except if required to do so in terms of the Companies Act or this MOI.
- 25.6 An ordinary resolution is to be subject to a minimum notice period of 15 business days. In order for an ordinary resolution to be approved by shareholders, it must be supported by more than 50% of the voting rights exercised on the resolution.
- 25.7 A Special resolution is to be subject to a minimum notice period of 15 business days. In order for a special resolution to be approved by shareholders, it must be supported by at least 75% of the voting rights exercised on the special resolution.

25.8 All shareholder meetings convened in terms of the JSE Listings Requirements must be held “in person” and may not be held by means of a written resolution as is contemplated in section 60 of the Act.

## 26. DIRECTORS

### 26.1 Powers of the Board

The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise (section 66(1)).

### 26.2 Composition of the Board

#### 26.2.1 Number of directors

The Board shall comprise not less than 5 (five) directors (section 66(2)(a) and (3)).

#### 26.2.2 Nominated directors (and their alternates)

The Board may confer on any person the right to nominate (but not to appoint and remove) any one or more persons as directors of the Company, subject to such nominated person’s appointment as director being sanctioned by an ordinary resolution of the ordinary shareholders in general meeting (section 66(4)(a)(i) and (iii)).

#### 26.2.3 Elected directors (and their alternates)

The ordinary shareholders shall be entitled at a general meeting of the Company to elect all of the directors of the Company (and their alternates) for the time being and from time to time, by a separate ordinary resolution with respect to each such director and each alternate, subject to articles 26.2.4 and 26.3.2, provided that if the ordinary shareholders do not elect an alternate with respect to any director the Board shall be entitled to appoint such alternate(s) provided further that such alternate is not a person previously proposed to the shareholders as an alternate or as a director but was not elected by the ordinary shareholders when put to the vote (section 66(4)(b) and 66(4)(a)(iii)).

#### 26.2.4 Ineligible or disqualified persons: Appointment a nullity

26.2.4.1 No person may be appointed or elected as a director (or his alternate), or be entitled to serve or continue to serve as a director (or an alternate director) of the Company, if that person is or becomes ineligible or disqualified from being entitled to serve as a director in terms of section 69 read with article 26.6, and if at the time of his appointment or election that person is so ineligible or disqualified then his appointment is a nullity in terms of section 66(6) (section 66(5)(a), 69 and 66(6)).

26.2.4.2 Any person whose appointment as a director of the Company is a nullity in terms of section 66(6), may not be counted towards a quorum of directors for purposes of article 28.6, and his vote shall be disregarded with effect from the time it was purportedly cast for purposes of articles 28.15 and 29 with the possible consequence that a decision or approval by the Board in which such person participated might need to be reversed with effect from the time it was made if the application of this article results in the meeting or resolution of the directors not being quorate or the decision or vote not being passed by the requisite majority.

#### 26.2.5 Alternate directors

26.2.5.1 If a person (for whom another person has been elected or appointed as an alternate director in terms of article 26.2.3) ceases to be a director of the Company for any reason, then the person who is his alternate shall hereby automatically and simultaneously at the same time as the first-mentioned person ceased to be a director, in terms of this article 26.2.5, also cease to be the alternate director for that first-mentioned person.



- 26.2.5.2 A person elected or appointed as an alternate for a director acts for all intents and purposes in the place of, and not for or as a representative, the director for whom he is an alternate, and is treated as a director of the Company while he acts in the place of the director for whom he is an alternate.
- 26.2.5.3 While acting in the place of the director for whom he is an alternate, the alternate may generally exercise all the rights of the director and shall, in all respects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as director and the holding of office of that director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.
- 26.2.5.4 A person may be elected or appointed as an alternate for one or more directors.
- 26.2.5.5 An alternate director shall only be entitled to vote at any meeting if the director for whom he is an alternate is not present at that meeting, provided that the alternate may also attend a meeting at which the director for whom he is an alternate is present if the other directors present at the meeting resolve that he may attend, provided further that in the circumstances he shall not be counted towards a quorum and he shall recuse himself from the meeting if requested by any director to do so.
- 26.2.5.6 Any person attending a meeting of directors as an alternate for one or more directors in the absence of such director(s) shall have one vote in respect of each director for whom he is an alternate.
- 26.2.5.7 An alternate shall only be entitled to sign a round robin resolution if the director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

#### 26.2.6 **Filing a notice with the Commission**

The Company shall file with the Commission a notice within 10 (ten) business days after a person becomes or ceases to be a director of the Company (section 70(6)).

#### 26.2.7 **Divisional and associate directors**

The Board may give employees of the Company (or employees of any company in the same group of companies as the Company) the title of "associate director" or "divisional director" or any other title deem fit to give recognition or status to such employees within the group of companies, but such employees shall not be directors of the Company and their authority shall be that of an ordinary employee in accordance with the terms and conditions of their employment.

### 26.3 **Register of directors**

- 26.3.1 The Company must establish and maintain a record of its directors, including all the details about each director required in terms of and for the periods stipulated in the Companies Act and the Companies Regulations, in a register of directors (section 24(3)(b) and (5), and regulation 23).
- 26.3.2 No person shall be entitled to be elected as, or to serve or act as a director (including as an alternate director) of the Company, or have his name entered in the register of directors of the Company, unless and until that person has delivered to the Company:
  - 26.3.2.1 all the details about that person which are required to be included in the register of directors in terms of the Companies Act and the Companies Regulations (article 26.3.1);
  - 26.3.2.2 a written undertaking from that person, signed by that person, representing and warranting to the Company that he is not and will not be, at the time of his proposed appointment, ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve and act as a director of the Company (section 66(5)(a) and (6) and section 69(2) read with article 26.6)), and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such warranty or representation and such person's appointment as a director being a nullity as contemplated by article 26.2.4;

- 26.3.2.3 a written undertaking from that person, signed by that person, undertaking to disclose in writing to the Board any facts, circumstances or events from time to time which might or are likely to result in him being or becoming ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve and act as a director of the Company, within 5 (five) business days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such undertaking or any decision or approval of the Board being reversed as contemplated in article 26.2.4.2;
  - 26.3.2.4 a written undertaking from that person, signed by that person, undertaking to disclose in writing to the Board from time to time any facts, circumstances or events from time to time which might or are likely to result in him or a person related to him, having or acquiring a personal financial interest as contemplated in section 75 (including but not limited to as contemplated in section 75(6)), and whether or not such interest is material, within 5 (five) business days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such undertaking or any transaction or agreement approved by the Board being invalid as a result thereof as contemplated in section 75(7) or (8); and
  - 26.3.2.5 a written statement signed by that person, confirming that he has familiarised himself with the provisions of the constitution of the Company (described in article 2) and understands that he will in his capacity as a director of the Company be bound by the terms of this MOI in terms of section 15(6), and consenting to serve as a director of the Company (section 66(7)(b)).
- 26.3.3 For purposes of the Companies Act, and in relation to the register of directors required to be kept by the Company in terms of section 24(3)(b), a director is defined in section one to mean:
- 26.3.3.1 a member of the Board (being a person appointed or elected as a director of the Company as contemplated in article 26.2);
  - 26.3.3.2 an alternate director for a member of the Board; and
  - 26.3.3.3 any person (if any) occupying the position of a director or alternate director, by whatever name designated (referred to in this MOI as a ("**shadow director**");
- and accordingly, the prescribed details of each such person is required to be included by the Company in the register of directors of the Company.

#### 26.4 Remuneration of directors and prescribed officers

- 26.4.1 A person occupying the position of director, or who is to be recommended for election as a director in terms of article 26.5.3, may be remunerated by the Company while a director in terms of separate contracts with the Company as follows:
  - 26.4.1.1 a services contract, in respect of and in consideration for his services as a director, that is, for discharging his statutory and common law duties to the Company or to any other company in the same group of companies as a director (sections 66(8) and 30(5)(a) and (b)), referred to herein as "**directors' services**"; and/or
  - 26.4.1.2 a services contract, in respect of and in consideration for his services not as a director, but while a director, in connection with the carrying on of the affairs of the Company or any other company within the same group of companies (section 30(5)(b)), referred to herein as "**connected directors' services**"; and/or
  - 26.4.1.3 an employment contract, in respect of and in consideration for discharging his obligations as an employee to the Company or to other companies in the same group of companies with respect to the executive management of the business and affairs of the Company or any other company within the same group of

- companies (or with respect to the exercise of any executive control or functions as contemplated in regulation 38 in relation to the Company), referred to herein as **“executive management services”**; and/or
- 26.4.1.4 an employment contract, in respect of and in consideration for discharging his other duties and functions (if any) not comprising directors’ services, connected directors’ services or executive management services, referred to herein as **“non-executive services”**.
- 26.4.2 A person, despite not occupying the position of a director (even the position of a shadow director) or an employee, may be remunerated in terms of separate contracts with the Company as follows:
- 26.4.2.1 a services contract or an employment contract, in respect of and in consideration for discharging his obligations as a prescribed officer of the Company with respect to the discharge of any specific functions designated by the Minister in terms of section 66(10) read with regulation 38, referred to herein as **“prescribed officer services”**; and/or
- 26.4.2.2 an employment contract, in respect of and in consideration for discharging his other duties and functions (if any) not comprising prescribed officer functions, referred to herein as **“non-executive services”**.
- 26.4.3 In terms of section 66(8) and (9), before the Company pays any remuneration to a director (whether a non-executive or executive director) for directors’ services in terms of a services contract contemplated by article 26.4.1.1, or otherwise as contemplated by article 26.4.1.1, the ordinary shareholders must by special resolution approve such payment(s) in terms of section 66(9) (paragraph 155 King III Report).
- 26.4.4 The Board, by way of a disinterested quorum of directors, shall be responsible for determining and approving the appointment and remuneration of directors for directors’ services, connected directors’ services and executive management services, and the remuneration of prescribed officers for prescribed officers’ services and non-executive services (paragraph 187 King III Report).
- 26.4.5 A director who is or will be a party to any of the contracts with the Company or any company in the same group of companies contemplated in article 26.4.1, will have a “personal financial interest” in that contract, and the directors of the Company shall deal with each such contract in terms of section 75(5) (including the director with the personal financial interest recusing himself from the Board meeting or Board committee meeting concerned in terms of section 75(5), and the terms and conditions of each such contract being approved by a disinterested quorum of directors).
- 26.4.6 In terms of section 30(5) read with section 30(4) and (6), the remuneration or benefits paid to or receivable by persons in respect of directors’ services, connected directors’ services, executive management services or prescribed officer services must be disclosed in the annual financial statements of the Company.
- 26.4.7 The directors for the time being of the Company (including their alternates) shall be entitled, in terms of this article, to be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the directors or of Board committees or of shareholders or other securities holders of the Company. For purposes hereof, the director may be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable.
- 26.4.8 An alternate director:
- 26.4.8.1 may be reimbursed by the Company the reasonable expenses which would be repayable to him if he were a full director in terms of article 26.4.7;
- 26.4.8.2 shall be entitled to receive from the Company such proportion (if any) or amount (if any) of the remuneration for directors’ services, connected directors’ services and executive management services of the director for whom he is an alternate as the Company may agree in a separate service contract between the alternate and the director for whom he is an alternate, and the Company; and

26.4.8.3 shall not be entitled to receive any other remuneration from the Company in respect of his appointment as an alternate.

## **26.5 Election of directors by the ordinary shareholders**

### **26.5.1 Fixed term**

Any person elected (or re-elected) as a director by ordinary shareholders in terms of article 26.2.3 shall be elected (or re-elected, as the case may be) only for a fixed term (not exceeding five years in each instance) specified in the ordinary resolution electing him or if not specified then for a term commencing at the time of conclusion of the general meeting at which the ordinary resolution electing him or her as a director of the Company was passed and expiring at the time and on the date of conclusion of the next annual general meeting of the Company, at which expiry date such person shall automatically be retired as and cease to be an elected director, and his or her name shall be removed as a director from the register of directors, unless he or she is or has been re-elected with immediate effect (section 68(1)).

### **26.5.2 Rotation of non-executive directors**

The non-executive directors shall retire from office on the following basis:

26.5.2.1 with effect at the time of conclusion of each annual general meeting of the Company non-executive directors comprising one-third of the number of non-executive directors or, if their number is not a multiple of three, then a number of them nearest to but not less than one-third of the number of non-executive directors, shall retire from office;

26.5.2.2 the non-executive directors to retire in terms of article 26.5.2.1 shall be those who have been longest in office, provided that if more than one of them were in office for the same length of time, those to retire shall be determined by lot among themselves unless those directors have agreed otherwise between themselves;

26.5.2.3 a retiring non-executive director shall be eligible for re-election, provided he is then eligible to serve as a director in terms of article 26.2.4, and provided further that his re-election has been recommended by the Board having regard to his past performance and contribution, and, if re-elected, shall be deemed for all purposes other than this article 26.5.2 not to have vacated his office; and

26.5.2.4 the ordinary shareholders at the annual general meeting at which a non-executive director retires may elect another eligible person to fill the vacated office, and if not so filled, the retiring non-executive director shall, if he is eligible and has offered himself for re-election, be deemed to have been re-elected unless the ordinary shareholders expressly resolves not to fill such vacated office or not to re-elect such retiring non-executive director;

### **26.5.3 Nominations process**

No person other than a retiring director shall be eligible for election as a director at any annual general meeting or any other general meeting (provided he is then eligible to serve as a director in terms of article 26.2.4, and provided further that his election or re-election (and that of his alternate) has been recommended by the Board having regard to his performance and contribution (and in the case of his alternate, the performance and contribution of such alternate), unless the Board recommends otherwise, or unless during the period of 30 days following the end of the financial year of the Company which immediately precedes the annual general meeting an ordinary shareholder who will be entitled to attend and speak at such annual general meeting shall have lodged at the registered office of the Company:

26.5.3.1 a written notice proposing such person as a director (and his alternate); and

26.5.3.2 the details, written undertakings, indemnities and consents of the proposed candidate referred to in article 26.3.2.

#### **26.5.4 Filling of vacancies on the Board by the Board**

26.5.4.1 Subject to article 26.5.4.2, if a vacancy arises on the Board, the Board may in terms of section 68(3) appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the Company on a temporary basis until the earlier of the vacancy being filled by election by the ordinary shareholders in terms of section 68(2) or the conclusion of the next annual general meeting of the Company after the temporary appointment.

26.5.4.2 If a vacancy arises on the Board and as a result thereof the Company does not have the minimum number of directors required by the Companies Act or this MOI, the Board shall within the period of 3 months from the date such a vacancy arose continue to function as contemplated in section 66(11) and shall fill the vacancy(ies) in question on a temporary basis as provided for in article 26.5.4.1 or convene a general meeting for the purposes of the ordinary shareholders conducting an election to fill such vacancy(ies) in terms of section 68(2). After the expiry of the aforementioned three-month period, the remaining directors on the Board shall only be permitted to act for the purpose of filling the vacancy(ies) in terms of article 26.5.4.1 or calling a general meeting of ordinary shareholders for purposes of an election in terms of section 68(2).

#### **26.6 Further grounds of ineligibility**

A person is ineligible to be or serve as a director of the Company for purposes of section 69(7) if the person:

26.6.1 is ineligible in terms of section 69(7)(a) or (b); or

26.6.2 is, or a related person is, in the opinion of the Board, a director of, or employed or otherwise engaged by, or in any way interested in (including but not limited to having a personal financial interest in), in any capacity whatsoever, any person who carries on activities in competition with any of the businesses or activities of the Company (section 69(7)(c)); or

26.6.3 has at any time been placed under an order of probation in terms of section 162 or in terms of section 47 of the Close Corporations Act, 69 of 1984, as amended (section 69(7)(c)); or

26.6.4 has, in the opinion of the Board, not delivered to the Company to the satisfaction of the Board any of the details, statements, undertakings, indemnities or consents contemplated by article 26.3.2 (section 69(7)(c)); or

26.6.5 has, in the opinion of the Board, made any misrepresentation or misled the Company in any way by act or omission or non-disclosure with regard to any aspect of his experience, training, qualifications or skills (section 69(7)(c)); or

26.6.6 has, in the opinion of the Board, at any time been involved in, or is involved in, as the subject or one of the subjects of any investigation, audit, enquiry, charge, court proceeding or other proceeding of any nature whatsoever, in any jurisdiction, which is contemplated in or similar to any contemplated in section 69(8), whether or not that person is or is likely to be disqualified from serving as a director in terms of section 69(8) (section 69(7)(c)); or

26.6.7 has, in the opinion of the Board, been absent without good cause shown, from any 3 (three) Board or Board committee meetings in any current rolling 12 (twelve) month cycle (section 69(7)(c)).

#### **26.7 Filling of vacancies on the Board by shareholders**

26.7.1 If a person has ceased to be a director of the Company in terms of section 70, then that fact shall be recorded in the register of directors and the Company shall file with the Commission a notice within 10 (ten) business days of that person ceasing to be a director (section 70(6) and section 24(3)(b)).

26.7.2 If a person has ceased to be a director of the Company and a vacancy on the Board has arisen, then such vacancy, if it is to be filled, must be filled as provided for in section 70(3), subject to section 70(4), by an election by the ordinary shareholders at the next annual general meeting of the Company in the manner provided for in article 26.2.3 (section 70(3)(b)).

## 26.8 Removal of director by ordinary shareholders

In terms of section 71(1), a director elected by ordinary shareholders may be removed by an ordinary resolution of the ordinary shareholders, following the procedure set out in section 71(2) (section 71(1)).

## 26.9 Removal of a director by the Board

26.9.1 If a shareholder or a director contends that a person should be removed as a director of the Company by the Board on any of the grounds contemplated in section 71(3), that shareholder or director shall first submit to the Board in writing each of its contentions and the specific grounds of each such allegation contemplated in section 71(3) on which reliance is made, and shall submit to the Board all evidence available to that shareholder or director on which such shareholder or director relies for making the contention and each allegation, and the Board on receipt thereof must study such submission, investigate the allegation(s) and determine the matter by resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

26.9.2 Notwithstanding article 26.9.1, any director (and/or his alternate), whether an executive or a non-executive director, may be removed from his office at any time, and be disqualified from being entitled to serve as a director (or alternate) of the Company, if the Board resolves that he shall be so removed and disqualified (King III Report Chapter 2, 79).

## 26.10 Resignation by directors

A director shall be entitled to resign as a director on 30 days' written notice to the Company.

## 27. BOARD COMMITTEES

27.1 Subject to this article 27, the Board may appoint any number of committees of directors and delegate to any such committee any of the authority of the Board (section 72(1)).

27.2 Any committee so appointed by the Board shall, in the exercise of the authority so delegated to it, have the full authority of the Board in respect of the matter referred to it, save that it must conform to any rules or regulations or restrictions or other instructions that may from time to time be imposed by the Board on the exercise of such authority by that committee (section 72(2)(c)).

27.3 Any committee appointed by the Board may include persons who are not directors of the Company, provided that any such non-director:

27.3.1 must not be a person who is ineligible or disqualified from being entitled to serve as a director in terms of section 69 read with article 26.6 (section 72(2)(a)(i)); and

27.3.2 may not vote on any matter to be decided by the committee on which he serves (section 72(2) (a)(ii)).

27.4 A committee appointed by the Board may, with the prior approval in each instance of the Board, (which approval may be a specific or general approval, and may be given in the terms of reference for that committee or from time to time by Board resolution or applicable Board committee resolution, and subject to any appropriate budgetary restrictions), consult with or receive advice from any person at the expense of the Company (section 72(2)(b)).

27.5 The Company shall establish a social and ethics committee in terms of section 72(4) and regulation 43.

27.6 Any audit committee appointed by the Board as a Board committee in terms of this article 27 is separate from any statutory audit committee elected by ordinary shareholders in terms of article 9.8.5.

27.7 The members of each Board committee shall hold and conduct their meetings in accordance with the provisions in the rules of the Company governing the holding and conduct of such meeting, which provisions are binding on each Board committee member in terms of section 15(6)(c)(ii) (article 9).

## 28. BOARD MEETINGS

### 28.1 Calling a Board meeting

A director authorised by the Board to do so:

28.1.1 may call a Board meeting at any time (section 73(1)(a)); or

28.1.2 must call a Board meeting if required to do so by at least 1 (one) director (sections 73(1)(b)(ii) and 73(2)).

### 28.2 Location of Board meetings

The director(s) of the Company convening a Board meeting may determine the location of the meeting (including the location of a meeting which has been adjourned), provided that the location shall be the registered office of the Company or a suitable venue within a 20 km radius of the registered office of the Company or a suitable venue in the Republic of South Africa which is reasonably accessible to each director.

### 28.3 Electronic participation at Board meetings

28.3.1 Every meeting of the Board must be reasonably accessible within the Republic of South Africa for electronic participation by directors, irrespective of the physical location of the meeting (section 73(3)).

28.3.2 Except if the Companies Act provides otherwise, a director may participate in a Board meeting (including the meeting as adjourned) by electronic communication, at the expense of the Company (section 73(3)(b)).

28.3.3 The electronic communication facility employed by the Company must ordinarily enable all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting (section 73(3)).

28.3.4 A resolution adopted by directors, some or all of whom were connected electronically, where:

28.3.4.1 directors connected electronically remained connected for the duration of that part of the meeting when the resolution was discussed;

28.3.4.2 the subject matter of the resolution has been discussed; and

28.3.4.3 the chairman of the meeting or any other director present in person or electronically certifies in writing that the aforementioned requirements have been met,

shall be deemed to have been passed on the date on which the resolution was adopted.

28.3.5 Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the directors were connected and participated electronically in terms of this article 28.3, the Company shall:

28.3.5.1 deliver to each director of the Company a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and

28.3.5.2 insert a copy of the resolution proposed and statement referred to in article 28.3.5.1 in the minute book of the Company.

28.3.6 A director who participates in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

### 28.4 Regulation of Board meeting

The directors may regulate the conduct of Board meetings as they think fit, subject to the provisions of the Companies Act and the MOI.

### 28.5 Notice of Board meetings

28.5.1 Subject to section 73(5)(a), a notice of a Board meeting must be in writing and delivered to each director of the Company (including each alternate director) so as to be received by the director in question in the ordinary course not less than 7 (seven) days before the date appointed for the Board meeting, provided that in exceptional circumstances the notice

period may be shortened as is necessary to allow the directors to attend to the exceptional circumstances in question (section 73(4) and 5(a)).

28.5.2 Such notice of a Board meeting may be in any form determined by the Board but must as a minimum include:

28.5.2.1 the date, time and place for the meeting;

28.5.2.2 a detailed agenda for the meeting;

28.5.2.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by electronic communication and the necessary information to enable directors (including their alternates) to access the available medium or means of communication;

28.5.2.4 the general purpose of the meeting;

28.5.2.5 any specific purpose of the meeting;

28.5.2.6 a copy of any proposed resolution which the Board will be asked to consider and, if deemed fit, approve (which proposed resolution must be expressed with sufficient clarity and specificity, and must be accompanied by sufficient information or explanatory material to enable a director to understand the reason and effect of the resolution and the ramifications for the Company, and to be properly informed about the matter for purposes of section 76(4)(a)(i));

28.5.2.7 an explanation of a person's non-standing as a director in terms of articles 26.2.4.2, 28.6.4 and 28.15.5, and as a standing agenda item, an opportunity for any director to disclose any facts, circumstances or events, or other grounds, for holding that director to be ineligible or disqualified from serving as a director (article 26.3.2.3);

28.5.2.8 an explanation of a director's duties to disclose, and as a standing agenda item an opportunity for any director to disclose any personal financial interest and regard being had of any general disclosure by a director in terms of section 75(4) of any personal financial interest, applicable with respect to any decisions to be taken by the Board, in terms of section 75 and section 76(4)(a)(ii) read with section 73(6) (a); and

28.5.2.9 an explanation of a director's duties to communicate, and as a standing agenda item an opportunity for any director to communicate, to the Board at the earliest practicable opportunity any information that has come to the attention of a director as contemplated by section 76(2)(b).

## 28.6 quorum

28.6.1 A Board meeting may not begin unless there are at least 3 (three) directors present (section 73(5)(b)).

28.6.2 A matter to be decided at the Board meeting may not begin to be considered unless there are at least 3 (three) directors present.

28.6.3 For purposes of counting a quorum at any time, a director (or his alternate) who is personally present at the meeting, or who participates in person electronically in terms of article 28.3 at that time, shall be counted towards a quorum at that time.

28.6.4 A person whose appointment as a director (including as an alternate director) is a nullity in terms of section 66(6), or who ceases to be a director in terms of section 70, shall not be counted towards any quorum of directors (article 26.2.4.2).

## 28.7 Chairman of the meeting

28.7.1 The Board may elect a chairman of their meetings, and one or more deputy chairmen to preside in the absence of the chairman, and may determine a period for which the chairman and deputy chairman are to hold office.

28.7.2 If no such chairman or deputy chairman is elected by the Board or if at any meeting neither the chairman nor a deputy chairman is present within 10 (ten) minutes after the time appointed for the beginning of the Board meeting, the directors then present shall choose one of their number to be chairman of such meeting.



## **28.8 Automatic postponement of a meeting**

If within 30 (thirty) minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for one week.

The 30 (thirty) minute limit specified in article 28.8.1 may be extended for a reasonable period not exceeding 2 (two) hours by the chairman of the meeting.

## **28.9 Automatic adjournment of a meeting**

If at the time a matter will begin to be considered at a meeting, a quorum is not present and there is no other business on the agenda, the meeting is automatically adjourned (without any motion or vote) for one week.

## **28.10 Voluntary postponement of a particular matter to later in the meeting**

If at the time a particular matter will begin to be considered at the meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion or vote) to a later time in the meeting.

## **28.11 Further notice required for postponed/adjourned meeting**

The Company shall not be required to give further notice of a Board meeting that is postponed or adjourned unless:

28.11.1 the location for the meeting is different from:

28.11.1.1 the location of the postponed or adjourned meeting; or

28.11.1.2 the location announced at the time of adjournment, in the case of an adjourned meeting; or

28.11.2 it is necessary to inform directors of the availability of participation in the postponed or adjourned meeting by electronic communication as contemplated by article 28.5.2.3.

## **28.12 Deemed quorum at a postponed or adjourned meeting**

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those directors present in person at the meeting including those participating electronically in terms of article 28.3, will be deemed to constitute a quorum.

## **28.13 Continuing quorum during meeting**

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 one director is present at the meeting.

## **28.14 Adjournment by directors**

A Board meeting may be adjourned by majority vote of the directors present at the meeting.

## **28.15 Voting by directors**

28.15.1 Each director has one vote on a matter before the Board (section 73(5)(c)), save that:

28.15.1.1 a director whose eligibility or ineligibility to serve as a director is being determined as contemplated in article 26.6 or in terms of article 26.9, shall not have a vote in respect of that matter (section 71(3));

28.15.1.2 a director who has been suspended in terms of section 70(2), shall not have a vote on any matter before the Board (section 70(2));

28.15.1.3 a director who has a personal financial interest in respect of a matter to be considered by the Board, or who knows that a related person has a personal financial interest in the matter as contemplated by section 75(4) or (5), shall not have a vote in respect of that matter (section 75(5)(f)(ii));

28.15.2 A majority of the votes of the directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board resolution, provided that there is at least a quorum of directors present and so exercising their votes on the matter. An abstention from voting shall not be counted as the exercise of a vote, and shall be disregarded for purposes of calculating whether or not a majority has been obtained (section 73(5)(d)).

- 28.15.3 Where the vote is tied, the matter being voted on will fail, and the chairman of the meeting shall not in the event of such a tie have a second or casting vote (section 73(5)(e)(ii)).
- 28.15.4 If a resolution of the directors has failed because of a tie contemplated in article 28.15.3, the Board or any director of the Company or any registered shareholder may refer the matter to the ordinary shareholders for the ordinary shareholders to resolve and facilitate the breaking of any deadlock at director level, failure of which by the ordinary shareholders and/or directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).
- 28.15.5 The vote of any person whose appointment as a director (including as an alternate director) is a nullity in terms of section 66(6), or who ceases to be a director in terms of section 70, shall not with effect from the time that vote is purportedly cast be counted towards any vote of directors (article 26.2.4.2).

#### **28.16 Recusal by directors from Board meetings**

A director (or in his absence his alternate) shall be required to attend all Board meetings in person or electronically, and to vote on all matters before the Board at Board meetings or by round-robin resolution, as the case may be, unless that director (and/or his alternate) is required not to do so or to recuse himself in terms of the Companies Act or the MOI, including in circumstances where that director does not have a vote in terms of article 28.15.

#### **28.17 Minutes**

- 28.17.1 Minutes of Board and Board committee meetings must be kept and minutes must include all resolutions adopted by the Board or Board committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a director in terms of section 75 (section 73(6)).
- 28.17.2 Each resolution adopted by the Board must be dated and sequentially numbered (section 73(7)(a)).
- 28.17.3 Signature of the minutes or of a resolution by the chair of the meeting (or by the chair of the next meeting) is evidence of the proceedings of that meeting, or adoption of the resolution, as the case may be (section 73(8)).
- 28.17.4 Any extract from such minutes or extract from any resolution in writing, if signed by any director or the company secretary, shall be evidence of the matters stated in such minutes or extract.

### **29. ROUND-ROBIN RESOLUTIONS BY THE BOARD**

- 29.1 A resolution that could be voted on at a Board meeting (other than a Board resolution that the Company voluntarily begin business rescue proceedings and place the Company under supervision as contemplated in section 129(1)) may instead of being voted on at a meeting be:
- 29.1.1 submitted (by the directors proposing the resolution) for consideration to each director (section 74(1)); and
- 29.1.2 voted on in writing by directors entitled to exercise voting rights on that matter within 10 (ten) business days after the resolution was submitted to them.
- 29.2 A resolution contemplated in article 29.1 will have been adopted as a Board resolution if it has been supported in writing by the requisite majority (as determined in terms of article 28.15.2) of the directors in person who are entitled to exercise and exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a Board meeting (section 74 (1) and (2)).
- 29.3 A round-robin resolution of directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date the resolution was submitted to directors for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the directors entitled to do so voting in favour of the resolution (or if that or any other written approval is undated, the date on which such written approval was communicated to the Company) within the 10 (ten) business days referred to in article 29.1.2, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed (section 73(7)(b)).

- 29.4 Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Company shall:
- 29.4.1 deliver to each director a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and
  - 29.4.2 insert a copy of the resolution and statement referred to in article 29.4.1 in the minute book of the Company.

### 30. WINDING UP

#### 30.1 While the Company is:

- 30.1.1 solvent, the Company may be wound-up in terms of Part G of Chapter 2 of the Companies Act (section 79(1)); or
- 30.1.2 insolvent, the Company may be wound-up as an insolvent company in terms of the applicable laws of insolvency prevailing (section 79(3)).

#### 30.2 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:

- 30.2.1 to repay to the ordinary shareholders the amount paid upon on the shares held by each of them; and
- 30.2.2 the balance (if any) shall be distributed among the ordinary shareholders in proportion to the number of ordinary shares held by each of them,

provided that the provisions of this article shall be subject to the rights of the holders of shares (if any) issued upon special conditions and contained in Schedule Two (Authorised securities of the Company).

#### 30.3 In a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution of the Company, be paid to the ordinary shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such ordinary shareholders, and the liquidation of the Company may be closed and the Company dissolved.

### 31. DISCLOSURE OF BENEFICIAL INTERESTS

#### 31.1 Subject to the Company being a “regulated company” and the Takeover Laws applying to the Company in terms of section 118(1) and, if they do, subject to the extent their application has not been exempted by the Panel in terms of section 119(6), a person who:

- 31.1.1 acquires a beneficial interest in sufficient securities of a class issued by the Company such that, as a result of the acquisition, the person holding a beneficial interest in securities amounting to 5%, 10%, 15%, or any further whole multiple of 5%, of the issued securities of that class (section 122(1)(a)); or
- 31.1.2 disposes of a beneficial interest in sufficient securities of a class issued by the Company such that, as a result of such disposition, the person no longer holds a beneficial interest in securities amounting to a particular multiple of 5% of the issued securities of that class (section 122(1)(b)),

must within 3 (three) business days of such acquisition or disposal by that person of the requisite beneficial interests notify the Company in the prescribed manner and form of that acquisition or disposal (section 122(1) read with section 117 and regulation 91).

#### 31.2 If the Company receives a notice from a person as contemplated in article 31.1, then the Company must:

- 31.2.1 file a copy of such notice with the Panel (section 122(3)(a));
- 31.2.2 report the information to the holders of the relevant class of securities unless the notice concerned a disposition of less than 1% of the class of securities (section 122(3)(b)); and
- 31.2.3 keep copies of such reports to securities holders for a period of 7 (seven) years, in terms of section 24(3)(e).

## 32. REMEDIES AND ENFORCEMENT

### 32.1 Protection for whistle-blowers

32.1.1 The Board shall propose rules with respect to the handling of disclosures by whistle-blowers to legal advisers, a director, a prescribed officer, the Company secretary, auditor, Board or committee of the Company contemplated in section 159(3)(b), in terms of article 9.

32.2.2 The Company must establish and maintain a system to receive disclosures contemplated in section 159 confidentially, and act on them (section 159(7))

### 32.2 Dispute resolution

Any dispute between any one or more persons bound by the provisions of this MOI, or not so bound, which cannot be resolved by negotiation and agreement within 10 (ten) business days of any party to the dispute or any other person bound by this MOI requesting such resolution, may be dealt with by any such party to the dispute in terms of Chapter 7 (*Remedies and Enforcement*) of the Companies Act. The persons bound by this MOI shall use their respective best endeavours to negotiate in good faith with each other and any applicable third party for purposes of reaching a resolution of the dispute in question within such 10 (ten) business day period.

## 33. NOTICES

33.1 A notice required in terms of the Companies Act or this MOI to be given to shareholders shall be delivered by the Company to all registered shareholders either personally or by sending it by post to any of the registered addresses provided by the registered shareholders and recorded in the securities register. If a shareholder has not nominated an address in terms of article 15.2, that registered shareholder shall be deemed to have waived his right to be served with notices.

33.2 All notices with respect to any shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such shares in terms of article 15.3, as the case may be, and notice so given shall be sufficient notice to all the holders of such shares.

33.3 The notice may be given by the Company to the persons entitled to a share in consequence of the death or insolvency of a shareholder, or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which same might have been given if the death or insolvency had not occurred.

33.4 Any notice by post shall be deemed to have been served at the time when the letter containing the notice was posted (that is, delivered to the post office where the post office is agent for the shareholder) and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and delivered to the post office.

33.5 A notice given to any shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.

33.6 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

33.7 Any person shall be entitled to send and receive any notice in terms of this article 33 by electronic media, subject to the provisions of regulation 7. Methods and times for delivery of notices sent by electronic media in terms of this article 33.7 will be governed by regulation 7 in particular, in accordance with Table CR 3 of the regulations.

**SCHEDULE ONE: RESTRICTIVE CONDITIONS**

**1. LIMITATION ON CAPACITY**

(none)

**2. LIMITATION ON POWERS**

(none)

## Schedule Two: Authorised securities of the Company

### 1. CLASSES AND NUMBERS OF AUTHORISED SHARES

500 000 000 ordinary par value shares of R0.01 (one cent) each.

### 2. ORDINARY SHARES

2.1 The following rights attach to one ordinary share:

- 2.1.1 the rights for the owner thereof to be entered in the securities register of the Company as the registered holder thereof;
- 2.1.2 the rights to attend and speak (in person or by proxy) at any meeting of shareholders where ordinary shareholders are entitled to vote;
- 2.1.3 the right to exercise one vote on any matter to be decided upon by the shareholders holding ordinary shares (section 37(2));
- 2.1.4 the right to receive a portion of any distribution, if and when declared by the Company in favour of shareholders holding ordinary shares (being that portion of the distribution in question determined by dividing the number one by the then total number of ordinary shares issued as at the applicable record date with respect to that distribution);
- 2.1.5 an irrevocable right to vote on any proposal to amend the preferences, rights, limitations and other terms associated with the ordinary share (section 37(3)(b));
- 2.1.6 the right to receive a portion of the net assets of the Company upon its liquidation (being that portion of the net assets in question determined by dividing the number one by then total number of ordinary shares issued as at the applicable time of the distribution of such net assets) (sections 37(3)(b)(ii) and 37(4)(b)).

2.2 The transferability of the ordinary share shall not be restricted.

### 3. VOTING AND OTHER RIGHTS: JSE LISTINGS REQUIREMENTS

For so long as any securities of the Company are listed on the JSE the authorised shares of the Company and any changes thereto, shall be subject to any limitations with respect thereto contained in schedule 10 to the JSE Listings Requirements as amended from time to time, including the following:

- 3.1 securities in each class of securities for which a listing on the JSE is applied shall rank *pari passu* in respect of all rights. A statement that "securities in each class rank *pari passu*" shall be understood to have the meaning attributed thereto in paragraph 3.29 of the Listings Requirements;
- 3.2 securities of any class, other than ordinary shares (which are dealt with in item 2 above) and other than a class of shares created for the purposes of Black Economic Empowerment, if any, shall not have the right to vote on any resolution taken by the Company save as expressly provided for in the JSE Listings Requirements. In the instances that such shareholders are allowed to vote at the general or annual meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each share that they hold, provided that their total voting right at such a general or annual general meeting may not exceed 24,99% of the total voting rights of all shareholders at such a meeting;
- 3.3 securities comprising cumulative or non-cumulative preference shares shall not be authorised or created without the following right attaching to such shares:  
"No further securities ranking in priority to, or *pari passu* with, existing preference shares, of any class, shall be created without a special resolution passed at a separate general meeting of such holders."
- 3.4 the preferences, rights, limitations or other terms of any class of shares of the Company shall not be varied, and no resolution may be proposed to shareholders of the Company for rights to include such variation, in response to any ascertainable external fact or facts, as provided for in section 37(6) and (7); and
- 3.5 the granting of special privileges to holders of debt instruments, such as attending and voting at general meetings and the appointment of directors, is prohibited.