

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008
MEMORANDUM OF INCORPORATION FOR A LISTED PUBLIC COMPANY

Kumba Iron Ore Limited

(Registration number 2005/015852/06)
("Kumba" or "the Company")

This MOI was adopted by Special Resolution passed on _____ in substitution for the existing MOI of the Company, consisting of the memorandum of association and the articles of association of the Company (which were the constitutional documents of the Company in terms of the Companies Act, No. 61 of 1973).

1. **INTERPRETATION**

- 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, shall bear the same meaning in this MOI as in the Companies Act, read, where necessary, with definitions in the listings requirements of the JSE. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. In this MOI, unless the context otherwise requires -
- 1.2.1. "**Audit Committee**" means the audit committee of the Company from time to time;
- 1.2.2. "**Companies Act**" or "**Act**" means the Companies Act, 71 of 2008, as amended or any legislation which replaces it;
- 1.2.3. "**Company**" means Kumba Iron Ore Limited (Registration No. 2005/015852/06) or by whatever other name it may be known from time to time;
- 1.2.4. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 37 and the Companies Act and the Regulations, and shall, where permitted by the Companies Act and the listings requirements of the JSE, include delivery of an abridged document together with instructions as to how the recipient may obtain an unabridged version of such document;
- 1.2.5. "**Effective Date**" means the date on which the Companies Act came into operation, namely 1 May 2011;
- 1.2.6. "**Electronic Address**" means in regard to Electronic Communication, any email or other electronic address furnished to the Company by the Holder;
- 1.2.7. "**Holders**" means registered holders of Securities;
- 1.2.8. "**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) which shall apply not only to Directors and Alternate Directors but also to members of Board committees and members of the Audit Committee and Prescribed Officers and the company secretary of the Company;

- 1.2.9. "**JSE**" means the exchange operated by the JSE Limited (Registration No. 2005/022939/06) (or any other name by which it may be known in the future) or its successor body;
- 1.2.10. "**MOI**" means this Memorandum of Incorporation;
- 1.2.11. "**Ordinary Shares**" means the ordinary Shares as contemplated in clause 6.1;
- 1.2.12. "**Participant**" means a depository institution accepted by a Central Securities Depository as a participant in terms of the Securities Services Act;
- 1.2.13. "**Regulations**" means regulations published pursuant to the Companies Act from time to time;
- 1.2.14. "**Republic**" means The Republic of South Africa;
- 1.2.15. "**Securities Services Act**" means the Securities Services Act, 2004 (No. 36 of 2004), as amended or replaced from time to time;
- 1.2.16. "**Shares**" means the shares in the share capital of the Company;
- 1.2.17. "**Uncertificated Securities**" means securities as defined in the Securities Services Act which are by virtue of the Companies Act transferable without a written instrument and are not evidenced by a certificate;
- 1.2.18. "**Writing**" includes Electronic Communication and delivery of a data storage device containing 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;
- 1.2.19. 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;
- 1.2.20. references to Holders entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by a duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.2.21. 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 feminine gender, and words importing persons shall include created entities (corporate or not);

- 1.2.22. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.23. expressions defined in this MOI shall bear the same meanings in schedules or annexures to this MOI which do not themselves contain their own conflicting definitions;
- 1.2.24. where any term is defined within the context of any particular clause in this 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;
- 1.2.25. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.2.26. reference to an enactment is to that enactment as at the date of filing of this MOI and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date of filing of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.2.27. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.2.28. 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;
- 1.2.29. 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 in the Republic, 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 and is not subject to any special conditions.
- 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 agreed with the JSE.
- 4.3. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if 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.

5. **MAKING OF RULES**

The Board shall not have the capacity to make, amend or repeal any Rules relating to the governance of the Company in respect of matters that are not addressed in the Companies Act or in

this MOI, as contemplated in sections 15(3) to (5) of the Companies Act and in the listings requirements of the JSE. **[10.4]**

6. **AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE**

- 6.1. Until this MOI is amended in accordance with the requirements of the Companies Act to provide otherwise, the Company is authorised to issue no more than 500 000 000 (five hundred million) ordinary Shares with a par value of R0,01 (one cent) each (which includes ordinary Shares already issued at any time), which shall –
- 6.1.1. have Voting Rights in respect of every matter that may be decided by voting (for which purposes, on a vote by poll, every Person entitled to vote who is Present at the Meeting, for the avoidance of doubt, in Person or by proxy, shall have 1 (one) vote per issued ordinary Share); and **[10.5(b)]**
- 6.1.2. rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation.
- 6.2. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.
- 6.3. To the extent that the Company immediately before the Effective Date had authorised but unissued par value Shares in its capital of a class of which there are issued Shares, the unissued Shares of that class may be issued at par or at a premium or at a discount.
- 6.4. All Securities of a class shall rank *pari passu* in all respects.
- 6.5. No rights, privileges or conditions for the time being attached to any class of Securities of the Company, nor any interests of that class of Securities, may (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied in any manner adverse to the to the Holders of that class of Securities, nor may any variations be made to the rights, privileges, conditions or interests of any class of Securities, such that the interests of another class of Securities is adversely affected, unless the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that adversely affected class has been obtained, or a Special Resolution sanctioning the variation has been passed by the Holders of that adversely affected class of Securities with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the Special Resolution at a separate general meeting of the Holders of the shares of that class. The Holders of that class of Securities shall also be

entitled to vote with the Holders of the ordinary Shares as regards the passing of any resolution required to be passed for such variation by the Holders of the ordinary Shares, subject to clause 20.1. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that - **[10.5(a) and (e)]**

6.5.1. the necessary quorum shall be the Holders of that class present in person, or represented by proxy, and holding at least 51% (fifty one per cent) of the Voting Rights that are entitled to be Exercised in respect of the resolution required to be passed for the variation of the relevant rights, privileges and/or conditions;

6.5.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 6.5.1 is not present, those Persons entitled to vote who are Present at the Meeting shall be a quorum; and

6.6. any Persons entitled to vote who are Present at the Meeting may demand a poll and 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) of the Companies Act.

6.7. No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in section 37(6) and section 37(7). **[10.5 (g)]**

7. **AUTHORITY TO ISSUE SECURITIES**

7.1. The Board shall not have the power to issue any authorised Securities (other than as contemplated in clause 7.4) without the prior approval contemplated in clause 7.2 and the approval of the JSE (where necessary). **[10.1]**

7.2. As regards the issue of –

7.2.1. Shares that require the approval of a Special Resolution as contemplated in sections 41(1) and (3) of the Companies Act or as contemplated in the listings requirements of the JSE, the Directors shall not have the power to allot or issue same, without the prior approval of a Special Resolution;

7.2.2. Securities (including Shares, other than as contemplated in sections 41(1) and (3) of the Companies Act), 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,

and provided that such issue has been approved by the JSE and is made subject to the listings requirements of the JSE. No special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3) of the Companies Act. **[10.1; 10.9(a) and 10.10]**

- 7.3. 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 7.2.1 and 7.2.2 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 7.2.1 and 7.2.2. 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.
- 7.4. The Board may issue capitalisation Shares or resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation Share in accordance with section 47 of the Companies Act. **[10.6][10.7]**
- 7.5. No Shares of a class which is listed may be issued other than as fully paid. **[10.2(a)]**

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

Equity Securities of a particular class 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 that class of equity Securities by way of a rights offer *pro rata* to the Voting Power of that Shareholder's Voting Rights of that class of equity Securities immediately before the offer was made (with a reasonable time allowed to subscribe), unless –

- 8.1. the approvals contemplated in clause 7.2 have been obtained;
- 8.2. 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; **[10.1]**
- 8.3. the equity Securities are to be issued pursuant to an approved share incentive scheme;
- 8.4. such intended issue is pursuant to the approval by the Shareholders, provided that same has been approved by the JSE (where necessary); and/or
- 8.5. the equity Securities are to be issued in terms of option or conversion rights.
- 8.6. 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 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.

9. **FRACTIONS**

If, on any issue or consolidation or sub-division or allocation of any Securities, Shareholders would, but for the provisions of this clause, become entitled to fractions of Securities, the Directors shall be entitled in their discretion to round down such fractions to the nearest whole number, if less than 0.5 and round up to the nearest whole number, if 0.5 or more.

10. **CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES, DEMATERIALISATION, REMATERIALISATION, JOINT SHAREHOLDING**

10.1. The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or uncertificated in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities. When any new Securities are to be issued by the Company, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to him shall be in certified or uncertificated form. Each original certificate issued to a Holder in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue.

10.2. **CERTIFICATES**

10.2.1. The certificates evidencing issued securities shall be issued under the authority of the Directors, or a committee thereof when authorised thereto by the Directors, in such manner and form as the Directors may from time to time prescribe, and shall (subject as hereinafter provided) bear the autographic, mechanical or electronic signatures of 2 (two) Persons authorised thereto by the Board.

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

10.2.2.1. the name of the Company;

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

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

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

- 10.2.3. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 10.2.4. Every Holder shall be entitled, without payment, to receive within 1 (one) month after allotment or 21 (twenty-one) days after lodgement of transfer, 1 (one) certificate for all the Securities of any 1 (one) particular class registered in his name, or to several certificates, each for a part of such Securities, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may see fit, to require a charge in settlement of the reasonable costs included in such issue. In the case of a Holder who has transferred a part of his Securities of any class, such Holder shall be entitled to receive a certificate free of charge for the balance of his holding, provided that notwithstanding anything herein contained or implied to the contrary, where Securities are registered in the names of 2 (two) or more Persons, such Persons shall be treated as 1 (one) Holder for the purposes of this clause.
- 10.2.5. If any Securities certificate is defaced, lost or destroyed, it may be renewed, on such terms (if any) as to evidence and indemnity and payment of such fee as the Directors may think fit and, in the case of defacement, on delivery of the old certificate to the Company.
- 10.2.6. The 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 in respect thereof, or to his authorised agent, and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders. In case of the legal incapacity of any one or more of the joint registered Holders of any Securities, the survivor then first named in the Securities Register shall be the only person recognised by the Company as being entitled to such certificate, or any new certificate which may be issued in place thereof: provided always that the Company shall not be bound to register more than 4 (four) persons as the Holders of any Securities.
- 10.2.7. If the Company issues Securities which are not listed on the JSE, the certificates for those Securities must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.

10.3. UNCERTIFICATED SECURITIES

The holders of uncertificated Securities in the Company shall not be entitled to share certificates and the Company shall not issue certificates evidencing or purporting to evidence title to uncertificated Securities of the Company.

10.4. DEMATERIALISATION

10.4.1. The Company shall be entitled to allow the dematerialisation of any of its Securities. Once such dematerialisation has been allowed:

10.4.1.1. any new Securities that are issued may be issued in uncertificated form if so requested by the subscriber to those Securities; or

10.4.1.2. Holders may dematerialise Securities already issued into uncertificated Securities, in such manner as may be decided by the Directors from time to time.

10.4.2. Securities that are dematerialised as contemplated in clause 10.4.1.2 shall have the same rights as attached to such Securities prior to their dematerialisation.

10.5. REMATERIALISATION

10.5.1. If a Holder wishes to rematerialise all or part of his uncertificated Securities held by the Participant and to obtain a certificate in respect of such uncertificated Securities, he should notify the Participant accordingly.

10.5.2. The Participant shall, within 7 (seven) days of receipt of the notification referred to in clause 10.5.1, notify the Company to provide a certificate and shall remove the uncertificated Securities so rematerialised from the sub-register.

10.5.3. The Company shall, immediately upon receipt of the notification from the Participant, enter the necessary details of the Holder and the holding of his Securities into the Securities Register and indicate in the Securities Register that the uncertificated Securities so rematerialised are no longer held in uncertificated form.

10.5.4. The Company shall, within 10 (ten) Business Days of receipt of the notification from the Participant in the case of a Holder who is resident within the Republic, or 20 (twenty) Business Days in the case of a Holder who is not resident within the Republic, prepare and deliver to the relevant Holder a Securities certificate in respect of the Securities and notify the Central Securities Depository that those Securities are no longer held in uncertificated form. The Company may

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

10.6. JOINT SHAREHOLDING

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

- 10.6.1. notwithstanding anything to the contrary in this MOI, on the death, sequestration, liquidation or legal disability of any one of such joint Holders, the remaining joint Holders may be recognised, at the discretion of the Directors, as the only persons having title to such Security;
- 10.6.2. any one of such joint Holders may give effectual receipts for any dividends, bonuses or returns of capital or other accruals payable to such joint Holders;
- 10.6.3. only the joint Holder whose names stand first in the Securities Register shall be entitled to delivery of the certificate relating to that Security, or to receive notices from the Company. Any notice given to such joint Holder shall be deemed to be notice to all the joint Holders;
- 10.6.4. any one of the joint Holders of any Security conferring a right to vote may vote either personally or by proxy at any Shareholders Meeting in respect of such Security as if he were solely entitled thereto, and if more than 1 (one) of such joint Holders is present at any Shareholders Meeting, either personally or by proxy, the joint Holder who tenders a vote and whose name stands in the Securities Register before the other joint Holders who are present in person or by proxy, shall be entitled to vote in respect of that Security; and
- 10.6.5. the Company shall be entitled but not obliged to refuse to register more than 4 (four) Persons as the joint Holders of a Security.

11. COMMISSION

The Company may pay commission not exceeding 10% (ten per cent) of the price at which Securities of the Company are issued to any Person, in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or of his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities of the Company. Such commission may be satisfied by the payment of cash. **[10.14]**

12. **SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER AND PROHIBITION AGAINST THE COMPANY CLAIMING ANY LIEN**

12.1. The Company shall permit Securities to be held by one Person for the Beneficial Interest of another. The Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy appointment from the Holder, notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder between the Holder and the holder of the Beneficial Interest.

12.2. If any Securities of the Company are registered in the name of a Person who is not the Holder of the Beneficial Interests in all such Securities of the Company, that registered Holder of Securities must disclose –

12.2.1. the identity of the person on whose behalf the Securities are held; and

12.2.2. the identity of each Person with a Beneficial Interest in the Securities so held, the number and class of Securities held for each such Person with a Beneficial Interest, and the extent of each such Beneficial Interest,

in accordance with the time periods as stipulated in section 56(4) of the Companies Act.

12.3. 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 –

12.3.1. the Beneficial Interest includes the right to vote on the matter; and

12.3.2. the Person's name is on the Company's register of disclosures as the holder of a Beneficial Interest.

12.4. The Company shall not be entitled to claim any lien over any Securities issued by it. **[10.12]**

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, the Company will (i) if the listing on the JSE is the primary listing comply in full with the Listings Requirements; and (ii) if it is required to obtain the consent of any other stock exchanges on which it is listed, comply in full with the requirements of the jurisdiction in which the Company has a secondary listing.

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

14.1. The executor or administrator of a deceased Holder or the trustee of an insolvent Holder and the curator of any insane or prodigal Holder or any person duly appointed by competent authority to represent or act for any Holder shall, subject to the provisions of clause 10.6 regarding joint holders, be the only person recognised by the Company as having any title to any Security registered in the name of such Holder.

14.2. 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 -

14.2.1. the parent or guardian or curator of any Holder who is a minor;

14.2.2. the trustee of an insolvent Holder;

14.2.3. the liquidator of a body corporate Holder;

14.2.4. the tutor or curator of a Holder under disability;

14.2.5. the executor or administrator of any deceased Holder's estate; or

14.2.6. 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 -

A to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the Holder of the Securities registered in the name of the Holder concerned; or

B himself 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.

14.3. No Securities which are registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the Directors to do so. **[10.13]**

15. **TRANSFER OF SECURITIES**

- 15.1. There is no restriction on the transfer of Securities. **[10.2(a)]**
- 15.2. The transferor of any Security shall be deemed to remain the Holder of such Security until the name of the transferee is entered in the Securities Register in respect thereof.
- 15.3. The transfer of any Securities which are certificated shall be implemented in accordance with the then common form of transfer. Transfer of any uncertified Securities shall be effected by entry in the central securities account or securities account of the transferor and transferee kept by the Central Securities Depository or the Participant, as the case may be.
- 15.4. The Directors may decline to register any transfer to a minor or to a person of unsound mind or to any trustee, curator, executor, administrator or other person in any representative capacity of any Securities.
- 15.5. 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 rights to transfer the Securities. Any authority to sign transfer deeds granted by a Holder for the purpose of transferring Securities which 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 deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon, until express Written notice of the revocation thereof is 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 may give effect to any instrument signed under such authority to sign and certified by any officer of the Company as being in order prior to the giving and lodging of such notice. **[10.2(b)]**
- 15.6. The Company must enter in its Securities Register regarding every transfer of any Securities the information contemplated in clause 16.3.1, any reference to issue being read as a reference to transfer, including in the entry –
- 15.6.1. the date of the transfer,
- provided that such entry may only be made only if the transfer –
- 15.6.2. is evidenced by a proper instrument of transfer that has been delivered to the Company; or
- 15.6.3. was effected by operation of law.

16. **REGISTER AND SUB-REGISTER**

- 16.1. The Company shall cause its share register to be converted into a Securities Register with effect from the Effective Date. The Securities Register shall be kept up to date by recording therein any change of particulars of any Holder forthwith after receipt of Written notice by the Holder of such change.
- 16.2. The Company's Securities Register shall reflect –
- 16.2.1. the number of Securities authorised and the number available to be issued and the date of authorisation;
 - 16.2.2. the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;
 - 16.2.3. the number of Securities of a class that are held in uncertificated form;
 - 16.2.4. 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;
 - 16.2.5. in the case of Uncertificated Securities, a unique identifying number of the Person to, from or by whom the Securities were issued, re-acquired or surrendered, as the case may be;
 - 16.2.6. details of any unlisted Securities issued by the Company.
- 16.3. As soon as practicable after –
- 16.3.1. issuing any Securities, the Company shall cause to be entered in its Securities Register, in respect of every class of Securities held in certified form that it has issued:
 - 16.3.1.1. full names and business address or residential address and identity numbers of the Persons to whom the Securities were issued;
 - 16.3.1.2. those Persons' Electronic Addresses who have furnished them;
 - 16.3.1.3. a record of the Securities held with reference to the number and class of Securities issued to each of them, the subscription consideration and the numbers of the share certificates in respect thereof;
 - 16.3.1.4. the total number of Securities of a class held by any Person;

- 16.3.1.5. the date(s) upon which the name of a Person has been entered in the Securities register as a Holder;
- 16.3.1.6. the date upon which a Person has ceased to be a Holder;
- 16.3.1.7. as regards debt instruments as contemplated in section 43 of the Companies Act –
 - 16.3.1.7.1. the number of those Securities still in issue;
 - 16.3.1.7.2. the names and addresses of the Holders of the Securities and any holders of a Beneficial Interest in the Securities;
- 16.3.1.8. the total number of Uncertificated Securities from time to time;
- 16.3.2. the re-acquisition or surrender of any Securities, the Company shall cause to be entered in its Securities Register, in respect of Securities re-acquired or surrendered:
 - 16.3.2.1. the date on which the Securities were re-acquired or surrendered to the Company;
 - 16.3.2.2. the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
 - 16.3.2.3. the consideration for which the Securities were re-acquired by, or surrendered to the Company; and
 - 16.3.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 16.3.3. a disclosure of Beneficial Interests, a record of all such disclosures shall be maintained, including the following information for any Securities in respect of which a disclosure was made:
 - 16.3.3.1. the name and unique identifying number of the Holder of the Securities;
 - 16.3.3.2. the number, class and the distinguishing numbers of the Securities; and

16.3.3.3. 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 –

16.3.3.3.1. name and unique identity number;

16.3.3.3.2. business, residential or postal address;

16.3.3.3.3. Electronic Address if available;

16.3.3.3.4. any other information prescribed in terms of the Companies Act from time to time.

16.4. The Company shall:

16.4.1. cause to be entered in its Securities Register, in respect of every class of its Securities, the total number or nominal value of each kind of Security held in uncertificated form;

16.4.2. if applicable, maintain a sub-register for each Central Securities Depository holding uncertified Securities; and

16.4.3. balance and reconcile with the Central Securities Depository the records referred to in clause 16.4.1 in respect of each kind of uncertified Security -

(i) if that record has not changed, not less than once a month; or

(ii) if the record has changed, on the Business Day after such change.

16.5. Subject to the provisions of the Act, the Company may request the Participant concerned to furnish it with such details of Uncertificated Securities in the Company as are reflected in the sub-register maintained by that Participant.

16.6. A Person –

16.6.1. 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

16.6.2. 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.

- 16.7. Subject to such restrictions as may be prescribed by the Directors from time to time, the Securities Register shall be available for inspection by the Holders during office hours.
- 16.8. 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.

17. **AMENDMENTS TO THE MOI**

Subject to the provisions of the Companies Act and the listings requirements of the JSE, save for –

- 17.1. correcting errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do; and
- 17.2. amendments of the MOI effected in compliance with a court order in the manner contemplated in section 16(1)(a), read with section 16(4), of the Companies Act,
- all other amendments of the MOI, including but not limited to -
- 17.3. an increase in the number of the Company's authorised Securities of a class;
- 17.4. a consolidation of the Company's Securities;
- 17.5. the conversion of one class of Shares into one or more other classes;
- 17.6. a sub-division of the Company's Securities;
- 17.7. the creation of any class of Shares;
- 17.8. the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
- 17.9. the change of the Company's name,

shall be effected in accordance with section 16(1)(c) of the Companies Act and must be approved by a Special Resolution passed by the Holders of the Ordinary Shares. The Board shall publish a copy of any such correction effected by the Board on the Company's web site. **[10.5(d) and 10.9(c)]**

18. **MEETINGS OF SHAREHOLDERS**

- 18.1. The Company shall convene an Annual General Meeting once in each calendar year; provided that no more than 15 (fifteen) months, or such other extended time allowed by the Companies Tribunal, on good cause shown, lapses between each Annual General Meeting.

- 18.2. The Annual General Meeting of the Company must, at a minimum, provide for the following business to be transacted –
- 18.2.1. presentation of –
 - 18.2.1.1. the Directors' report;
 - 18.2.1.2. Audited Financial Statements for the immediately preceding financial year;
 - 18.2.1.3. an audit committee report;
 - 18.2.2. election of Directors, to the extent required by the Companies Act or the MOI;
 - 18.2.3. appointment of –
 - 18.2.3.1. an Auditor for the ensuing year;
 - 18.2.3.2. an audit committee;
 - 18.2.4. any matters raised by Holders, with or without advance notice to the Company.
- 18.3. The Company shall hold a Shareholders Meeting in order to consider one or more resolutions and shall not permit resolution/s that could be voted on at a Shareholders Meeting to be dealt with by round robin resolutions of those Persons entitled to vote. In particular, all Shareholder Meetings convened in terms of the listings requirements of the JSE must be held in person and may not be held by means of a written resolution as is contemplated in section 60 of the Companies Act. **[10.11(c)]**
- 18.4. Unless otherwise agreed with the JSE, no resolution may be proposed to be considered by Shareholders in terms of section 20(2) and (6) of the Companies Act if such a resolution would lead to the ratification of an act that is contrary to the listings requirements of the JSE. **[10.3]**
- 18.5. A Company must hold a Shareholders Meeting –
- 18.5.1. at any time that the Board is required by the Companies Act, the listings requirements of the JSE or the MOI to refer a matter to Holders entitled to vote for decision; **[10.11(d)]**
 - 18.5.2. whenever required in terms of section 70(3) of the Companies Act to fill a vacancy on the Board, other than in terms of clause 22.10.

- 18.6. 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.
- 18.7. The Directors may, whenever they think fit, convene a Shareholders Meeting, and a Shareholders Meeting may also be convened by a Shareholder/s holding not less than 10% (ten per cent) of the Voting Rights attached to the Ordinary Shares, or not less than 10 (ten) of the Holders of the Ordinary Shares or, if the Company has no Directors, any single Holder entitled to vote, may, whenever he thinks fit, convene a Shareholders Meeting. A Shareholders Meeting must be convened if one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and –
- 18.7.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
- 18.7.2. in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be Exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 18.8. If at any time there shall not be within the Republic sufficient Directors capable of acting to form a quorum, any Director or any 2 (two) Shareholders of the Company may convene a Shareholders Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.
- 18.9. 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 –
- 18.9.1. 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
- 18.9.2. a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands, in compliance with section 56(11) of the Companies Act.
- 18.10. An Annual General Meeting and a Shareholders Meeting shall be called by at least 15 (fifteen) 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. **[10.11(a), (b), (e) and (f)]**.

18.11. The notice of a Shareholders Meeting shall be in writing, in plain language and must specify –

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

18.11.2. the general nature of the business to be conducted at the Shareholders Meeting, and any specific purpose contemplated in clause 18.6, if applicable;

and shall be given, in manner herein mentioned or in such other manner, if any, as may be prescribed by the Company at a Shareholders Meeting, to such persons as are, under this MOI, entitled to receive such notices from the Company.

18.12. The notice of a Shareholders Meeting shall include –

18.12.1. in the case of the Annual General Meeting, a copy of the Annual Financial Statements for the preceding financial year, unless the Company has distributed them previously; **[10.19]**

18.12.2. 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;

18.12.3. a reasonably prominent statement that –

18.12.3.1. 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;

18.12.3.2. a proxy need not be a Holder;

18.12.3.3. a Holder entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by that Holder entitled to vote in respect of any Shareholders Meeting and may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by the Holder which entitle him to vote;

- 18.12.3.4. the proxy may delegate the authority granted to him as proxy, subject to any restriction in the proxy itself;
 - 18.12.3.5. participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Shareholders Meeting;
 - 18.12.3.6. 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.
- 18.13. A Shareholders Meeting shall, notwithstanding that it is called by shorter notice than that specified in clause 18.10 and/or notwithstanding any other Material defect in the giving of the notice, subject to clause 18.14, be deemed to have been duly called and proceed only if -
- 18.13.1. in the case of a Shareholders Meeting that is called by shorter notice than that specified in clause 18.10, every Person who is entitled to exercise Voting Rights in respect of any item on the agenda of the Shareholders Meeting, (i) is present at the Shareholders Meeting; and (ii) votes to waive the required minimum notice of the meeting, as contemplated in section 62(2A); or
 - 18.13.2. in the case of a Material defect in the giving of the notice, subject to clause 18.15, every Person who is entitled to exercise Voting Rights in respect of any item on the agenda of the Shareholders Meeting, (i) is present at the Shareholders Meeting; and (ii) votes to approve the ratification of the defective notice, as contemplated in section 62(4).
- 18.14. A Holder entitled to vote, who is Present at a Shareholders Meeting –
- 18.14.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;
 - 18.14.2. has a right to –
 - 18.14.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and

- 18.14.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
- 18.14.3. except to the extent set out in clause 18.14.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 18.15. 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 –
 - 18.15.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - 18.15.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 18.16. An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or the accidental omission or inadvertent failure to Deliver notice to any particular Holder, or the non-receipt of notice of a Shareholders Meeting by, any Person entitled to receive notice shall not invalidate the proceedings of that Shareholders Meeting.

19. **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

- 19.1. 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) of the Companies Act, is not limited or restricted.
- 19.2. Business may be transacted at any Shareholders Meeting only while a quorum is present. The quorum 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 the Shareholders Meeting may not begin unless in addition at least 3 (three) Persons entitled to vote are Present. **[10.11(h)]**
- 19.3. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 19.2 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. **[10.11(h)]**

- 19.4. If within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, a quorum is not present, the Shareholders meeting shall be postponed, without motion, vote or further notice, subject to clause 19.8, to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day which is not a public holiday, Saturday or Sunday and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 19.5. 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 –
- 19.5.1. held by all of the Persons who are present at the Shareholders Meeting at the time; and
- 19.5.2. 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.
- 19.6. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall choose some Director present at the Shareholders Meeting, or if no Director be present, or if all the Directors present decline to take the chair, the Persons entitled to vote which are Present shall choose one of their number to be chairperson of the Shareholders Meeting.
- 19.7. The chairperson may, with the consent of Persons entitled to Exercise, in aggregate, a majority of the Voting Rights –
- 19.7.1. Present at any Shareholders Meeting at which a quorum is present; and
- 19.7.2. 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,

(and shall if so directed by the Shareholders Meeting), adjourn the Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the Shareholders Meeting from which the adjournment took place.

19.8. When a Shareholders Meeting is adjourned and the location for the Shareholders Meeting is different from –

19.8.1. the location of the postponed or adjourned Shareholders Meeting; or

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

notice of the adjourned meeting shall be given in the manner prescribed but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

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

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

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

19.10. At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded:

19.10.1. by the chairperson; or

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

19.10.3. by a Person/s entitled to Exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter,

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 carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact, 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.

- 19.11. If a poll is demanded as aforesaid it shall be taken in such manner and at such place and time as the chairperson of the Shareholders Meeting directs, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers shall be appointed by the chairperson to count the votes and to declare the result of the poll and their declaration, which shall be announced by the chairperson of the meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.
- 19.12. In the case of an equality of votes on a poll, the chairperson of the Shareholders Meeting at which the voting on a poll takes place, shall not be entitled to a second or casting vote.
- 19.13. 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. **VOTES OF SHAREHOLDERS**

- 20.1. Subject to any rights or restrictions attaching to any class or classes of Securities which are not Ordinary Shares (as no voting restrictions shall be permitted as regards Ordinary Shares and no special rights or privileges shall attach to other Securities) and to the provisions of clause 14.2, 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 Securities he holds or represents, provided that a proxy shall, on a show of hands, irrespective of the number of holders of Securities entitled to vote he represents, have only 1 (one) vote. On a poll every Person entitled to vote who is Present at the Shareholders Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question. The total Voting Rights of the Holders of all Securities, other than Ordinary Shares and any special shares created for the purposes of Black Economic Empowerment, may not exceed 24,99% (twenty four comma nine nine per cent) of the total Voting Rights of all Persons entitled to vote at such a 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, their votes shall not be taken into account for the purposes of determining whether or not the requirements of the JSE have been attained. **[10.5(c)]**

- 20.2. No objection shall be raised 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 meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 20.3. When there are joint Holders of any Securities, any one of such persons may vote at any Shareholders Meeting in respect of such Securities as if he were solely entitled thereto; but if more than one of such joint Holders be Present at any Shareholders Meeting, that one of the said persons whose name stands first in the Securities Register in respect of such Securities or his proxy, as the case may be, shall alone be entitled to vote in respect thereof.
- 20.4. Any person entitled to a Security in terms of clause 14.2 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 his right to vote in respect of that Security) 24 (twenty four) hours at least before the time of holding the Shareholders Meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to exercise the right referred to in clause 14.2. Several executors of a deceased Holder in whose name Securities stand in the Securities Register shall, for the purposes of this clause, be deemed joint Holders of those Securities.
- 20.5. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution. A Special Resolution shall require to be adopted with the 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 JSE's 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.
- 20.6. A proxy need not be a Holder.
- 20.7. The form appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporate body, under the hand of an officer or agent authorised by that body. The holder of a general or special power of attorney given by a Holder shall be entitled to vote, if duly authorised under that power to attend and take part in the Shareholders Meetings and proceedings of the Company, whether or not he be himself a Holder. The form appointing a proxy shall be deemed to confer authority to demand a poll.

- 20.8. 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 to any person which the Company has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, immediately prior to the time for holding the Shareholders Meeting (including an adjourned Shareholders Meeting), before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting.
- 20.9. 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.
- 20.10. 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.
- 20.11. 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.
- 20.12. 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 he sees fit unless the proxy indicates otherwise.

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 of the JSE. ***[10.15 and 10.17(b)]***
- 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; **[10.17(b)]**
 - 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;
 - 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. Until otherwise determined by a Shareholders Meeting, the number of Directors shall not be less than 4 (four) nor more than 12 (twelve). 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. **[10.16(a)]**
- 22.2. The Directors shall have power at any time and from time to time to appoint any Individual as a Director to fill a casual vacancy occurring on the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed. Any Individual appointed to fill a casual vacancy occurring on the Board shall retain office only until the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director and shall be eligible for election at such Shareholders Meeting. **[10.16(b)]**
- 22.3. The shareholders shall have the right to nominate any Director for appointment. Each of the Directors and their respective Alternate Directors, other than a Director contemplated in clause 22.2, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 22.7 **[10.16(b)]** –
 - 22.3.1. in the case of executive (as this term is defined in the Listings Requirements) Directors, to serve for a term as set out in clause 26.1; and

- 22.3.2. in the case of non-executive (as this term is defined in the Listings Requirements) Directors, to serve for a term as set out in clause 24.2.
- 22.4. No Alternate Director may be appointed from the ranks of the Directors. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing him during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 22.5. There are no general qualifications prescribed by the Company for a Individual to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act. The Board with the assistance of the nominations committee must make recommendations to the Holders regarding the eligibility of Individuals nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief *curriculum vita* of each Individual standing for election or re-election as a Director at a Shareholders' Meeting or the Annual General Meeting, must accompany the notice of the meeting.
- 22.6. No Director shall be entitled to appoint any Person as an Alternate Director to himself.
- 22.7. In any election of Directors and Alternate Directors, the election is to be conducted as follows –
- 22.7.1. a series of votes of those entitled to Exercise Voting Rights 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
- 22.7.2. in each vote to fill a vacancy –
- 22.7.2.1. each Voting Right entitled to be Exercised may be Exercised once; and
- 22.7.2.2. the vacancy is filled only if a majority of the Voting Rights Exercised support the candidate.
- 22.8. No Person shall be elected as a Director or Alternate Director, if 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.

- 22.9. No election of a Person to serve as a Director shall take effect until he has delivered to the Company a Written consent to serve.
- 22.10. 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 he/she is elected at such Shareholders Meeting.
- 22.11. The continuing Directors (or sole continuing Director) may act, notwithstanding any casual vacancy in their body, so long as there remain in office not less than the prescribed minimum number of Directors duly qualified to act; but if and so long as the number falls below the number fixed by or pursuant to this MOI as the minimum, the remaining Directors shall not act except for the purpose of filling such vacancy or calling Shareholders Meetings not later than 3 (three) months from the date that the number falls below the minimum. A failure by the Company to have the minimum number of Directors during the 3 (three) month period does not limit or negate the authority of the Board of Directors or invalidate anything done by the Board of Directors or the Company. **[10.16(d)]**
- 22.12. 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.

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

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

- 23.1. immediately when he becomes Ineligible or Disqualified or the Board resolves to remove 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 he shall be suspended);
- 23.2. if there are more than 4 (four) Directors in office and if the Board (other than the Director concerned) determines that he has become incapacitated to the extent that such Director 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 he shall be suspended);
- 23.3. when he dies;

- 23.4. if, in the case of a Director, he is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors and is not represented at any such meetings during such 6 (six) consecutive months by an Alternate Director and the Directors resolve that the office be vacated, provided that the Directors shall have power to grant any Director leave of absence for any period;
- 23.5. 1 (one) month or, with the permission of the Directors earlier, after he has given notice in Writing of his resignation; or
- 23.6. if there are more than 4 (four) Directors in office and if he is removed from office by a resolution of the Directors (other than the Director concerned) 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 he shall be suspended);
- 23.7. if 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;
- 23.8. if there are more than 3 (three) Directors in office and if the Board determines that he/she 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 he/she shall be suspended);
- 23.9. if he is removed by Ordinary Resolution;
- 23.10. he Files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally;
- 23.11. when his term of office contemplated in clauses 22.3 expires; or
- 23.12. he is otherwise removed in accordance with any provisions of this MOI.

24. **ROTATION OF DIRECTORS**

- 24.1. No lifetime directorships or directorships for an indefinite period are permitted, [**10.16(k)**]
- 24.2. At the Annual General Meeting held in each year:
 - 24.2.1. 1/3 (one-third) of the non-executive (as this term is defined in the Listings Requirements) Directors, or if their number is not a multiple of 3 (three), then

the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that:

24.2.1.1. in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the managing director or any other executive Director for a fixed period and his contract provides that he is not subject to retirement during that fixed period;

24.2.1.2. if, at the date of any Annual General Meeting, any non-executive (as this term is defined in the Listings Requirements) Director will have held office for a period in excess of 3 (three) years or longer since his last election or appointment, he shall retire at such Annual General Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto.

The non-executive (as this term is defined in the Listings Requirements) Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. As between non-executive (as this term is defined in the Listings Requirements) Directors of equal tenure, the non-executive (as this term is defined in the Listings Requirements) Directors to retire shall, in the absence of agreement, be selected from among them by lot; and **[10.16(g)]**

24.2.2. any independent non-executive (as these terms are defined in the Listings Requirements) Director holding office for an aggregate period in excess of 9 (nine) years since his first election or appointment, shall only be entitled to be re-elected as a Director of the Company, if the Board has conducted a rigorous review of such Director and determined that no relationships and circumstances exist that are likely to affect, or appear to affect, such Director's judgment and independence of character.

24.3. A retiring Director shall act as a Director throughout the Annual General Meeting at which he retires. The length of time a Director has been in office shall be computed from the date of his last election.

24.4. Retiring Directors shall be eligible for re-election. No Individual other than a Director retiring at the Annual General 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 Annual General Meeting, there shall have been given to the company secretary notice in

Writing by some Holder duly qualified to be present and vote at the Annual General Meeting for which such notice is given of the intention of such Holder to propose such Individual for election and also notice in Writing signed by the Individual to be proposed of his willingness to be elected. **[10.16(g) and (h)]**

24.5. Subject to clause 24.4, the Company at an Annual General Meeting may fill the vacated offices by electing a like number of Individuals to be Directors and may fill any other vacancies.

24.6. If at any Annual General Meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled, 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 his place is filled, unless it shall be determined at such Annual General Meeting not to fill such vacancy.

25. **REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF COMMITTEES**

25.1. The Directors or Alternate Directors or members of Board or statutory committees shall be entitled to such remuneration for their services as Directors or Alternate Directors or members of 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 committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the members of the committees as determined by a disinterested quorum of Directors. The Board may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act to any executive Directors. **[10.16(f)]**

25.2. A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a major subsidiary of, the Company and in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors. **[10.16(e)]**

26. **MANAGING DIRECTORS AND EXECUTIVE DIRECTORS**

26.1. The Directors may from time to time appoint one or more of their number to be managing Director or joint managing Directors of the Company, or to be the holder of any other executive office in the Company and may, subject to any contract between him or them and the Company, from time to time terminate his or their appointment and appoint another or others in his or their place or places (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). Any appointments made by the Board in terms of this clause shall be for such term as may be determined by the Board (which term shall be stipulated in a contract relating to such Director's appointment), at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms as the Board may think fit, and it may be made a term of the appointment that the appointee be paid a pension, gratuity or other benefit on his retirement from office.

- 26.2. A managing Director and any Director who holds any other executive office shall not be subject to retirement by rotation and not be taken into account in determining the rotation of retirement of Directors, during the period of any such contract.
- 26.3. The managing Director shall, subject to the terms of his contract, be subject to the same provisions as to removal as the other Directors and if he ceases to hold the office of Director from any cause he shall ipso facto cease to be a managing Director.
- 26.4. The Directors may from time to time entrust and confer upon a managing Director or other executive officer for the time being such of the powers and authorities vested in them as they think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities. A managing Director and any Director who holds any other executive office appointed pursuant clause 26.1 shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Directors in terms hereof he shall be deemed to derive such powers directly from this clause.

27. **PROCEEDINGS OF DIRECTORS**

- 27.1. A Director authorised by the Board –
- 27.1.1. may at any time, and the company secretary upon the request of such Director, shall at any time, convene a meeting of the Directors; and
- 27.1.2. must call a meeting of the Board if required to do so by at least 2 (two) Directors.
- 27.2. 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 the Republic.

27.3. If all of the Directors –

- 27.3.1. acknowledge actual receipt of the notice;
- 27.3.2. are present at the Board meeting; or
- 27.3.3. 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.

27.4. The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Until otherwise resolved by the majority of the Directors for the time being in office, 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 the Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication, provided that the Electronic Communication facility employed ordinarily enables each Director who participates in that meeting:

- 27.4.1. to communicate concurrently with the other Directors participating in the meeting without an intermediary;
- 27.4.2. to hear each of the other participating Directors addressing the meeting;
- 27.4.3. if he so wishes, to address all of the other participating Directors simultaneously; and
- 27.4.4. to participate effectively in the meeting.

27.5. The quorum for a Directors' meeting is the majority of the Directors for the time being in office. A quorum will be deemed to be present if the conditions contemplated in clause 27.4 are satisfied in respect of at least the number of Directors required to form a quorum. A meeting held by Electronic Communication shall be deemed to take place at the place where the largest group of participating Directors is assembled or, if no such group is readily identifiable, at the place from where the chairperson of the meeting participates.

27.6. Each Director has 1 (one) vote on a matter before the Board. A majority of votes cast on a resolution is sufficient to approve that resolution and in case of an equality of votes, the chairperson shall not have a casting vote, (even in the case where the quorum of Directors

is two and only two Directors are present at such meeting), and the matter being voted on fails.

- 27.7. The Directors may elect a chairperson of their meetings and one or more deputy chairmen to preside in the absence of the chairperson, and may determine a period, not exceeding 1 (one) year, for which they are to hold office, but if no such chairperson or deputy chairperson is elected or if at any meeting neither the chairperson nor a deputy chairperson is present within 15 (fifteen) minutes after the time appointed for holding the same, the Directors present shall choose one of their number to be chairperson of such meeting.

[10.16(i)]

- 27.8. A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this MOI or the Companies Act for the time being vested in or exercisable by the Directors generally.

- 27.9. Subject to the Companies Act -

27.9.1. 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 has received notice of the matter to be decided upon. 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 27.13, a majority of Directors, voted in favour by signing in Writing a resolution in counterparts (for which purpose one or more Alternate Directors shall be entitled to sign a round robin resolution if one or more Directors are not present in the Republic to sign, and without his/their vote/s the requisite majority cannot be achieved);

27.9.2. all resolutions referred to in clause 27.9.1 shall be forwarded or otherwise delivered to the secretary without delay, and be recorded by him in the Company's minute book and noted at the meeting of the Directors next following the receipt thereof by him.

- 27.10. Any resolution referred to in clause 27.9.1 may consist of several documents, each signed by one or more Directors or their alternates.

- 27.11. Any resolution referred to in clause 27.9.1 shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last Director or alternate required to sign it and where it states a date as being the date of its signature by any Director or alternate that document shall be prima facie evidence that it was signed by that Director or alternate on that date.

27.12. Resolutions adopted by the Board –

27.12.1. must be dated and sequentially numbered; and

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

27.13. The Company must keep minutes of the meetings of the Board, and of each Board and statutory committee, and include in the minutes –

27.13.1. any declaration given by notice or made by a director as required by clause 32;

27.13.2. every resolution adopted by the Board.

27.14. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair 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.

28. **PRESCRIBED OFFICERS**

28.1. No Person shall perform any function that has been designated by the Minister in terms of section 66(10) of the Companies Act to constitute a prescribed office, if 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 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 him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

28.2. A Prescribed Officer shall cease to perform any function that has been designated by the Minister in terms of section 66(10) of the Companies Act to constitute a prescribed office immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.

29. **COMMITTEES**

29.1. 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 nominations 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 the Listings Requirements), and which must be chaired by the chairperson of the Board, may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors, but such Persons shall not be able to vote. Any committee so formed shall in the exercise of the powers so

delegated, conform to any regulations that may from time to time be imposed on it by the Directors.

- 29.2. No Person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 29.3. 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.
- 29.4. A member of a Board committee shall cease to hold office as such immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.
- 29.5. Committees of the Board may consult with or receive advice from any Person.
- 29.6. The meetings and proceedings of any such committee consisting of 2 (two) or more members shall be governed by the provisions of this MOI regulating the meetings and proceedings of the Directors.
- 29.7. The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company.

30. **POWERS OF DIRECTORS**

- 30.1. The management of the Company shall be vested in the Directors who, in addition to the powers and authorities expressly conferred upon them by this MOI, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company, it being recorded that the powers of management of the Company granted to the Directors in terms of section 66(1) of the Companies Act are not limited in any manner.
- 30.2. The Directors shall have power to delegate to any person or persons any of their powers and discretions and to give to any such person or persons the power of sub-delegation.
- 30.3. Without in any way limiting or restricting the general powers of the Directors to grant pensions, allowances, gratuities and bonuses to officers or ex-officers, employees or ex-employees of the Company or the dependants of such persons, it is hereby expressly declared that the Directors may from time to time without any further sanction or consent of the Company in general meeting (but subject to the Companies Act) –

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

30.3.2. grant pensions, gratuities or other allowances to and make payments for or towards the insurance of,

any persons who are employees or former employees (including Directors or former 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.

30.4. The Directors may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds or associations or persons as may seem to them advisable or desirable in the interests of the Company.

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

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

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

31.2.1. 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 1/10th (one tenth) of 1% (one percent) of the Company's net worth at the time of the resolution; or

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

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

32.1. For the purposes of this clause 32 –

32.1.1. "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; and

32.1.2. "Related Person" also includes any other company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is a member.

32.2. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, 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.

32.3. This clause 32 shall not apply to a Director in respect of a decision that may generally affect –

32.3.1. 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) of the Companies Act 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

32.3.2. 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 32 to apply.

32.4. If despite the Listings Requirements, 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 –

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

32.4.2. 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.

- 32.5. 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 32.4 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.
- 32.6. 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.
- 32.7. If a Director (whilst the circumstances contemplated in clause 32.4 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 –
- 32.7.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
 - 32.7.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
 - 32.7.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - 32.7.4. if Present at the Meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 32.7.2 and 32.7.3;
 - 32.7.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 32.7.2 and 32.7.3;
 - 32.7.6. while absent from the meeting in terms of this clause 32.7 –

- 32.7.6.1. 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
 - 32.7.6.2. 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
 - 32.7.7. 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.
- 32.8. 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 circumstances contemplated in clause 32.4 prevail), 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.
- 32.9. A decision by the Board, or by the Holders (if the circumstances contemplated in clause 32.4 prevail), or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –
 - 32.9.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 32; or
 - 32.9.2. 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 has been declared to be valid by a court in terms of section 75(8) of the Companies Act.

33. **COMPANY RECORDS AND AUTHENTICATION OF DOCUMENTS**

- 33.1. The Directors shall -
 - 33.1.1. comply with all the requirements of the Companies Act as to the keeping of Records;
 - 33.1.2. keep proper minutes of Shareholders' Meetings and Directors' Meetings.
- 33.2. Any minutes of any meetings of the Directors or of the Shareholders of the Company and of resolutions passed at such meetings, if purporting to be signed by the chairperson of such meeting, or by some person present thereat and appointed to sign the same in his place, or

by the chairperson of the next succeeding meeting of the Directors, shall be receivable as evidence of the matters stated in such minutes.

- 33.3. Any Director or the company secretary or any Person appointed by the Directors for this purpose shall have power to authenticate any documentation affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. Where any books, records, documents or accounts are elsewhere than at the Company's Registered Office, the local manager or other officer of the Company having the custody thereof shall be deemed to be the Person appointed by the Directors aforesaid.
- 33.4. A document purporting to be a copy of a resolution of the Directors or an extract from the minutes of a meeting of the Directors which is certified as such in accordance with the provisions of clause 33.3 shall be conclusive evidence in favour of all Persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

34. **LOSS OF DOCUMENTS**

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

35. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 35.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 35.2. 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 -
- 35.2.1. Beneficial Interests of the Directors;
- 35.2.2. 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; and
- 35.2.3. status of any Securities issued by the Company which are not listed on the JSE.

35.3. 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 documents which the Holders and holders of Beneficial Interests are entitled to inspect and take copies of, being –

35.3.1. the MOI;

35.3.2. amendments to the MOI;

35.3.3. records in respect of Directors;

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

35.3.5. reports to Annual General Meetings;

35.3.6. annual Financial Statements;

35.3.7. notices and minutes of Shareholders' Meetings;

35.3.8. communications generally to Holders; and

35.3.9. the Securities Register,

shall be open to inspection by the Holders and holders of Beneficial Interests (not being Directors).

35.4. 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) unless expressly authorised by the Directors or in accordance with the Promotion of Access to Information Act, No 2 of 2000, as amended.

35.5. 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 the holder of a 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.

36. **AUDIT COMMITTEE AND AUDITOR**

36.1. At each Annual General Meeting, the Company must elect an Audit Committee comprising at least 3 (three) members, unless -

36.1.1. the Company is a subsidiary of another company that has an Audit committee; and

- 36.1.2. the audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.
- 36.2. Each member of the Audit Committee must –
- 36.2.1. be a Director, who satisfies any applicable requirements prescribed by the Minister;
 - 36.2.2. not be –
 - 36.2.2.1. 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;
 - 36.2.2.2. 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
 - 36.2.2.3. 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 36.2.2.1 to 36.2.2.3. 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 and/or human resource management.
- 36.3. The Board must appoint a person to fill any vacancy on the Audit Committee within 40 (forty) Business Days after the vacancy arises.
- 36.4. The Audit Committee has the following duties –
- 36.4.1. to nominate, for appointment as Auditor, a Registered Auditor who, in the opinion of the Audit Committee, is independent of the Company;
 - 36.4.2. to determine the fees to be paid to the Auditor and the Auditor's terms of engagement;
 - 36.4.3. 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;

- 36.4.4. 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;
- 36.4.5. to pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;
- 36.4.6. to prepare a report, to be included in the annual Financial Statements for that financial year –
 - 36.4.6.1. describing how the Audit Committee carried out its functions;
 - 36.4.6.2. stating whether the Audit Committee is satisfied that the Auditor was independent of the Company; and
 - 36.4.6.3. commenting in any way the Audit Committee considers appropriate on the Financial Statements, the accounting practices and the internal financial control of the Company;
- 36.4.7. to receive and deal appropriately with any concerns or complaints, whether from within or outside the Company, or on its own initiative, relating to –
 - 36.4.7.1. the accounting practices and internal audit of the Company;
 - 36.4.7.2. the content or auditing of the Company's Financial Statements;
 - 36.4.7.3. the internal financial controls of the Company; or
 - 36.4.7.4. any related matter;
- 36.4.8. to make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
- 36.4.9. to perform other oversight functions as may be determined by the Board.

In considering whether, for the purposes of this clause 36.4, a Registered Auditor is independent of the Company, the Audit Committee must –

- 36.4.10. ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
 - 36.4.10.1. as Auditor; or
 - 36.4.10.2. for rendering other services to the Company, to the extent permitted in terms of the Companies Act;

36.4.11. consider whether the auditor's independence may have been prejudiced –

36.4.11.1. as a result of any previous appointment as Auditor; or

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

36.4.12. 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.

36.5. 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.

36.6. No Person shall be elected as a member of the Audit Committee, if 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.

36.7. A member of the Audit Committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

36.8. 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.

36.9. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or re-appoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –

36.9.1. the retiring Auditor is –

36.9.1.1. no longer qualified for appointment;

36.9.1.2. no longer willing to accept the appointment, and has so notified the Company; or

- 36.9.1.3. required to cease serving as auditor, in terms of section 92 of the Companies Act;
 - 36.9.2. the Audit Committee objects to the re-appointment; or
 - 36.9.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 36.10. Nothing precludes the appointment 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 appointed, the appointment is valid only if the Audit committee is satisfied that the proposed Auditor is independent of the Company.
- 36.11. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that –
 - 36.11.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
 - 36.11.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 36.12. The Auditor –
 - 36.12.1. has the right of access at all times to the Accounting Records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
 - 36.12.2. if the Company is a Holding Company, has the right of access to all current and former Financial Statements of any Subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties; and
 - 36.12.3. is entitled to –
 - 36.12.3.1. attend any Shareholders' Meeting;

- 36.12.3.2. receive all notices of and other communications relating to any Shareholders' Meeting; and
- 36.12.3.3. be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions.
- 36.12.4. may not perform any services for the Company –
 - 36.12.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or
 - 36.12.4.2. as may be prescribed by the Audit Committee.
- 36.13. If a vacancy arises in the office of Auditor, the Board –
 - 36.13.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor;
 - 36.13.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company; and
 - 36.13.3. if the Company has appointed 2 (two) or more Persons as Auditors, the Company must manage the rotation required by section 90 of the Companies Act in such a manner that all of the joint Auditors do not relinquish office in the same year.

If, by comparison with the membership of a firm at the time of its latest appointment, less than $\frac{1}{2}$ (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.

- 36.14. Before making an appointment in terms of clause 36.13 the Board –
 - 36.14.1. 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
 - 36.14.2. may proceed to make an appointment of a Person proposed in terms of clause 36.14.1 if, within 5 (five) Business Days after delivering the proposal, the Audit Committee does not give notice in Writing to the Board rejecting the proposed auditor.

36.15. The provisions of clauses 43.4 and 43.5 apply *mutatis mutandis* to the auditor.

37. **NOTICES**

37.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder, or if required, a holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by Electronic Communication. The Company must give notice of –

37.1.1. any Shareholders' Meeting to each Person entitled to vote at such Shareholders' Meeting other than proxies and Persons who have elected not to receive such notices;

37.1.2. the availability of a document, record or statement to the Holder or holder of Beneficial Interests either to his/her/its last known delivery address or last known Electronic Address.

37.2. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –

37.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and

37.2.2. confirms that the notices, documents, records or statements contemplated in clause 37, can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.

37.3. 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 the Companies Act (in particular, Table CR3 of the Regulations).

37.4. A Holder or Person entitled to Securities (or his 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.

- 37.5. 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.
- 37.6. 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), the provisions of clause 2 shall also be applied.
- 37.7. 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.
- 37.8. 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.

38. **INDEMNITY**

- 38.1. For the purposes of this clause 38, "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.
- 38.2. The Company may –
- 38.2.1. 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;
- 38.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

- 38.2.3. directly or indirectly indemnify a Director for –
 - 38.2.3.1. any liability, other than in respect of –
 - 38.2.3.1.1. any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
 - 38.2.3.1.2. any fine contemplated in clause 38.2.1;
 - 38.2.3.2. any expenses contemplated in clause 38.2.2, irrespective of whether it has advanced those expenses, if the proceedings –
 - 38.2.3.2.1. are abandoned or exculpate the Director; or
 - 38.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 38.2.3.1.
- 38.3. The Company may purchase insurance to protect –
 - 38.3.1. a Director against any liability or expenses for which the Company is permitted to indemnify a Director, as contemplated in clause 38.2.2 or 38.2.3; or
 - 38.3.2. the Company against any contingency including but not limited to –
 - 38.3.2.1. any expenses –
 - 38.3.2.1.1. that the Company is permitted to advance in accordance with clause 38.2.2; or
 - 38.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 38.2.3.2; or
 - 38.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 38.2.3.1.
- 38.4. The Company is entitled to claim restitution from a Director 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 or director of a Related company in any manner inconsistent with section 75 of the Companies Act.

39. **REPURCHASE OF SECURITIES**

The Company is authorised to repurchase Securities as provided for in the JSE listings requirements. **[10.9(b)]**

40. **ODD-LOT OFFERS**

40.1. For the purposes of this clause 40, “**odd-lot**” means a total holding by a Securities holder of: (a) less than 100 (one hundred) Securities (or such other number as may be permitted by the JSE); or (b) 100 or more Securities (or such other number as may be permitted by the JSE), provided that it can be illustrated to the JSE that the costs associated with a holder disposing of such number of Securities is equal to or exceeds the total value of such number of Securities.

40.2. Where the Company intends reducing administrative costs resulting from a large number of odd-lot holders and the Company proposes to make an odd-lot offer, the Company shall do so in accordance with the Listings Requirements (in particular, paragraphs 5.123 to 5.126) or as otherwise permitted by the JSE and in such instances a two-way election shall be provided for in terms of which the Securities holders may -

40.2.1. elect to retain their odd-lot holding; or

40.2.2. elect to sell the odd-lot holding, being the default action applicable if the Securities holders do not make any election in terms of clause 40.2.

40.3. In any Distribution, award or reconstruction contemplated by the Company where the holders of Securities may receive odd-lot entitlements, the holders of Securities so effected must, where the Company wishes instead to compensate such holders in monetary terms, be given the opportunity to elect to receive such odd-lot entitlements.

40.4. When the Company proposes to make an odd-lot offer, the Board shall pass a resolution approving the odd-lot offer confirming that the Company and its Subsidiaries (the “Company Group”) have passed the Solvency and Liquidity Test (in respect of the maximum payment that will be made to holders of Securities as a result of the odd lot offer) and that, since the Solvency and Liquidity Test was performed, there have been no material changes to the financial position of the Company Group.

40.5. If any holders of Securities who qualify to participate in the odd-lot offer do not make an election in terms of clause 40.2, such holders (and any Person with a Beneficial Interest in such odd-lots) shall be deemed to have agreed to sell their odd-lot holdings, and the Company shall be entitled (on implementation of the odd lot offer) to expropriate all of the

odd-lots held by such holders, provided that the odd-lot offer has been approved by Shareholders in Shareholders Meeting by Ordinary Resolution.

41. **REGISTER OF DISCLOSURES AND NOTIFICATION**

The Company must –

- 41.1. establish and maintain a register of the disclosures made in terms of section 56(7) of the Companies Act; and
- 41.2. 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;
- 41.3. 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 41.2 unless it relates to the disposal of any Beneficial Interest of less than 1% (one per cent) of the class;
- 41.4. 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;
- 41.5. within 48 (forty eight) hours after receiving a notification in respect of the acquisition of any Beneficial Interest publish the information on SENS.

42. **DISTRIBUTIONS**

- 42.1. Subject to the Companies Act (in particular, section 46), the Listings Requirements and this MOI, the Directors may –
 - 42.1.1. make Distributions from time to time, provided that – [**10.17(a)**]
 - 42.1.1.1. any such Distribution –
 - 42.1.1.1.1. is pursuant to an existing legal obligation of the Company, or a court order; or
 - 42.1.1.1.2. has been authorised by the Board, by resolution.]
 - 42.1.1.2. it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;

42.1.1.3. 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

42.1.1.4. no obligation is imposed, if it is a Distribution of capital, that the Company is entitled to require it to be subscribed again; **[10.8]**

42.1.2. must before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 42.1.1,

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 42.1.1.3, failing which it must again comply with the foregoing.

42.2. The Company may transmit any Distributions or other monies to a Shareholder by electronic bank transfer to such bank account as the Shareholder may have notified to the Company in writing for this purpose, and the Company shall not be responsible for any loss in transmission. A Distribution may also be paid in any other way determined by the Board, and if the directives of the Board in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.

42.3. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 42.1.1.1, 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.

42.4. The Company must hold all monies due to the Shareholders in trust indefinitely, but subject to the laws of prescription. **[10.17(c)]**

42.5. 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.

43. **COMPANY SECRETARY**

43.1. The Directors of the Company must appoint a company secretary from time to time who –

43.1.1. is permanently resident in the Republic and remain so while serving as company secretary; and

43.1.2. has the requisite knowledge of, or experience in, relevant laws to carry out the duties of a company secretary of a public company; and

- 43.1.3. may be a Juristic Person subject to the following –
- 43.1.3.1. 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;
 - 43.1.3.2. 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 43.1.1 and 43.1.2.
- 43.2. Within 60 (sixty) Business Days after a vacancy arises in the office of a 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 43.1.3.
- 43.3. If at any time a Juristic Person or partnership holds office as company secretary of the Company –
- 43.3.1. the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 43.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
 - 43.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 43.1.3, until the Company has received a notice contemplated in clause 43.3.1; and
 - 43.3.3. 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 43.1.3 at the time of that action.
- 43.4. 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.
- 43.5. 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.

44. **SOCIAL AND ETHICS COMMITTEE**

44.1. 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.

44.2. 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.

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

44.3.1. 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 –

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

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

44.3.1.1.2. the OECD recommendations regarding corruption;

44.3.1.1.3. the Employment Equity Act; and

44.3.1.1.4. the Broad-Based Black Economic Empowerment Act;

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

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

44.3.1.2.2. contribution to development of the communities in which its activities are predominantly conducted or

within which its products or services are predominantly marketed; and

44.3.1.2.3. record of sponsorship, donations and charitable giving;

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

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

44.3.1.5. labour and employment, including –

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

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

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

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

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

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

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

44.4.3. attend any Shareholders' Meeting;

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

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

- 44.5. 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.

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;¹

"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,

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

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

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

"central securities depository" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

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

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

"**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;

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

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

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

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

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

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

"file" when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

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

"financial statement" includes –

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

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

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

"incorporator", when used –

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

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

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

"**juristic person**" includes –

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

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

- (a) Had actual knowledge of the matter; or
- (b) Was in a position in which the person reasonably ought to have –
 - (i) had actual knowledge;
 - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
 - (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

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

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

"**nominee**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

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

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

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

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

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

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

"**present at a meeting**" (or "**present at the meeting**", depending on the context) 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;

"**records**", when used with respect to any information pertaining to a company, means any information contemplated in section 24(1);

"**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);

"**share**" means one of the units into which the proprietary interest in a profit company is divided;

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

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

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

"**special resolution**" means –

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) –
 - (i) at a shareholders meeting; or
 - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or

- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

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

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

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

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

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

- (a) carry voting rights with respect to that matter; or
- (b) are presently convertible to securities that carry voting rights with respect to that matter;

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

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

1. A person is ineligible to be a Director if the Person –
 - 1.1. is a juristic person;
 - 1.2. is an unemancipated minor, or is under a similar legal disability; or
 - 1.3. does not satisfy any qualification set out in the MOI.

2. A person is disqualified to be a Director if –
 - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

 - 2.2. the Person –
 - 2.2.1. is an unrehabilitated insolvent;
 - 2.2.2. is prohibited in terms of any public regulation to be a Director;
 - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

 - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
 - 2.2.4.1. involving fraud, misrepresentation or dishonesty;

 - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or

 - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).