

Republic of South Africa  
Companies Act, 2008

**MEMORAN DUM OF INCORPORATION FOR A PUBLIC COMPANY LISTED**

**Pick n Pay Stores Limited**

Registration No.: 1968/008034/06

This MOI was adopted by Special Resolution passed on 26 July 2022 in substitution for the existing memorandum of incorporation of the Company. This MOI was amended by Special Resolutions adopted on 26 June 2024.

MOI adopted by special resolution number 4 at AGM held on 26 July 2022

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As amended by the adoption of special resolutions at general meeting on 26 June 2024

## 1. INTERPRETATION

In this MOI, –

1.1. words that are defined in the Companies Act (which are contained in **Annexure A** for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act read where necessary with definitions in the Listings Requirements. For ease of reading, such terms have been capitalised in this MOI;

1.2. unless the context otherwise requires –

1.2.1. "**Companies Act**" means the Companies Act, 2008, as amended or any legislation which replaces it;

1.2.2. "**Company**" means Pick n Pay Stores Limited or by whatever other name it may be known from time to time;

1.2.3. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 34 (*Notices*) and the Companies Act;

1.2.4. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by the Holder;

1.2.5. "**Financial Markets Act**" means the Financial Markets Act, 2012;

1.2.6. "**Holders**" means registered holders of Securities;

1.2.7. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Annexure B** for easy reference but which does not form part of this MOI for purposes of interpretation);

1.2.8. "**JSE**" means the exchange operated by JSE Limited (Registration No. 2005/022939/06) (or any other name by which it may be known in the future) or its successor body;

1.2.9. "**Listings Requirements**" means the listings requirements of the JSE from time to time, including any dispensation granted by the JSE and any practice notes and guidance letters issued by the JSE from time to time;

- 1.2.10. "**MOI**" means this Memorandum of Incorporation;
- 1.2.11. "**Participant**" means a depository institution accepted by a Central Securities Depository as a participant in the Financial Markets Act;
- 1.2.12. "**Regulations**" means regulations published pursuant to the Companies Act from time to time;
- 1.2.13. "**Un-certificated Securities**" means securities as defined in the Financial Markets Act which are by virtue of the Companies Act transferable without a written instrument and are not evidenced by a certificate;
- 1.2.14. "**Writing**" includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3. references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4. references to Holders entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing Persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;

- 1.9. the use of the word "including", "includes" or "include", followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of that general wording or those specific example/s;
- 1.10. save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.11. words and expressions defined in Annexure D hereto shall bear the meaning ascribed thereto for all purposes in terms of this MOI; and
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## 2. **CALCULATION OF BUSINESS DAYS**

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

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

## 3. **PUBLIC COMPANY**

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

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

- 4.1. The Company has the powers and capacity of an Individual.
- 4.2. No Special Resolution may be put to Holders to ratify any action by the Company or the Directors that is inconsistent with any limit, restriction or qualification regarding the purposes, powers or activities of the Company, or the authority of the Directors to perform an act on behalf of the Company, if that action was contrary to the Listings Requirements unless agreed with the JSE.

- 4.3. Notwithstanding the omission from this MOI of any provision to that effect, the Company may, subject to any limitation in clause 4.1, do anything which the Companies Act empowers a company to do if so authorised by its MOI.
- 4.4. The following corporate actions shall be undertaken in accordance with the Listings Requirements –
- 4.4.1. issues of Securities (including options) for cash;
  - 4.4.2. repurchases of Securities;
  - 4.4.3. alterations of authorised Securities and rights attaching to classes of Securities including convertible Securities which might be approved to be issued.

## 5. **AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) and 16(4) and a Special Resolution passed by the Holders of the ordinary Shares and, for so long as they carry Voting Rights and remain in issue, a separate class resolution of the Holders of the B Shares, as contemplated and provided for in Annexure D hereto. The Board shall publish a copy of any such correction effected by the Board on the Company's web site.

## 6. **THE MAKING OF RULES**

The Board shall not make, amend or repeal Rules as long as the Listings Requirements prohibit it.

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

- 7.1. The Company is authorised to issue (which includes Shares already issued at any time) –
- 7.1.1. 10 000 000 000 (ten billion) ordinary Shares with no par value which shall have Voting Rights in respect of every matter that may be decided by voting and which shall rank after all other classes of Shares in the Company which do not rank pari passu with the ordinary Shares as regards

Distributions, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation; and

- 7.1.2. 5 300 000 000 (five billion three hundred million) "B" Shares having the preferences, limitations and other terms set forth in Annexure D.
- 7.2. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3).
- 7.3. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a related or inter-related company without complying with section 44(3).

## 8. **AUTHORITY TO ISSUE SECURITIES**

- 8.1. The Board shall not have the power to issue authorised Securities (other than as contemplated in clause 8.4) without the prior approval contemplated in clause 8.2 and the approval of the JSE (where necessary).
- 8.2. As regards the issue of –
  - 8.2.1. Shares contemplated in sections 41(1) and (3) or as contemplated in Listings Requirement 5.50, the Directors shall not have the power to allot or issue same without the prior approval of a Special Resolution;
  - 8.2.2. Shares, other than those contemplated in clause 8.2.1, and other Securities including options in respect thereof, the Directors shall not have the power to allot or issue same without the prior approval of an Ordinary Resolution,

provided that such issue has been approved by the JSE. No special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3).

- 8.3. Any such approval may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any such Securities contemplated in clauses 8.2.1 and 8.2.2 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities contemplated in clauses 8.2.1 and 8.2.2. Such authority shall endure for the period provided in the Ordinary or Special Resolution in question but may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time.
- 8.4. The Board may issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47.
- 8.5. For so long as the Listings Requirements so require, no Shares of a class which is listed may be issued other than as fully paid.

9. **PRE-EMPTION ON ISSUE OF EQUITY SECURITIES**

Equity Securities in the Company which are authorised but unissued and which are intended to be issued for cash, shall be offered to the existing Holders of those equity Securities by way of a rights offer, *pro rata* to the Voting Power of that Shareholder's Voting Rights immediately before the offer was made, with a reasonable time allowed to subscribe, unless –

- 9.1. the approvals contemplated in clause 8.1 have been obtained;
- 9.2. a capitalisation issue, an issue for an acquisition of assets (including another company) or an issue for the purposes of an Amalgamation or Merger, is to be undertaken;
- 9.3. the equity Securities are to be issued in terms of option or Conversion rights;
- 9.4. the equity Securities are to be issued to an approved share incentive scheme.

After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Person to whom the offer is made that he/she/it declines to accept the equity Securities offered, the Directors may, subject to the foregoing provisions, issue such equity Securities in such manner as they think most beneficial to the Company. The foregoing provisions of this clause 9 will not apply to the issue of any "B" Shares.

10. **CERTIFICATES EVIDENCING ISSUED SECURITIES, UN-CERTIFICATED SECURITIES AND SECURITIES REGISTER**

- 10.1. The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or un-certificated in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities. When any new Securities are to be issued by the Company, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to her/him/it shall be in certificated or un-certificated form, provided that all "B" Shares will be held in certificated form. Each original certificate issued to a Holder in certificated form shall be issued without charge within 60 (sixty) days after allotment, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue.
- 10.2. The Company shall convert its share register into a Securities Register with effect from the Effective Date which shall reflect –
- 10.2.1. the number of Securities authorised and the number available to be issued and the date of authorisation;
  - 10.2.2. the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;
  - 10.2.3. the number of Securities of a class that are held in un-certificated form;
  - 10.2.4. the number of Securities of that class that are the subject of options or conversion rights which, if exercised, would require Securities of that class to be issued;
  - 10.2.5. in the case of un-certificated Securities, a unique identifying number of the Person to, from or by whom the Securities were issued, re-acquired or surrendered, as the case may be;
  - 10.2.6. details of any unlisted Securities issued by the Company.
- 10.3. As soon as practicable after –
- 10.3.1. issuing any Securities the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities evidenced by certificates that it has issued –



- 10.3.1.1. the names and addresses and identity numbers of the Persons to whom the Securities were issued;
  - 10.3.1.2. those Persons' Electronic Addresses who have furnished them;
  - 10.3.1.3. the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the Consideration;
  - 10.3.1.4. the total number of Securities of a class held by any Person;
  - 10.3.1.5. the date on which any such Securities were transferred by the Holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
  - 10.3.1.6. the number of, and prescribed circumstances relating to, any Securities –
    - 10.3.1.6.1. that have been placed in trust as contemplated in section (40)(6)(d) by reason of not having been fully paid for; or
    - 10.3.1.6.2. whose transfer has been restricted;
  - 10.3.1.7. as regards debt instruments as contemplated in section 43 –
    - 10.3.1.7.1. the number of those Securities still in issue;
    - 10.3.1.7.2. the names and addresses of the Holders of the Securities and any holders of a Beneficial Interest in the Securities;
  - 10.3.1.8. the total number of un-certificated Securities from time to time;
- 10.3.2. the re-acquisition or surrender of any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities re-acquired or surrendered –
- 10.3.2.1. the date on which the Securities were re-acquired or surrendered to the Company;

- 10.3.2.2. the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
  - 10.3.2.3. the Consideration for which the Securities were re-acquired by, or surrendered to the Company; and
  - 10.3.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 10.3.3. transferring any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities evidenced by certificates that it has transferred -
- 10.3.3.1. the name and address of the transferee;
  - 10.3.3.2. the description of the Securities, or interest transferred;
  - 10.3.3.3. the date of the transfer; and
  - 10.3.3.4. the value of any Consideration still to be received by the Company on each Security or interest, in the case of a transfer of Securities the subscription price for which has not been fully paid;
  - 10.3.3.5. any other information contemplated in clause 10.3.1, any reference to issue being read as a reference to transfer, provided that such entry may only be made if the transfer -
  - 10.3.3.6. is evidenced by a proper instrument of transfer that has been delivered to the Company; or
  - 10.3.3.7. was effected by operation of law;
- 10.3.4. any disclosures to the Company of any Beneficial Interest in respect of Securities evidenced by certificates, the Company must enter or cause to be entered in its Securities Register a record of all such disclosures, including the following information for any Securities in respect of which a disclosure was made -
- 10.3.4.1. the name and unique identifying number of the Holder of the Securities;

10.3.4.2. the number, class and the distinguishing numbers of the Securities; and

10.3.4.3. for each Person who holds a Beneficial Interest in the Securities, the extent of the Person's Interest in the Securities, together with that Person's –

10.3.4.3.1. name and unique identity number;

10.3.4.3.2. business, residential or postal address;

10.3.4.3.3. Electronic Address if available,

and any other information prescribed in terms of the Companies Act from time to time. If the Company has un-certificated Securities at any time it shall comply with the provisions of sections 52 and 53 and in particular shall enter or cause to be entered in its Securities Register the total number of such un-certificated Securities from time to time.

10.4. Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe save that they must –

10.4.1. state on the face –

10.4.1.1. the name of the Company;

10.4.1.2. the name of the Person to whom the Securities were issued;

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

10.4.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE) evidenced by that certificate;

10.4.2. be signed by 2 (two) Persons authorised by the Board from time to time by autographic, mechanical or electronic means;

10.4.3. be issued within 60 (sixty) days from allotment in the case of an issue of Securities or from the lodging of the requisite documents by the transferor.

10.5. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.

- 10.6. Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in her/his/its name, or to several certificates, each for a part of such Securities.
- 10.7. A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 10.8. If a certificate for Securities or share warrant to bearer is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate or share warrant to bearer to the Company.
- 10.9. A Person –
- 10.9.1. acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register as a Person to whom those Securities have been issued or transferred; and
  - 10.9.2. ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.
- 10.10. After receiving a notice from a Central Securities Depository or Participant that a Holder who wishes to withdraw all or part of the un-certificated Securities held by that Person in an un-certificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, the Company must –
- 10.10.1. immediately enter the relevant Person's name and details of that Person's holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in un-certificated form;
  - 10.10.2. within 10 (ten) Business Days, or 20 (twenty) Business Days in the case of a Holder who is not resident within South Africa –
    - 10.10.2.1. prepare and Deliver to the relevant Person a certificate in respect of the Securities; and

10.10.2.2. notify the Central Securities Depository that the Securities are no longer held in un-certificated form,

and may charge the Holder a reasonable fee to cover the actual costs of issuing a certificate.

10.11. If the Company issues Securities which are not listed on the JSE, the share certificates for those Securities must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.

**11. HOLDING SECURITIES FOR THE BENEFICIAL INTEREST OF ANOTHER PERMITTED**

The Company shall permit Securities (other than the "B" Shares) to be held by one Person for the Beneficial Interest of another, but the Holder (other than a Central Securities Depository Participant) shall be obliged in the case where he/she/it holds for the Beneficial Interest of another, to advise the Company in writing within 14 (fourteen) days of such position having arisen, or in the case of such a position already prevailing at the date of adoption of this MOI, within 14 (fourteen) days of the adoption of this MOI.

**12. PROHIBITION AGAINST THE COMPANY TAKING ANY LIEN**

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

**13. LISTINGS ON OTHER STOCK EXCHANGES**

13.1. The Company may seek listings on such stock exchanges as the Directors may consider appropriate from time to time.

13.2. For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE, if the listing on the JSE is the primary listing and if the Company is obliged to obtain the approval of the JSE in regard to any matter, it shall be obliged also to obtain the consent at the same time of any other stock exchanges on which it is listed.

**14. COMMISSION**

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

15. **TRANSFER OF SECURITIES**

- 15.1. There is no restriction on the transfer of Securities, unless the specific terms of those Securities provide otherwise.
- 15.2. The transfer of any Securities which are certificated shall be implemented in accordance using the then common form of transfer. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his/her/its rights to transfer the Securities.
- 15.3. All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.
- 15.4. The certificated Securities Register may, upon notice being given on the web site of the Company, be closed during such time as the Directors think fit, not exceeding in the whole 60 (sixty) days in each year.

16. **TRANSMISSION OF SECURITIES BY OPERATION OF LAW**

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

- 16.1. the parent or guardian or curator of any Holder who is a minor;
- 16.2. the trustee of an insolvent Holder;
- 16.3. the liquidator of a body corporate Holder;
- 16.4. the tutor or curator of a Holder under disability;

- 16.5. the executor or administrator of the estate of a deceased Holder; or
- 16.6. any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

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

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

17. **FINANCIAL YEAR**

- 17.1. The financial year of the Company is a 52-week period, also referred to as the 4-4-5 Retail Calendar as defined by the National Retail Federation, where the financial year will begin on a Monday and end on a Sunday at the end of February or the beginning of March.
- 17.2. Subject to the provisions of the Listings Requirements and the Companies Act (including any exemption granted by the Companies Tribunal), the Board has the authority to change the financial year of the Company and/or to deviate from the 4-4-5 Retail Calendar, should the Board so resolve.

18. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 18.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 18.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited. In addition the annual Financial Statements shall reflect the –
  - 18.2.1. Beneficial Interests of the Directors and major Shareholders;

18.2.2. status of any Securities issued by the Company which are not listed on the JSE.

18.3. The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the Holders and holders of Beneficial Interests are entitled to inspect and take copies of –

18.3.1. the MOI;

18.3.2. amendments to the MOI;

18.3.3. records in respect of Directors;

18.3.4. Accounting Records required to be maintained by the Company;

18.3.5. reports to Annual General Meetings;

18.3.6. annual Financial Statements;

18.3.7. notices and minutes of Shareholders Meetings;

18.3.8. communications generally to Holders;

18.3.9. the Securities Register.

18.4. Apart from the Holders and holders of Beneficial Interests, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register and the register of Directors) unless expressly authorised by the relevant Board committee.

18.5. The Company shall notify the Holders and the holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder or holder of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Holder / holder of Beneficial Interests free of charge.

## 19. **AUDIT COMMITTEE AND AUDITOR**

19.1. At each Annual General Meeting, the Company must elect an Audit committee comprising at least 3 (three) members, unless –



- 19.1.1. the Company is a subsidiary of another company that has an Audit committee; and
- 19.1.2. the audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.

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

19.2. Each member of the Audit committee must –

- 19.2.1. be a Director, who satisfies any applicable requirements prescribed by the Minister;
- 19.2.2. not be –
  - 19.2.2.1. involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
  - 19.2.2.2. a Prescribed Officer, or full-time employee, of the Company or another Related or inter-related company, or have been such an Officer or employee at any time during the previous 3 (three) financial years; or
  - 19.2.2.3. a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and

nor be related to any Person who falls within the criteria in clauses 19.2.2.1 to 19.2.2.3. In addition at least one third of the members of the Audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

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

- 19.4. The Audit committee has the following duties –
- 19.4.1. to nominate, for appointment as Auditor, a Registered Auditor who, in the opinion of the Audit committee, is independent of the Company;
  - 19.4.2. to determine the fees to be paid to the Auditor and the Auditor's terms of engagement;
  - 19.4.3. to ensure that the appointment of the Auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors;
  - 19.4.4. to determine the nature and extent of any non-audit services that the Auditor may provide to the Company subject to compliance with the Companies Act, or that the Auditor must not provide to the Company, or a Related company;
  - 19.4.5. to pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;
  - 19.4.6. to prepare a report, to be included in the annual Financial Statements for that financial year –
    - 19.4.6.1. describing how the Audit committee carried out its functions;
    - 19.4.6.2. stating whether the Audit committee is satisfied that the Auditor was independent of the Company; and
    - 19.4.6.3. commenting in any way the Audit committee considers appropriate on the Financial Statements, the accounting practices and the internal financial control of the Company;
  - 19.4.7. to receive and deal appropriately with any concerns or complaints, whether from within or outside the Company, or on its own initiative, relating to –
    - 19.4.7.1. the accounting practices and internal audit of the Company;
    - 19.4.7.2. the content or auditing of the Company's Financial Statements;
    - 19.4.7.3. the internal financial controls of the Company; or

- 19.4.7.4. any related matter;
- 19.4.8. to make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
- 19.4.9. to perform other oversight functions as may be determined by the Board.

In considering whether, for the purposes of this clause 19.4, a Registered Auditor is independent of the Company, the Audit committee must –

- 19.4.10. ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
  - 19.4.10.1. as Auditor; or
  - 19.4.10.2. for rendering other services to the Company, to the extent permitted in terms of sections 90(2)(b) and 93(3);
- 19.4.11. consider whether the auditor's independence may have been prejudiced –
  - 19.4.11.1. as a result of any previous appointment as Auditor; or
  - 19.4.11.2. having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the Company; and
- 19.4.12. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,

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

- 19.5. The Company must pay all expenses reasonably incurred by its Audit committee, including, if the Audit committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit committee to assist it in the performance of its functions.

- 19.6. No Person shall be elected as a member of the Audit committee, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a member of the Audit committee nor act as a member of the Audit committee. A Person placed under probation by a court must not serve as a member of the Audit committee unless the order of court so permits.
- 19.7. A member of the Audit committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 19.8. There are no general qualifications prescribed by the Company for a Person to serve as a member of the Audit committee in addition to the requirements of the Companies Act.
- 19.9. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –
- 19.9.1. the retiring Auditor is –
- 19.9.1.1. no longer qualified for appointment;
- 19.9.1.2. no longer willing to accept the appointment, and has so notified the company; or
- 19.9.1.3. required to cease serving as auditor, in terms of section 92;
- 19.9.2. the Audit committee objects to the re-appointment; or
- 19.9.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 19.10. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2), provided that –
- 19.10.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;

- 19.10.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.

19.11. The Auditor –

- 19.11.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
- 19.11.2. has the right of access to all current and former financial statements of any Subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties; and
- 19.11.3. is entitled to –
- 19.11.3.1. attend any Shareholders Meeting;
  - 19.11.3.2. receive all notices of and other communications relating to any Shareholders Meeting; and
  - 19.11.3.3. be heard at any Shareholders Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions.
- 19.11.4. may not perform any services for the Company –
- 19.11.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or
  - 19.11.4.2. as may be prescribed by the Audit committee.

19.12. If a vacancy arises in the office of Auditor, the Board –

- 19.12.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and
- 19.12.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as auditor of the Company.

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

19.13. Before making an appointment in terms of clause 19.12 the Board –

- 19.13.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one Registered Auditor to be considered for appointment as the new Auditor; and
- 19.13.2. may proceed to make an appointment of a Person proposed in terms of clause 19.13.1 if, within 5 (five) Business Days after delivering the proposal, the Audit committee does not give notice in writing to the Board rejecting the proposed auditor.

19.14. The provisions of clauses 31.4 and 31.5 apply *mutatis mutandis* to the auditor.

## 20. **SHAREHOLDERS MEETINGS**

20.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

- 20.1.1. presentation of –
  - 20.1.1.1. the Directors' report;
  - 20.1.1.2. Audited Financial Statements for the immediately preceding financial year;
  - 20.1.1.3. an Audit committee report;

- 20.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 20.1.3. appointment of –
    - 20.1.3.1. an Auditor for the ensuing year;
    - 20.1.3.2. an Audit committee;
  - 20.1.4. any matters raised by Holders, with or without advance notice to the Company.
- 20.2. The Shareholders shall be entitled to pass resolutions by way of written consent in accordance with the provisions of section 60 of the Companies Act, unless the Listings Requirements provide otherwise.
- 20.3. A Company must hold a Shareholders Meeting –
- 20.3.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Holders entitled to vote for decision;
  - 20.3.2. whenever required to fill a vacancy on the Board other than by the Board in accordance with clause 22.9.
- 20.4. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 20.5. Convening of Shareholders Meetings
- 20.5.1. A Shareholders Meeting may be convened by -
    - 20.5.1.1. the Board; or
    - 20.5.1.2. a Shareholder/s holding not less than 10% (ten percent) of the Voting Rights attached to the Shares or
    - 20.5.1.3. not less than 10 (ten) of the ordinary Shareholders; or

- 20.5.1.4. if the Company has no Directors, any single Holder entitled to vote.
- 20.5.2. A Shareholders Meeting must be convened if -
  - 20.5.2.1. one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and -
  - 20.5.2.2. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
  - 20.5.2.3. in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 20.6. Every Shareholders Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2), is not limited or restricted.
- 20.7. The Holder of any Securities which are in certificated form and thus not subject to the rules of Strate as the Central Securities Depository in which any Person has a Beneficial Interest must deliver to each such Person -
  - 20.7.1. a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and
  - 20.7.2. a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11).
- 20.8. A Shareholders Meeting shall be called by at least -
  - 20.8.1. 15 (fifteen) Business Days' notice; or



20.8.2. any lesser period (permitted by the JSE from time to time) not being less than 5 (five) Business Days' notice,

Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice and to the JSE. An announcement shall also be made on SENS.

20.9. A Holder entitled to vote, who is Present at a Shareholders Meeting –

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

20.9.2. has a right to –

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

20.9.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and

20.9.3. except to the extent set out in clause 20.9.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.

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

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

20.10.2. the general purpose of the Shareholders Meeting, and any specific purpose contemplated in clause 20.4, if applicable;

20.10.3. in the case of the Annual General Meeting a copy of the complete annual financial statements for the preceding financial year unless it has elected to furnish a summarised form thereof in which case it must also furnish directions for obtaining a copy of the complete annual financial statements;

20.10.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholders Meeting, and

a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

20.10.5. a reasonably prominent statement that –

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

20.10.5.2. a proxy need not be a Holder;

20.10.5.3. a Holder entitled to vote may only appoint 1 (one) proxy to exercise Voting Rights attached to Securities held by that Holder entitled to vote in respect of any Shareholders Meeting;

20.10.5.4. the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;

20.10.5.5. participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) in order to reasonably satisfy the Person presiding at the Shareholders Meeting;

20.10.5.6. participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.

20.11. If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting, any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda.

- 20.12. An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.
- 20.13. A Person who holds a Beneficial Interest in any Securities may vote in a matter at a Shareholders Meeting, without a proxy only to the extent that –
- 20.13.1. the Beneficial Interest includes the right to vote on the matter; and
  - 20.13.2. the Person's name is on the Company's register of disclosures as the holder of a Beneficial Interest.
- 20.14. Business may be transacted at any Shareholders Meeting only while a quorum is present.
- 20.15. The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient Persons present at the Shareholders Meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting but –
- 20.15.1. the Shareholders Meeting may not begin unless in addition at least 3 (three) Persons entitled to vote are Present;
  - 20.15.2. if the Company is a subsidiary of a company, those constituting the quorum must include a duly authorised representative and/or proxy of its holding company, present in person.
- 20.16. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 19.16, continue to be Present. If a resolution is proposed to meet the requirements of the JSE, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to be counted in the quorum as a matter of law, they shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained.
- 20.17. If within 1 (one) hour from the time appointed for the Shareholders Meeting to commence, a quorum is not present or if the quorum requirements in clause 20.16 cannot be achieved for any one or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 20.20, for

3 (three) hours on the same day of the Shareholders Meeting, and if at such adjourned Shareholders Meeting a quorum is not present within 10 (ten) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.

20.18. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights –

20.18.1. held by all of the Persons who are present at the Shareholders Meeting at the time; and

20.18.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders), as determined at the Shareholders Meeting.

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

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

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

20.20. No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 20.17, unless the location or time for the Shareholders Meeting is different from a location announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.

20.21. After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Shareholders Meeting, or on that matter, is Present at the Shareholders Meeting.

20.22. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting, unless the chairperson elects to delegate that function to another Director. If there is no such chairperson, or if at any Shareholders Meeting s/he is not present within 10 (ten) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the deputy chairperson shall preside as the chairperson of that Shareholders Meeting or failing him/her, the lead independent Director shall preside as the chairperson of that Shareholders Meeting, or failing him/her the Persons entitled to vote which are Present shall select a Director present at the Shareholders Meeting, or if no Director be present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.

20.23. At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands or on a poll demanded (which may demanded without the necessity to put the vote to a show of hands or may be demanded on the declaration of the result of the show of hands in which event the result of the show of hands shall be ignored) by –

20.23.1. not less than 5 (five) Persons having the right to vote on that matter;  
or

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

20.23.3. the chairperson,

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

- 20.24. If a poll is duly demanded it shall be taken in such manner as the chairperson directs save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers must be appointed by the chairperson to declare the result of the poll, and their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 20.25. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 20.26. Any person entitled to a Share in terms of clause 16 (*Transmission of Securities by Operation of Law*) may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Directors have previously accepted her/his/its right to vote in respect of that Security) at least 24 (twenty four) hours before the time of holding the Shareholders Meeting at which she/he/it proposes to vote, she/he/it shall have satisfied the Directors that she/he/it is entitled to exercise the right referred to in clause 16 (*Transmission of Securities by Operation of Law*).
- 20.27. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution. For so long as the Company is listed on the JSE, if any of the Listings Requirements require an ordinary resolution to be passed with a 75% (seventy five per cent) majority, the resolution shall instead be required to be passed by a Special Resolution.
- 20.28. In addition to any particular restrictions attaching to any class of Securities (other than ordinary Shares (as no voting restrictions shall be permitted as regards ordinary Shares) and any special shares created for the purposes of black economic empowerment in terms of the relevant legislation), the Holders of such Securities shall not be entitled to vote on any resolution at any Shareholders

Meeting, but this shall not be construed as preventing the Company, when agreeing the rights attaching to any particular class of preference Shares, from including amongst such rights, a right permitting such class of preference Shares to vote –

- 20.28.1. during any period commencing on a day specified in the MOI being not more than 6 (six) months after –
- 20.28.1.1. the due date of a dividend or redemption payment; or
- 20.28.1.2. if no due date is specified, the end of the financial year in respect of which such dividend accrued or such redemption payment became due,
- during which any dividend or part thereof or any redemption payment or part thereof remains in arrears and unpaid; and/or
- 20.28.2. with regard to any resolution proposed for the winding up of the Company or the reduction of its capital.

For so long as the Listings Requirements so require, subject to the foregoing and any restrictions attaching to any class or classes of Securities which are not ordinary Shares, on a show of hands a Person entitled to vote Present at the Shareholders Meeting shall have only 1 (one) vote, irrespective of the number of Voting Rights that Person would otherwise be entitled to Exercise. A proxy shall irrespective of the number of holders of Securities entitled to vote she/he/it represents have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question. For so long as the Listings Requirements so require, in instances in which Holders of Securities other than ordinary Shares and any special shares created for the purposes of black economic empowerment in terms of the relevant legislation are entitled to vote at Shareholders Meetings, their votes may not carry any special rights or privileges and may not be more than 24,99% (twenty four comma nine nine per cent) of the total Voting Rights of all Persons entitled to vote at such a Shareholders Meeting. If a resolution is proposed to meet the requirements of the JSE, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to vote thereon as a matter of law, for so long as the Listings Requirements so require, their votes shall not be taken into account for

the purposes of determining whether or not the requirements of the JSE have been attained.

- 20.29. In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.
- 20.30. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.
- 20.31. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of such power or authority, shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, at any time prior to the proxy exercising any rights of the Holder at the Shareholders Meeting.
- 20.32. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.
- 20.33. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in Writing. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.



20.34. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit unless the proxy indicates otherwise.

20.35. Unless the JSE otherwise agrees, no ratifying resolution contemplated in section 20(2) or 20(6) shall be passed at a Shareholders Meeting if that would lead to the ratification of an act that is contrary to the Listings Requirements.

## 21. **RECORD DATE**

21.1. The Board shall determine the Record Date in accordance with the applicable rules of the Central Securities Depository and the Listings Requirements and clause 32.

21.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –

21.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders Meeting;

21.2.2. in the case of dividends a date subsequent to the declaration date or confirmation of the dividend, whichever is the later;

21.2.3. the date of the action or event, in any other case.

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

21.3.1. delivering a copy to each Holder; and

21.3.2. posting a conspicuous copy of the notice –

21.3.2.1. at its principal office;

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

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

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

22.1. Unless and until the Company by Ordinary Resolution from time to time increases or reduces (but not below 4 (four) for so long as the Listings Requirements so require) the minimum and maximum number of Directors, the minimum number

of Directors shall be 4 (four) and the maximum 15 (fifteen). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.

- 22.2. At the Annual General Meeting held in each year  $\frac{1}{3}$  (one third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than  $\frac{1}{3}$  (one third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the chief executive officer, chief finance officer or any other executive Director. The nominations and corporate governance committee of the Board shall determine which Directors are to retire at each Annual General Meeting, taking into account, *inter alia*, the requirements of the Companies Act, the Listings Requirements, any corporate governance charter adopted by the Board from time to time, and the length of time that each Director has served in office since their last election. Provided that, if, at the date of any Annual General Meeting any Director will have held office for a period of 3 (three) years since her/his last election or appointment she/he shall retire at such Annual General Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto. A retiring Director shall act as a Director throughout the Meeting at which she/he retires. The length of time a Director has been in office shall be computed from the date of her/his last election. Retiring Directors shall be eligible for re-election. No Person other than a Director retiring at the Meeting shall, unless recommended by the Directors for election, be eligible for election to the office of Director at any Annual General Meeting unless, not less than 7 (seven) days nor more than 14 (fourteen) days before the day appointed for the Meeting, there shall have been given to the secretary notice In Writing by some Holder duly qualified to be present and vote at the Meeting for which such notice is given of the intention of such Holder to propose such Person for election and also notice In Writing signed by the Person to be proposed of her/his willingness to be elected. If at any Annual General Meeting, the place of any retiring Director is not filled, she/he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until her/his place is filled, unless it shall be determined at such Meeting not to fill such vacancy.
- 22.3. Each of the Directors and the Alternate Directors, other than a Director contemplated in clause 22.9, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 22.6, to serve for a term of 3 (three) years as a Director or Alternate

Director. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing her/him during the Director's/s' absence or inability to act as Director, but may also attend any meetings of Directors as a non voting observer when the Director, in whose place s/he would serve in the absence or inability of that Director to act, is present at the meeting. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, she/he shall have a separate vote, on behalf of each Director she/he is representing in addition to her/his own vote, if any.

- 22.4. There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act. The Board with the assistance and after considering the proposals of the nominations committee must make recommendations to the Holders regarding the eligibility of Persons nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief *curriculum vita* of each Person standing for election or re-election as a Director at a Meeting or the Annual General Meeting, must accompany the notice of the Meeting.
- 22.5. No individual Director shall be entitled to appoint any Person as an Alternate Director to himself/herself but the Board shall be entitled to appoint Alternate Directors provided that they do not constitute more than 50% (fifty percent) of all Alternate Directors in office.
- 22.6. In any election of Directors and Alternate Directors, the election is to be conducted as follows –
- 22.6.1. a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and
- 22.6.2. in each vote to fill a vacancy –
- 22.6.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 22.6.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 22.7. No Person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible

or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.

- 22.8. No election of a Director shall take effect until he/she has delivered to the Company a Written consent to serve.
- 22.9. Any vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, if any, but the Individual so appointed shall cease to hold office at the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Shareholders Meeting.
- 22.10. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as the minimum, the continuing Directors or Director may act only for the purpose of summoning a Shareholders Meeting or filling vacancies not later than 3 (three) months from the date that the number falls below the minimum.
- 22.11. If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of electing Directors.
- 22.12. All acts done by the Board or of any Board committee, or by any Person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Director/s or Person acting as aforesaid, or that they or any of them were disqualified or had vacated office or were not qualified to vote, be as valid as if every such Director/Person had been duly appointed and was qualified to be and to act and vote as a Director.

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

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

- 23.1. immediately she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director / Alternate Director has not within the permitted period filed an application for review or has

filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);

- 23.2. when her/his term of office contemplated in clauses 22.2 and 22.3 expires;
- 23.3. when she/he dies;
- 23.4. when she/he resigns by Written notice to the Company;
- 23.5. if there are more than 3 (three) Directors in office and if the Board determines that she/he has become incapacitated to the extent that the Person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 23.6. if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company
- 23.7. if she/he is removed by Ordinary Resolution;
- 23.8. if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 23.9. she/he files a petition for the surrender of her/his estate or an application for an administration order, or if she/he commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he makes any arrangement or composition with her/his creditors generally; or
- 23.10. she/he is otherwise removed in accordance with any provisions of this MOI.

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

- 24.1. The Directors or Alternate Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or Alternate Directors or members of Board committees as may have been determined from time to time

by Special Resolution within the previous 2 (two) years. In addition, the Directors and Alternate Directors shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the Directors and Holders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the members of the Board committees as determined by a disinterested quorum of Directors. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) to any executive Directors.

24.2. A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a subsidiary of, the Company and in that event, his/her appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

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

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

25.2. If the Board adopts a resolution as contemplated in section 45(2) regarding financial assistance to the Directors / Prescribed Officers and others contemplated in that section, the Company shall Deliver to all Shareholders, notice in Writing of that resolution unless every Shareholder is also a Director, and to any trade union representing its employees –

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

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

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

26.1. The powers of management granted to the Directors in terms of section 66(1) are limited in that the total amount owing by the Company in respect of monies borrowed by the Company shall not exceed the amount authorised by Pick n Pay

Holdings Limited RF or if it is no longer the Holding Company, by the Company's Holding Company from time to time.

26.2. The Directors may –

26.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

26.2.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with it or any such subsidiary, and the wives, widows, families and dependants of such persons.

26.3. The Board must appoint a chief executive officer and an executive financial Director. The Board may from time to time appoint one or more of the Directors to the office of Managing Director or manager (provided always that the number of Directors so appointed as Managing Director or joint Managing Directors and/or the holders of any other executive office including a chairperson who holds an executive office but not a chairperson who is a non-executive Director shall at all times be less than  $\frac{1}{2}$  (one half) of the number of Directors in office) for such period (not exceeding 5 (five) years) and generally on such terms it may think fit; provided that the remuneration of any such Director shall be determined by a disinterested quorum of the Board in accordance with the provisions of the Listings Requirements.

26.4. The Board may from time to time entrust to and confer upon a Managing Director or manager for the time being such of the powers vested in the Directors as it may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as it may think expedient; and it may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A Managing Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.

## 27. BOARD COMMITTEES

- 27.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The Directors must appoint a remuneration committee and a risk committee and a nominations committee and a social and ethics committee. The members of any such committees (other than the nominations committee which shall have as its members only non-executive Directors, the majority of whom must be independent (as defined in Listings Requirement 3.84(e)), and which must be chaired by the chairperson of the Board for so long as the Chairperson is a non-executive Director and otherwise shall be chaired by the lead independent director if s/he is a member or failing that by one of the members of the nominations committee chosen by them) may include Persons, in addition to the members who are Directors, who are not Directors as long as they are not Ineligible or Disqualified to be Directors, but such Persons shall not be able to vote. A Director may be appointed to more than one Board committee.
- 27.2. An Ineligible or Disqualified Person shall not be appointed as a member of a Board committee, and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 27.3. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 27.4. A member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 27.5. Each standing Committee (other than the nominations committee which shall report only if it has something to report) shall report to the Board every 6 (six) months and each *ad hoc* Committee shall report to the Board as required by the terms of that Committee's appointment.
- 27.6. Committees of the Board may consult with or receive advice from any person.
- 27.7. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.



27.8. The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company.

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

28.1. For the purposes of this clause 28 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*), "Director" includes an Alternate Director, a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.

28.2. This clause 28 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*) shall not apply to a Director in respect of a decision that may generally affect –

28.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) were applicable unless the Directors are acting pursuant to an authorisation given by the Holders for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or

28.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or inter-related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 28 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*) to apply.

28.3. If despite the requirements of JSE, there is only 1 (one) Director in office at any time, and since the Company is listed and that Director cannot as a result hold all of the Beneficial Interests of all of the issued Securities of the Company, that Director may not –

28.3.1. approve or enter into any agreement in which the Director or a Related Person has a Personal Financial Interest; or

28.3.2. as a Director, determine any other matter in which the Director or a Related Person has a Personal Financial Interest,

unless the agreement or determination is approved by an Ordinary Resolution after the Director has disclosed the nature and extent of that Personal Financial Interest to those entitled to vote on such Ordinary Resolution.

28.4. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Holders (if the circumstances contemplated in clause 28.2 prevail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

28.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

28.6. If a Director (whilst the circumstances contemplated in clause 28.2 are not applicable), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director –

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

28.6.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;

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

28.6.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 28.6.2 and 28.6.3;

28.6.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 28.6.2 and 28.6.3;

28.6.6. while absent from the meeting in terms of this clause 28.5 –

- 28.6.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
  - 28.6.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
  - 28.6.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 28.7. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Holders entitled to vote (if the Company is a company contemplated in clause 28.2), the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.
- 28.8. A decision by the Board, or a transaction or agreement approved by the Board, or by the Holders (if the Company is a company contemplated in clause 28.2), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –
- 28.8.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 28 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*); or
  - 28.8.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

29. **PROCEEDINGS OF DIRECTORS**

- 29.1. A Director authorised by the Board –
  - 29.1.1. may, at any time, summon a meeting of the Directors; and

- 29.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors or if required by at least 25% (twenty five per cent) of the Directors if there are at least 12 (twelve) Directors in office.
- 29.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 29.3. If all of the Directors –
- 29.3.1. acknowledge actual receipt of the notice and agree the meeting must proceed; or
- 29.3.2. are present at a meeting of the Directors; or
- 29.3.3. waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 29.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 29.5. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 29.6. The quorum for a Directors' meeting is 3 (three).
- 29.7. The Directors may elect a chairperson and one or more deputy chairpersons and also may elect one of the independent Directors as the lead independent Director, and determine the period for which she/he is to hold office. If no such chairperson is elected, or if at any meeting of Directors the chairperson is not present within 10 (ten) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of their meeting.

- 29.8. Each Director or Alternate Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 29.9. In the case of a tied vote the chairperson may cast a deciding vote, but if only 2 (two) Directors are present at the meeting of Directors, the chairperson shall not have a second or casting vote. Every Director or Alternate Director present at a meeting of Directors shall sign his/her name in a book to be kept for that purpose.
- 29.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 29.10.1. any declaration given by notice or made by a director as required by clause 28 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Board Committees*);
- 29.10.2. every resolution adopted by the Board.
- 29.11. Resolutions adopted by the Board –
- 29.11.1. must be dated and sequentially numbered; and
- 29.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 29.12. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be, without the necessity for further proof of the facts stated.
- 29.13. A round robin resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided. For the purposes hereof a round robin resolution means a resolution passed other than at a meeting of Directors, in respect of which, subject to clause 29.10, a majority of Directors, (for which purpose one or more Alternate Directors shall be entitled to sign a round robin resolution if one or more Directors are not able to sign or timeously return a signed copy of the resolution, and without his/her vote/s the requisite majority cannot be achieved) voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them.

30. **PRESCRIBED OFFICERS**

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

31. **APPOINTMENT OF SECRETARY**

- 31.1. The Directors must appoint the secretary from time to time, who –
- 31.1.1. shall be a permanent resident of South Africa and remain so while serving as secretary; and
  - 31.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and
  - 31.1.3. may be a juristic Person subject to the following –
    - 31.1.3.1. every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
    - 31.1.3.2. at least 1 (one) employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 31.1.1 and 31.1.2;
- 31.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of clause 31.1.3.

- 31.3. If at any time a juristic person or partnership holds office as company secretary of the Company –
- 31.3.1. the juristic person or partnership must immediately notify the Directors if the juristic person or partnership no longer satisfies the requirements of clause 31.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
  - 31.3.2. the Company is entitled to assume that the juristic person or partnership satisfies the requirements of clause 31.1.3, until the Company has received a notice contemplated in clause 31.3.1; and
  - 31.3.3. any action taken by the juristic person or partnership in performance of its functions as company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of clause 31.1.3 at the time of that action.
- 31.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 31.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

## 32. **DISTRIBUTIONS**

- 32.1. The Company –
- 32.1.1. may make Distributions from time to time, provided that –
    - 32.1.1.1. any such Distribution –
      - 32.1.1.1.1. is pursuant to an existing legal obligation of the Company, or a court order; or

32.1.1.1.2. has been authorised by the Board, by resolution, and also by Ordinary Resolution, save in the case of –

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

32.1.1.1.2.2. cash dividends paid out of retained income; or

32.1.1.1.2.3. capitalisation issues; or

32.1.1.1.2.4. scrip dividends incorporating an election to receive either capitalisation Shares or cash;

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

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

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

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

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 32.1.1.3, failing which it must again comply with the foregoing. Dividends shall be paid to Holders registered as at a date subsequent to the date of declaration or date of



confirmation of the dividend, whichever is the later. Any dividend or other Distribution shall be paid by electronic funds transfer or such other method of payment as determined by the Board from time to time..

32.2. No notice of instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 32.1.1.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.

32.3. All unclaimed dividends or other Distributions as contemplated in this clause will be held in trust or by a trust nominated by the Company until claimed, without the accrual or payment of interest to the Holder, provided that:

32.3.1. any dividend remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable (or such other period as may be required by law) may be forfeited by resolution of the Directors for the benefit of the Company; and

32.3.2. any other Distribution will be held until lawfully claimed or if not claimed, until such time as the claim has prescribed, after which such other Distributions may be forfeited by resolution of the Directors for the benefit of the Company.

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

### 33. **LOSS OF DOCUMENTS**

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

### 34. **NOTICES**

34.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by telegram, telex or fax. The Company must give notice of

any Meeting to each Person entitled to vote at such Meeting who has elected to receive such notice other than proxies.

- 34.2. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –
- 34.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and
- 34.2.2. confirms that same can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.
- 34.3. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the Regulations (which is included as **Annexure C** for easy reference but which does not form part of this MOI for purposes of interpretation).
- 34.4. A Holder or Person entitled to Securities (or his/her executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 34.5. If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Securities Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 34.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if

the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.

- 34.7. The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 34.8. As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

### 35. **INDEMNITY**

- 35.1. For the purposes of this clause 35 (*Indemnity*), "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board and a member of the Audit committee.
- 35.2. The Company may –
- 35.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction was based on strict liability;
  - 35.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 35.2.3. directly or indirectly indemnify a Director for –
    - 35.2.3.1. any liability, other than in respect of –

- 35.2.3.1.1. any liability arising in terms of section 77(3)(a), (b) or (c) or from wilful misconduct or wilful breach of trust on the part of the Director; or
- 35.2.3.1.2. any fine contemplated in clause 35.2.1;
- 35.2.3.2. any expenses contemplated in clause 35.2.2, irrespective of whether it has advanced those expenses, if the proceedings –
  - 35.2.3.2.1. are abandoned or exculpate the Director; or
  - 35.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 35.2.3.1.
- 35.3. The Company may purchase insurance to protect –
  - 35.3.1. a Director against any liability or expenses contemplated in clause 35.2.2 or 35.2.3; or
  - 35.3.2. the Company against any contingency including but not limited to –
    - 35.3.2.1. any expenses –
      - 35.3.2.1.1. that the Company is permitted to advance in accordance with clause 35.2.2; or
      - 35.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 35.2.3.2; or
    - 35.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 35.2.3.1.
- 35.4. The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.

36. **REPURCHASES OF SECURITIES**

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

37. **RIGHT TO EXPROPRIATE SECURITIES**

Subject to the requirements of the JSE, Holders holding the requisite majority of the Securities (depending upon the structure adopted to implement the expropriation provisions of this clause) shall be entitled at any time and from time to time to expropriate the Securities of any Holders, notwithstanding that the sole or main purpose thereof may be to benefit the Holders exercising such power, provided that the compensation payable to the Holders so expropriated is fair and reasonable in the circumstances.

38. **REGISTER OF DISCLOSURES AND NOTIFICATION**

The Company must –

- 38.1. establish and maintain a register of the disclosures made in terms of section 56(7); and
- 38.2. publish in its annual Financial Statements a list of the Persons who hold Beneficial Interests equal to or in excess of 5% (five per cent) of the total number of Securities of that class issued by the Company, together with the extent of those Beneficial Interests;
- 38.3. file a copy of a notification in respect of the acquisition of any Beneficial Interest constituting 5% (five per cent) or a multiple thereof of the issued Securities of that class or disposal so that the Person no longer holds a multiple of 5% (five per cent) of the issued Securities of that class, with the Panel;
- 38.4. report the information to the Holders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 38.3 unless it relates to the disposal of any Beneficial Interest of less than 1% (one per cent) of the class;
- 38.5. within 48 (forty eight) hours after receiving a notification in respect of the acquisition of any Beneficial Interest publish the information on SENS.

### 39. **SOCIAL AND ETHICS COMMITTEE**

- 39.1. The Board shall appoint a social and ethics committee unless it is a Subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required on behalf of the Company, or the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.
- 39.2. The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years.
- 39.3. The social and ethics committee has the following functions –
- 39.3.1. to monitor the Company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –
- 39.3.1.1. social and economic development, including the Company's standing in terms of the goals and purposes of –
- 39.3.1.1.1. the 10 (ten) principles set out in the United Nations Global Compact Principles; and
- 39.3.1.1.2. the OECD recommendations regarding corruption;
- 39.3.1.1.3. the Employment Equity Act; and
- 39.3.1.1.4. the Broad-Based Black Economic Empowerment Act;
- 39.3.1.2. good corporate citizenship, including the Company's –
- 39.3.1.2.1. promotion of equality, prevention of unfair discrimination, and reduction of corruption;
- 39.3.1.2.2. contribution to development of the communities in which its activities are predominantly conducted or within which its

products or services are predominantly marketed; and

39.3.1.2.3. record of sponsorship, donations and charitable giving;

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

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

39.3.1.5. labour and employment, including –

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

39.3.1.5.2. the Company's employment relationships, and its contribution toward the educational development of its employees;

39.3.2. to draw matters within its mandate to the attention of the Board as occasion requires;

39.3.3. to report, through one of its members, to the Shareholders at the Annual General Meeting on the matters within its mandate.

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

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

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

39.4.3. attend any Shareholders Meeting;

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

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

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

#### 40. **FRACTIONS OF SECURITIES**

40.1 Notwithstanding any other provision in this MOI, if pursuant to -

40.1.1 any issue of Securities (including any capitalisation issue, issue for an acquisition of assets, issue for the purposes of an Amalgamation or Merger, issue in terms of any option or Conversion rights and/or issue to an approved share incentive scheme); and/or

40.1.2 any other corporate action or event (as defined in the Listings Requirements);

a holder of a Security issued by the Company ("**Security Holder**") would, but for the provisions of this clause 40, become entitled to a fraction of a Security, such fractional entitlement shall be dealt with in accordance with the Listings Requirements and any other requirements of the JSE from time to time. If in any particular instance the JSE does not have any requirements which specify, and the Listings Requirements do not specify, the manner in which fractional entitlements are to be dealt with, the Board shall be entitled (i) to round off the number of Securities to be received by the relevant Security Holder to the nearest whole number, or (ii) to sell the Securities resulting from the aggregation of all those fractions, on such terms and conditions as the Board deems fit, for the benefit of the relevant Security Holder. Any director shall be empowered to sign any instrument of transfer or any other instrument required to give effect to the provisions of this clause 40.1.

40.2 Subject to the Listings Requirements and any other requirements of the JSE from time to time, the provisions of clause 32.3 (and, in particular, sub-clause 32.3.1 thereof) and clause 32.4 shall apply mutatis mutandis to any amount/s that become payable to Security Holders in terms of clause 40.1 which remain



unclaimed for more than 3 (three) years after the date on which such amount/s became payable.

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## Annexure A – Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;<sup>1</sup>

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

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

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

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

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

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

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

"**Banks Act**" means the Banks Act, 1990 (Act No. 94 of 1990);

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

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

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

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

"**board**" means the board of directors of a company;

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

"**central securities depository**" has the meaning set out in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

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

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

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

(a) was registered in terms of the –

- (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
- (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of **Annexure B**;

(b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

(c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

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

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

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

- (a) any non-voting securities issued by the company and which will become voting securities –
  - (i) on the happening of a designated event; or
  - (ii) if the holder of those securities so elects at some time after acquiring them; and

- (b) options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

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

"**distribution**" means a direct or indirect –

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

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

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

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

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

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

"**exchange**" when used as a noun, has the meaning set out in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

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

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

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

"**financial statement**" includes –

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

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

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

"**incorporator**", when used –

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

"**individual**" means a natural person;

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

"**juristic person**" includes –

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

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

- (a) Had actual knowledge of the matter; or
- (b) Was in a position in which the person reasonably ought to have –
  - (i) had actual knowledge;
  - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or

- (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

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

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

"**nominee**" has the meaning set out in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

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

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

"**person**" includes a juristic person;

"**personal financial interest**", when used with respect to any person –

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

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

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

"**private company**" means a profit company that –

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

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

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

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

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

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

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

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

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

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

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

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

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

"**special resolution**" means –

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

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

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

"**voting rights**", with respect to any matter to be decided by a company, means –

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

"**voting securities**", with respect to any particular matter, means securities that –

- (a) carry voting rights with respect to that matter; or

(b) are presently convertible to securities that carry voting rights with respect to that matter;  
"**wholly-owned subsidiary**" has the meaning determined in accordance with section 3(1)(b).



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

2. A person is ineligible to be a Director if the Person –
  - 2.1. is a juristic person;
  - 2.2. is an unemancipated minor, or is under a similar legal disability; or
  - 2.3. does not satisfy any qualification set out in the MOI.
  
3. A person is disqualified to be a Director if –
  - 3.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  - 3.2. the Person –
    - 3.2.1. is an unrehabilitated insolvent;
    - 3.2.2. is prohibited in terms of any public regulation to be a Director;
    - 3.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
    - 3.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
      - 3.2.4.1. involving fraud, misrepresentation or dishonesty;
      - 3.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
      - 3.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Financial Markets Act, 2012 (Act No. 19 of 2012), or Chapter 2 of the Prevention and

Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

**Annexure C – Prescribed methods of delivery in the Regulations**

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees, in terms of the Regulations at that office.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>

## ANNEXURE D

### **RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE B SHARES**

*The B Shares shall carry the following rights and privileges and shall be subject to the following conditions -*

#### **1. Definitions**

- 1.1. The following words and expressions shall, when used in this Annexure D, bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings –
  - 1.1.1. "**Act in Concert**" shall bear the meaning ascribed thereto in section 117(b) of the Companies Act construed *mutatis mutandis*, and the phrase "Acting in Concert" shall be construed accordingly;
  - 1.1.2. "**B Share Holding Ratio**" means the ratio of B Shares held by each B Shareholder to the total number of B Shares in issue;
  - 1.1.3. "**B Share Issue Ratio**" means the ratio of 1.98061 (one point nine eight zero six one) B Shares, or such lesser number of B Shares as the B Shareholders may approve from time to time by resolution adopted in accordance with clause 5.2 of these B Share terms, for every 1 (one) Stapled Ordinary Share held by the B Shareholders from time to time (it being recorded for the sake of clarity, that this ratio (as amended) may not be increased at any time);
  - 1.1.4. "**B Shares**" means the unlisted, non-convertible, non-participating, no par value B ordinary shares which the Company is authorised to issue, having the rights, privileges and conditions set out in this Annexure D;
  - 1.1.5. "**B Shareholders**" means the holders of B Shares together with the corresponding number of Stapled Ordinary Shares (as determined in accordance with the B Share Issue Ratio) from time to time;
  - 1.1.6. "**Call Option**" means in relation to B Shares, the irrevocable and unconditional right and option which each B Shareholder of a B Share grants to the Company to enable the Company at its election to oblige that B Shareholder (which shall then be obliged) to sell B Shares to the Company, each for the Option Amount, upon the happening of an Option Event on the terms set out in this Annexure D;

- 1.1.7. "**Disposal**" or "**Transfer**" means, when used in relation to a B Share, the sale, alienation, transfer, donation or other conveyance of that B Share or any part thereof including, without limitation, any rights attaching thereto and shall include any agreement or arrangement howsoever described to give effect to the foregoing, and the expressions "**Dispose**", "**Disposal**", "**Transfer**" or "**Transferred**" shall be construed accordingly;
- 1.1.8. "**Initial Ackerman Family Holders**" means the members of the Ackerman family who hold Ordinary Shares and to whom B Shares are to be issued in accordance with the B Share Issue Ratio, namely:
- 1.1.8.1. Ackerman Investment Holdings Proprietary Limited (Registration number: 2010/018805/07) (owning 48.5%);
- 1.1.8.2. The Mistral Trust (owning 1.05%);
- 1.1.8.3. Burrumbuck Investments (Pty) Ltd (owning 0.63%);
- 1.1.8.4. RD Ackerman (owning 0.24%)
- 1.1.8.5. The Jongus Trust (owning 0.22%)
- 1.1.8.6. The Bermack Trust (owning 0.11%)
- 1.1.8.7. The Sudale Trust (owning 0.07%)
- 1.1.8.8. J Ackerman (owning 0.05%);
- 1.1.8.9. S Ackerman (owning 0.05%);
- 1.1.8.10. K Ackerman (owning 0.04%);
- 1.1.8.11. A Ackerman (owning 0.01%); and
- 1.1.8.12. 15 other individuals (collectively owning 0.05%);
- 1.1.9. "**Option Amount**" means in relation to each B Share, an amount of R0.00001 which is payable by the Company to the B Shareholder of that B Share upon the exercise of the Call Option in respect of that B Share;
- 1.1.10. "**Option Event**" means in respect of the B Shares –

- 1.1.10.1. if no B Shareholder together with any other B Shareholder(s) Related to or Acting in Concert with such B Shareholder holds an amount of more than 25% (twenty five percent) of the total voting rights of the Company; or
- 1.1.10.2. if any B Shareholder fails to notify the company secretary in writing of a Disposal of B Shares, prior to such Disposal, as contemplated in clause 6 below; or
- 1.1.10.3. if any B Shareholder Disposes of or Transfers any Stapled Ordinary Shares on-market (which, for the avoidance of doubt, shall be via the JSE's normal order book); or
- 1.1.10.4. if any B Shareholder Disposes of any B Shares without the Disposal of the corresponding number of Stapled Ordinary Shares as contemplated in clause 8.1 below; or
- 1.1.10.5. if any B Shareholder Disposes of any B Shares and a corresponding number of Stapled Ordinary Shares, and the Transferee to whom such B Shares are Transferred, together with any other B Shareholder(s) Related to or Acting in Concert with such Transferee, does not, after the Disposal, hold more than 25% (twenty five percent) of the total voting rights of the Company upon Transfer of such B Shares (which amount shall, for the avoidance of doubt, be determined together with any other voting rights already held by such Transferee at the date of Transfer of the relevant B Shares);
- 1.1.10.6. if any B Shareholder Disposes of any B Shares, and a corresponding number of Stapled Ordinary Shares and, as a result of such Disposal, such B Shareholder no longer holds more than 25% (twenty five percent) of the total voting rights of the Company (together with such B Shareholder's Related and Concert Parties at the date of Transfer of the relevant B Shares) upon Transfer of such B Shares; or
- 1.1.10.7. if as a result of a transaction (or a series of integrated transactions (as contemplated in section 41(4)(b) of the Companies Act)) relating to the Disposal of B Shares, and a



corresponding number of Stapled Ordinary Shares, as at the time of the transaction (or the culmination of a series integrated transactions (as contemplated in section 41(4)(b) of the Companies Act)):

- 1.1.10.7.1. the combined voting rights of the transferring B Shareholder(s) ("**Transferor**") together with any other B Shareholder(s) Related to or Acting in Concert with the Transferor comprise more than 25% (twenty five percent) of the total voting rights of the Company; and
- 1.1.10.7.2. the combined voting rights of the persons(s) to whom such B Shares, and a corresponding number of Stapled Ordinary Shares, are transferred to a Transferee together with any other B Shareholder(s) and/or holders of Ordinary Shares Related to or Acting in Concert with the Transferee, comprise more than 25% (twenty five percent) of the total voting rights of the Company, and such Transferee has not, at its sole discretion, elected to make an offer to all of the other holders of the Ordinary Shares, mutatis mutandis, in accordance with section 123 of the Companies Act;
- 1.1.11. "**Ordinary Shareholders**" means the holders of Ordinary Shares;
- 1.1.12. "**Ordinary Shares**" means the ordinary shares which the Company is authorised to issue, having the rights, privileges and conditions set in this MOI;
- 1.1.13. "**Related**" shall have the meaning ascribed thereto in section 2 of the Companies Act;
- 1.1.14. "**Stapled Ordinary Shares**" means the Ordinary Shares held by the B Shareholders at the time of the issue and allotment of the B Shares, determined in accordance with the B Share Issue Ratio, which Ordinary

Shares are subject to the restrictions on disposal described in clause 6 below; and

- 1.1.15. "**Transferee**" shall mean any person(s) to whom B shares are Transferred (as defined in clause 1.1.7 above), and "**Transferor**" shall bear a corresponding meaning.

## **2. Winding-up and return of capital**

The B Shares shall not carry the right, on a winding-up of the Company or on any return or reduction of capital, to the payment or repayment of any amount.

## **3. No participation**

The B Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company.

## **4. Voting**

- 4.1. At every general meeting or adjourned general meeting of the Company at which Ordinary Shareholders and B Shareholders are present and entitled to vote on any particular matter, upon a poll, or in respect of any written resolution contemplated in section 60 of the Companies Act on which the Ordinary Shareholders and the B Shareholders are entitled to vote, each B Shareholder shall, in respect of that particular matter, be entitled to exercise 1 (one) vote for every B Share held and entitled to vote at that time.
- 4.2. Any B Shareholder shall, by giving written notice to that effect to the Company at any time when the B Shareholders are entitled to vote in terms of clause 4.1 above, be entitled to require the Company, which shall thereupon be obliged, to call a general meeting of its Holders, or any class of them, to consider any matter (including, without limitation, a resolution requiring the Company to comply with its obligations to the B Shareholders, and any such resolution adopted at a meeting of all shareholders of the Company shall, notwithstanding anything to the contrary contained in this MOI, be binding upon and be given effect to by the Company and the directors).

## **5. Modification of the terms of the B Shares**

The terms of the B Shares may not be modified without a special resolution amending this MOI, which special resolution must be approved by shareholders holding:

- 5.1. at least 75% (seventy five percent) of the voting rights exercisable at a meeting of all shareholders (which, for the avoidance of doubt, shall include the B Shareholders); and
- 5.2. at least 75% (seventy five percent) of the voting rights exercisable at a separate class meeting comprised of the B Shareholders only.

## **6. Notification of transfer of B Shares**

No B Shareholder shall be entitled to Dispose of or Transfer its B Shares or any of them (together with the corresponding number of Stapled Ordinary Shares (as determined in accordance with the B Share Issue Ratio)) unless and until it has notified the company secretary in writing thereof and any failure by a B Shareholder to so notify the company secretary will on the Date of Transfer or Disposal constitute an Option Event, which shall result in immediate cancellation of the voting rights attached to such B Shares in accordance with the provisions of the clause 7 below.

## **7. Call Option and Cessation of B Share Voting Rights**

- 7.1. On the occurrence of an Option Event, the voting rights which attach to the B Shares, in respect of that Option Event, shall immediately cease to be of force and effect and the B Shareholder(s) concerned hereby undertakes not to exercise or purport to exercise such voting rights. For the avoidance of doubt:
  - 7.1.1. the occurrence of the Option Event set out in clause 1.1.10.1 above shall result in the cessation of the voting rights attaching to all B Shares in issue;
  - 7.1.2. the occurrence of the Option Events set out in clauses 1.1.10.2, 1.1.10.3, 1.1.10.4, 1.1.10.5, or 1.1.10.6 above shall result in the cessation of the voting rights attaching to only those B Shares:
    - 7.1.2.1. the Disposal of which the company secretary was not notified of, in terms of clause 6 above, read with clause 1.1.10.2 above;
    - 7.1.2.2. the Disposal of Stapled Ordinary shares on-market in terms of clause 1.1.10.3 above;
    - 7.1.2.3. which were Disposed of without the Disposal of the corresponding number of Stapled Ordinary Shares, in terms of clause 8.1 below read with clause 1.1.10.4 above; or

- 7.1.2.4. which were Disposed of to a Transferee who does not, together with any other B Shareholder(s) Related to or Acting in Concert with such Transferee, hold more than 25% (twenty five percent) of the total voting rights of the Company (which amount shall, for the avoidance of doubt, be determined together with any other voting rights already held by such Transferee at the date of Transfer of the relevant B Shares) in accordance with clause 1.1.10.5 above; or
      - 7.1.2.5. which are retained by a B Shareholder in circumstances where such B Shareholder has Disposed of B Shares, together with the corresponding number of Stapled Ordinary Shares, and as a result of such Disposal the relevant B Shareholder no longer holds more than 25% (twenty five percent) of the total voting rights of the Company, as contemplated in clause 1.1.10.6 above;
    - 7.1.3. the occurrence of the Option Event set out in clause 1.1.10.7 above shall result in the cessation of the voting rights attaching to those B Shares held by the Transferee together with all of the B Shares held by any person(s) Related to or Acting in Concert with the Transferee with effect from the date of Transfer.
  - 7.2. Notwithstanding anything to the contrary in this MOI, the B Shareholders hereby irrevocably grant the Company the Call Option, exercisable at the Company's election, to repurchase:
    - 7.2.1. on the occurrence of the Option Event set out in clause 1.1.10.1 above, all of the B Shares in issue;
    - 7.2.2. on the occurrence of the Option Events set out in clauses 1.1.10.2, 1.1.10.3 1.1.10.4, 1.1.10.5, or 1.1.10.6 above, all of those B Shares:
      - 7.2.2.1. the Disposal of which the company secretary was not notified of, in terms of clause 6 above, read with clause 1.1.10.2 above; or
      - 7.2.2.2. the Disposal of Stapled Ordinary shares on –market in terms of clause 1.1.10.3 above;

- 7.2.2.3. which were Disposed of without the Disposal of the corresponding number of Stapled Ordinary Shares, in terms of clause 8.1 below read with clause 1.1.10.4 above;
  - 7.2.2.4. which were Disposed of to a Transferee who does not, together with any other B Shareholder(s) Related to or Acting in Concert with such Transferee, hold more than 25% (twenty five percent) of the total voting rights of the Company (which amount shall, for the avoidance of doubt, be determined together with any other voting rights already held by such Transferee at the date of Transfer of the relevant B Shares) in accordance with clause 1.1.10.5 above; or
  - 7.2.2.5. which are retained by a B Shareholder in circumstances where such B Shareholder has Disposed of B Shares, together with the corresponding number of Stapled Ordinary Shares, and as a result of such Disposal such B Shareholder no longer holds more than 25% (twenty five percent) of the total voting rights of the Company, as contemplated in clause 1.1.10.6 above;
- 7.2.3. on the occurrence of the Option Event set out in clause 1.1.10.7 above, and provided that the Transferee in terms of clause 1.1.10.7.2 above has, at its sole discretion, not elected to make an offer to all other holders of Ordinary Shares on the date of Transfer, mutatis mutandis, in accordance with section 123 of the Companies Act, all of those B Shares held by the Transferee together with all of the B Shares held by any person(s) Related to or Acting in Concert with the Transferee in respect of that Option Event,

at any time on or after the happening of the relevant Option Event and for the Option Amount per B Share.

- 7.3. In circumstances where the Transferee elects to make an offer as provided for in clause 7.2.2.4 above (or where the Transferee is obliged to do so under section 123 of the Companies Act), the full consideration payable by the Transferee to the Transferor under the transaction which triggers the offer in question shall be attributable to the Ordinary Shares forming the subject matter of such offer and no consideration shall be attributable to the B Shares.

- 7.4. The Company shall, subject to the passing of any and all shareholders resolutions and fulfilment of any and all other legal requirements (if any) required to authorise the exercise of the Call Option, be entitled to exercise the Call Option at any time after the occurrence of an Option Event and repurchase all of the relevant B Shares in terms thereof.
- 7.5. Immediately following receipt of the necessary shareholder approvals and fulfilment of any and all other legal requirements (if any) required to authorise the exercise of the Call Option, the Company shall be entitled to exercise the Call Option by giving written notice to that effect to the relevant B Shareholder and paying the relevant B Shareholder the Option Amount for each B Share repurchased. The Option Amount shall be paid in cash by way of electronic funds transfer into such bank account as may be recorded by the Company in its records in respect of that B Shareholder. The B Shareholder shall be obliged to surrender to the Company of the share certificate/s for the B Shares (or, if such certificate has been lost or destroyed, proof of such loss or destruction) upon receipt of payment of the Option Amount in relation to any B Shares.
- 7.6. In the event that a B Shareholder(s) holds its B Shares together with Related Parties, or parties Acting in Concert with such B Shareholder, for the purposes hereof, then the company secretary may from time to time require that such B Shareholder(s) furnish the Company with documentary proof of their Related Party or Concert Party relationship, to the company secretary's reasonable satisfaction, and the onus of proving such a relationship shall rest on the relevant B Shareholder(s).

## **8. General**

- 8.1. A B Shareholder may only dispose of B Shares if, in the same transaction, the pro rata number of Stapled Ordinary Shares held by that B Shareholder (as determined in accordance with the B Share Issue Ratio) are also disposed of and vice versa. Ordinary Shares held by a B Shareholder may be disposed of off-market or on-market via the JSE order book, subject to the provisions of clause 7 above. Each B Shareholder must at all times hold at least the B Share Issue Ratio of Stapled Ordinary Shares to B Shares.
- 8.2. The board of the Company shall resolve to issue and allot B Shares initially only to the Initial Ackerman Family Holders in the B Share Issue Ratio, and thereafter from time to time only to the B Shareholders in such circumstances as may be expressly contemplated and provided for in this MOI. For the avoidance of doubt,

the board shall not have a general authority to issue and allot B Shares in circumstances not expressly contemplated herein.

8.3. To the extent that the application of the B Share Issue Ratio to the issue of B Shares to the initial B Shareholders, or the application of clause 9 below results in any B Shareholder becoming entitled to a fraction of a B Share, the fraction shall be rounded down to the nearest whole number.

8.4. In the event that all of the issued B Shares have:

8.4.1. ceased to exercise voting rights, in terms of clause 7.1 above; and

8.4.2. been repurchased by the Company in terms of clause 7.2 above (such that no B Shares are any longer in issue),

then, for the avoidance of doubt, the Company shall thereafter no longer issue and allot B Shares, notwithstanding the number of authorised but unissued B Shares.

## 9. **Adjustment**

9.1. For the purpose of this clause 9 an "**Adjustment Event**" means –

9.1.1. a restructure of the Ordinary Share capital of the Company; or

9.1.2. any corporate action or event howsoever described –

9.1.2.1. pursuant to which new Ordinary Shares are allotted and issued to all holders of Ordinary Shares (including, without limitation, B Shareholders in respect of their Stapled Ordinary Shares); or

9.1.2.2. in which all holders of Ordinary Shares have a right or entitlement to participate, to the extent that the B Shareholders have exercised such right or entitlement in respect of their Stapled Ordinary Shares; or

9.1.2.3. pursuant to which Ordinary Shares are repurchased from all holders of Ordinary Shares (including, without limitation, the Stapled Ordinary Shares of B Shareholders); or

9.1.2.4. in which all holders of Ordinary Shares have a right or entitlement to participate in a repurchase of some or all of

their Ordinary Shares, to the extent that the B Shareholders have exercised such right or entitlement in respect of their Stapled Ordinary Shares;

9.1.3. a combination of any one or more of the events referred to in 9.1.1 or 9.1.2.

9.2. The intention of this clause 9 is to ensure that upon the occurrence of the Adjustment Event the B Share Issue Ratio of Stapled Ordinary Shares to B Shares held by such B Shareholder (as amended from time to time) is maintained.

9.3. Having regard to clause 9.2 and notwithstanding any other provision of this MOI, if an Adjustment Event occurs and such Adjustment Event results in –

9.3.1. the ratio of B Shares to Stapled Ordinary Shares held by a B Shareholder being less than the B Share Issue Ratio (as amended from time to time), then such number of B Shares as will result in the B Share Issue Ratio (as amended from time to time) will be allotted and issued to the relevant B Shareholders (in proportion to their holding of Stapled Ordinary Shares) against payment of a subscription price of R0.00001 (zero point zero zero zero zero one) Rand per B Share;

9.3.2. the ratio of B Shares to Stapled Ordinary Shares held by a B Shareholder being more than the B Share Issue Ratio, then the Company shall have the right and option to repurchase (in proportion to their holding of Stapled Ordinary Shares) such number of B Shares from the relevant B Shareholders as will result in them holding B Shares in the B Share Issue Ratio (as amended from time to time). The aforesaid right and option to repurchase shall be at a repurchase price of R0.00001 (zero point zero zero zero zero one Rand) per B Share and otherwise in accordance with clause 7.2 above which shall apply *mutatis mutandis*. Any B Shares which the Company is entitled to repurchase in terms of this clause 9.3.2 shall cease to enjoy voting rights immediately upon the occurrence of the Adjustment Event in question.

9.4. For the avoidance of doubt, it is recorded that -

9.4.1. the following capital restructures or corporate actions and events shall constitute an Adjustment Event, namely –

9.4.1.1. a sub-division or consolidation of Ordinary Shares;



9.4.1.2. a rights issue in respect of Ordinary Shares, to the extent that B Shareholders follow their rights in respect of their Stapled Stores Shares;

9.4.2. the following corporate actions and events shall not constitute an Adjustment Event –

9.4.2.1. any issue of Ordinary Shares in which all Ordinary Shareholders would not be entitled to participate including, without limitation, any issue of Ordinary Shares under any employee incentive scheme;

9.4.2.2. any acquisition issue of Ordinary Shares;

9.4.2.3. any vendor consideration placing of Ordinary Shares;

9.4.2.4. any issue of Ordinary Shares for cash or to settle any indebtedness, liability, obligation, commitment, expense or the like);

9.4.2.5. any amalgamation or merger in accordance with section 113 of the Act; and

- 9.4.2.6. any rights issue to the extent that the B Shareholders do not follow their rights in respect of their Stapled Ordinary Shares.