

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT 71 OF 2008, AS AMENDED

MEMORANDUM OF INCORPORATION

OF

JSE LIMITED

Registration number 2005/022939/06

("the Company")

This memorandum of incorporation was adopted by a special resolution in terms of section 16(1)(c) passed by the shareholders of the Company on **25 April 2013**, in substitution for the then existing memorandum and articles of association of the Company.

Chairperson

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1. Definitions and interpretation

1.1 In this memorandum of incorporation ("**MOI**") the following words shall bear the following meanings and other words derived from the same origin as such words (that is cognate words) shall bear corresponding meanings, unless the context indicates otherwise:

1.1.1 "**Beneficial Interest**", when used in relation to the Company's Securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person, to:

1.1.1.1 receive or participate in any distribution in respect of the Company's Securities;

1.1.1.2 exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the Company's Securities; or

1.1.1.3 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 45 of 2002;

1.1.2 "**Board**" means the board of Directors of the Company from time to time;

1.1.3 "**Commission**" means the Companies and Intellectual Property Commission established in terms of section 185;

1.1.4 "**Companies Act**" means the Companies Act 71 of 2008;

1.1.5 "**Companies Regulations**" means the Companies Regulations, 2011 promulgated by the Minister in terms of section 223;

1.1.6 "**CSD**" means a "central securities depository" as defined in section 1 of the Securities Services Act;

1.1.7 "**CSDP**" means a depository institution accepted by a CSD as a "participant" in terms of section 34 of the Securities Services Act;

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

1.1.9 **"Distribution"** means a direct or indirect:

1.1.9.1 transfer by the 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 the Company or of another company within the same group of companies, whether:

1.1.9.1.1 in the form of a dividend;

1.1.9.1.2 as a payment in lieu of a capitalisation share, as contemplated in section 47;

1.1.9.1.3 as consideration for the acquisition:

1.1.9.1.3.1 by the Company of any of its Shares, as contemplated in section 48; or

1.1.9.1.3.2 by any company within the Company's group of companies, of any shares of a company within that group of companies; or

1.1.9.1.4 otherwise in respect of any of the Shares of the Company or of another company within the Company's group of companies, subject to section 164(19);

1.1.9.2 incurrence of a debt or other obligation by the Company for the benefit of one or more holders of any of the Shares of the Company or of another company within the same group of companies; or

1.1.9.3 forgiveness or waiver by the Company of a debt or other obligation owed to the Company by one or more holders of any of the Shares of the 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;

- 1.1.10 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act 25 of 2002;
- 1.1.11 "**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;
- 1.1.12 "**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 such persons are Related and one of them is Related to the third, and so forth in an unbroken series;
- 1.1.13 "**JSE**" means the securities exchange operated by the Company as a licensed exchange under the Securities Services Act;
- 1.1.14 "**Listings Requirements**" means the listings requirements of the JSE;
- 1.1.15 "**Ordinary Resolution**" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution (a) at a Shareholders' meeting or (b) by holders of the Company's Securities acting other than at a meeting in accordance with section 60;
- 1.1.16 "**Ordinary Shareholder**" means a Shareholder reflected in the Securities Register as holding Ordinary Shares;
- 1.1.17 "**Ordinary Shares**" means the authorised ordinary Shares in the Company contemplated in article 5;
- 1.1.18 "**Prescribed Officer**" means, in respect of a company, a person that exercises, or regularly participates to a material degree in the exercise of, general executive control over and management of the whole, or a significant portion, of the business and activities of that company;¹
- 1.1.19 "**present at a meeting**" means to be present in person, or able to participate in the meeting by Electronic Communication, or to be represented by a proxy who is present in person or able to participate in the meeting by Electronic Communication;

¹ Regulation 38.

- 1.1.20 "**publish**" or "**deliver**" means, in relation to any document that is required to be published or delivered to Shareholders in terms of this MOI, that the document in question is prepared in plain language and, if applicable, in the prescribed form, in accordance with sections 6(4) and (5), and is delivered to each Shareholder at that Shareholder's registered address (either its business, postal or residential address, or by e-mail) as recorded in the Securities Register of the Company;²
- 1.1.21 "**Registrar**" means the Registrar of Securities Services under the Securities Services Act or such other person as may from time to time have the authority to exercise regulatory oversight over the Company in terms of the Securities Services Act or any replacement thereof;
- 1.1.22 "**Related**", when used in respect of two persons, means persons who are connected to one another in the manner contemplated in section 2(1)(a) to (c), subject to section 75(1)(b);
- 1.1.23 "**Securities**" means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.24 "**Securities Register**" means the register required to be established by the Company in terms of section 50(1);
- 1.1.25 "**Securities Services Act**" means the Securities Services Act 36 of 2004;
- 1.1.26 "**Shareholder**" means:³
- 1.1.26.1 the holder of a Share who is entered as such in the Securities register of the Company, being the person who shall be regarded for purposes of this MOI as the person who, in relation to the Company, is the person entitled to exercise the rights attaching to the Shares so registered; and
- 1.1.26.2 for purposes of articles 10 to 12, a person who is entitled to exercise any voting rights in relation to the Company, irrespective of the form,

² Regulation 32(2)(a); article 15.1.

³ Sections 1 and 57(1).

title or nature of the Securities to which those voting rights are attached;

- 1.1.27 "**Shares**" means the Ordinary Shares and any other shares issued by the Company from time to time;
- 1.1.28 "**Solvency and Liquidity Test**" means the test set out in section 4(1);
- 1.1.29 "**Special Resolution**" means a resolution adopted with the support of at least 75% of the votes exercised on that resolution by the holders of the Ordinary Shares present in person or by proxy at a meeting of Shareholders;⁴
- 1.1.30 "**Subsidiary**" has the meaning determined in accordance with section 3 and, for purposes of the Listings Requirements, includes a juristic person or other undertaking which would have been a subsidiary as defined in section 1:
- 1.1.30.1 had the juristic person or other undertaking been a company; and/or
- 1.1.30.2 but for the fact that it is incorporated outside of the Republic of South Africa;
- 1.1.31 a reference to an "**article**" by number refers to the corresponding article in this MOI;
- 1.1.32 a reference to a "**regulation**" by number refers to the corresponding regulation in the Companies Regulations;
- 1.1.33 a reference to a "**section**" by number refers to the corresponding section of the Companies Act;
- 1.1.34 a reference to "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

⁴ LR Schedule 10 para 10.11(a).

- 1.1.35 a reference to "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.1.36 a reference to "**writing**" means legible writing and in English and includes printing, typewriting or any other mechanical process, as well as any Electronic Communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;
- 1.1.37 words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this MOI in a similar context bear the same meaning, unless excluded by the subject or the context, or unless this MOI provides otherwise;
- 1.1.38 where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur;
- 1.1.39 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;
- 1.1.40 each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void;

- 1.1.41 words signifying the singular shall include the plural, and *vice versa*;
- 1.1.42 words signifying one gender include the other genders; and
- 1.1.43 any reference contained in footnotes to a section of the Companies Act, to a regulation of the Regulations, to a paragraph of the Listings Requirements (denoted by the letters "LR") or to a paragraph of the King Code on Corporate Governance (denoted by "King") are for guidance only and do not form part of and are not to be used in the interpretation of this MOI.
- 1.2 The standard form of memorandum of incorporation for a public company referred to in regulation 15(1)(b) shall not apply to the Company. This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii).

2. **Juristic personality**

2.1 **incorporation and nature of the Company**

The Company is a pre-existing public company as contemplated in section 8(2)(d).

2.2 **constitution of the Company**

The Company is constituted in terms of section 19(1)(c) in accordance with and governed by:

- 2.2.1 the unalterable provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii)); and
- 2.2.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with section 15(2)(a)(ii)); and
- 2.2.3 the provisions of this MOI.

2.3 **amending the MOI**

2.3.1 **by Special Resolution**

2.3.1.1 In terms of section 16(1), the MOI may be amended at any time if a Special Resolution to amend it is proposed by:

2.3.1.1.1 the Board; or

2.3.1.1.2 Shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution,

and adopted.

2.3.1.2 While the Shares of the Company remain listed on the Company's securities exchange, the Board must, prior to proposing any amendments for approval by the Ordinary Shareholders, submit any proposed amendments to the MOI to the Registrar for approval in accordance with the Listings Requirements.⁵

2.3.1.3 If any proposed amendment of this MOI relates to the variation of any preferences, rights, limitations or other terms attaching to any class of Shares already in issue, other than the Ordinary Shares, that amendment must be approved by a Special Resolution of the holders of Shares in that class at a separate meeting of holders of those Shares prior to proposing such amendment for approval by the Shareholders.⁶ In such instances the holders of Shares in the relevant class will be allowed to vote also at the meeting of Ordinary Shareholders where the amendment to this MOI is proposed to be passed, subject to any applicable limitation on their voting rights.⁷

2.3.1.4 Preferences, rights, limitations or other terms of any class of Shares must not be varied and no resolution may be proposed to Shareholders for rights to include such variation in response to any

⁵ LR Schedule 10 para 2.

⁶ LR Schedule 10 para 10.5(d) and (e).

⁷ LR Schedule 10 para 10.5(e).

objectively ascertainable external fact or facts as provided for in section 37(6) and (7).⁸

2.4 **alteration of the MOI by the Board**

If the Board, or any person authorised by the Board to do so, proposes to alter any of the provisions of this MOI in terms of section 17(1), then the Board shall, together with the notice convening the next general meeting of Shareholders, deliver to each Shareholder a copy of the final notice of alteration Filed with the Commission together with a written explanation of the reason for and effects of each alteration and confirmation that each alteration was permitted in terms of section 17.

2.5 **powers and capacity of the Company**

2.5.1 The Company is not subject to any restrictive conditions or prohibitions as contemplated in section 15(2)(b) or (c) and section 11(3)(b)

2.5.2 The Company has all the legal powers and capacity of an individual, in terms of section 19(1)(b), except to the extent that:

2.5.2.1 a juristic person is incapable of exercising any such power, or having any such capacity; or

2.5.2.2 this MOI provides otherwise.

2.6 **change of name**

Any change of the name of the Company must be approved by a Special Resolution of the Shareholders and the proposed new name must comply with the requirements of the Companies Act.⁹

2.7 **rules**

The Board may not make, amend or repeal any rules for the Company as contemplated in section 15(3) to (5).¹⁰

⁸ Section 37(3)(a); LR Schedule 10 para 10.5(g).

⁹ LR Schedule 10 para 10.5(d)(vii).

¹⁰ LR Schedule 10 para 10.4.

2.8 **ratification of *ultra vires* acts**

Save to the extent otherwise agreed with the Registrar, it shall not be competent for any resolution to be proposed to the Shareholders for adoption in terms of sections 20(2) and/or 20(6), if such resolutions would lead to the ratification of an act on behalf of the Company that is contrary to the Listings Requirements.¹¹

3. **Company's records and accounting records**

3.1 All the Company's records contemplated by section 24 and all accounting records contemplated by section 28 shall be kept and be accessible at the registered office of the Company from time to time.¹²

3.2 **annual financial statements**

3.2.1 Each year the Company shall prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting of the Company.¹³

3.2.2 The annual financial statements must include information relating to the remuneration and benefits, including pension and issued Securities, received by each Director and any individual holding any prescribed office in the Company, as required in terms of sections 30(4) and (5).

3.2.3 The annual financial statements in respect of any financial year of the Company must be audited by the auditor appointed as contemplated in article 4.1.2.2.¹⁴

3.2.4 The annual financial statements must be distributed to the Shareholders at least 15 business days prior to the annual general meeting at which the annual financial statements will be considered.¹⁵

¹¹ LR Schedule 10 para 10.3.

¹² Sections 25 and 28(2).

¹³ Section 30(1); LR paragraph 3.19; article 10.6.

¹⁴ Section 30(2)(a).

¹⁵ LR Schedule 10 para 10.19.

3.2.5 The annual financial statements of the Company and all of its Subsidiaries must comply with the relevant provisions of the Listings Requirements.¹⁶

3.3 **annual returns**

3.3.1 The Company shall File an annual return in the prescribed form with the prescribed fee, in compliance with section 33(1).

3.3.2 The annual return of the Company shall include a copy of its annual financial statements and other prescribed information to the extent it applies to the Company.¹⁷

3.3.3 The company secretary (whose duty to do so is prescribed in section 88(2)(g)) or, in the absence of a company secretary for the time being, a director, employee or other person designated as such in terms of section 33(3) shall be responsible for the Company's compliance with the requirements of Part C of Chapter 2 (*Transparency, accountability and integrity of companies*) and Chapter 3 (*Enhanced Accountability and Transparency*) of the Companies Act, for purposes of section 33(3).

4. **Extended accountability requirements in Chapter 3**

4.1 **application of Chapter 3 to the Company**

4.1.1 The Company, being a public company, is required in terms of section 34(1) to comply with the provisions of Chapter 3 (*Enhanced Accountability and Transparency*) of the Companies Act.

4.1.2 The Company must:

4.1.2.1 appoint a person to serve as company secretary in the manner and for the purposes set out in Part B of Chapter 3 of the Companies Act;¹⁸

4.1.2.2 appoint a person to serve as an auditor, in the manner and for the purposes set out in Part C of Chapter 3 of the Companies Act;¹⁹ and

¹⁶ LR Schedule 10 para 10.22.

¹⁷ Section 33(1)(a) and (b).

¹⁸ Sections 86 to 89.

4.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in Part D of Chapter 3 of the Companies Act,²⁰

provided that no person who is ineligible (other than by virtue of being a juristic person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) or article 12.7 shall be appointed as the company secretary, auditor or a member of the statutory audit committee.²¹

4.1.3 In terms of section 72(4) read with regulation 43, the Company must, unless exempted, appoint a social and ethics committee.

4.2 register of company secretary and auditor

4.2.1 The Company shall, in accordance with section 85, establish or cause to be established, and maintain, a register of its company secretary and auditor.²²

4.2.2 Within 10 business days of appointing a company secretary or auditor, or of termination of such an appointment, the Company must File with the Commission a notice of the appointment or termination, as the case may be.²³

5. Securities of the Company

5.1 authorisation for Shares

The Company is authorised to issue 400 000 000 ordinary shares with a par value of R0.10 each, each of which ranks *pari passu* in all respects and entitles the holder to:²⁴

5.1.1 the right to be entered in the Securities Register as the registered holder of an Ordinary Share;

¹⁹ Sections 90 to 93.

²⁰ Section 94; LR paragraph 3.84(d) and King III Chapter 3.

²¹ Section 84(5).

²² Section 85(1).

²³ Section 85(3).

²⁴ LR Schedule 10 para 10.5(a).

- 5.1.2 one vote in respect of each Ordinary Share held by the holder and the right in person or by proxy to attend, speak at and vote on any matter to be considered at, any meeting of Ordinary Shareholders;²⁵
- 5.1.3 the right to receive any Distribution by the Company, if and when declared on the Ordinary Shares, to be made in proportion to the number of Ordinary Shares held by each Ordinary Shareholder;
- 5.1.4 the right to receive a portion of the total net assets of the Company remaining upon its liquidation; and
- 5.1.5 any other rights attaching to the Ordinary Shares in terms of the Companies Act or any other law.

5.2 **authority to alter authorised Shares**²⁶

- 5.2.1 The Board shall not have the powers contained in section 36(3).
 - 5.2.2 The Shareholders shall have the sole authority to undertake the following actions by a Special Resolution, which amends this MOI, namely to:
 - 5.2.2.1 increase or decrease the number of authorised but unissued Shares of any class;²⁷
 - 5.2.2.2 create any new class or classes of authorised Shares;²⁸
 - 5.2.2.3 consolidate or subdivide any:
 - 5.2.2.3.1 authorised but unissued no par value Shares of any class; and
 - 5.2.2.3.2 issued no par value Shares of any class,
- provided that the holders of the class of issued Shares so consolidated or subdivided approve that action by Special Resolution;²⁹

²⁵ LR Schedule 10 para 10.5(b).

²⁶ LR Schedule 10 para 10.9(c).

²⁷ LR Schedule 10 para 10.5(d)(iv).

²⁸ LR Schedule 10 para 10.5(d)(i).

²⁹ LR Schedule 10 para 10.5(d)(v) and (vi).

- 5.2.2.4 reclassify any Shares that have been authorised but not issued;
- 5.2.2.5 classify any unclassified Shares that have been authorised but are not issued;
- 5.2.2.6 determine the preferences, rights, limitations and other terms of any Shares that have been authorised but not issued;
- 5.2.2.7 vary the preferences, rights, limitations and other terms of any issued or unissued Shares,³⁰
- 5.2.2.8 convert any class of Shares into Shares of another class,³¹ and
- 5.2.2.9 convert any par value Shares to no par value Shares.³²
- 5.2.3 If the Shareholders act pursuant to the authority contemplated in article 5.2.2, the Company must File a notice of amendment of this MOI in accordance with section 16(7).

5.3 **issue of Shares**

- 5.3.1 Notwithstanding section 38 or anything contained in this MOI to the contrary, Shareholders of the Company in general meeting may by Ordinary Resolution authorise the Directors to issue unissued Shares and to grant options to subscribe for unissued Shares, as the Directors in their discretion may deem fit, provided that such corporate actions have been approved by the Registrar (if necessary) and comply with the Listings Requirements and the Companies Act.³³
- 5.3.2 Subject to article 5.3.1, if the Company proposes to issue any Shares (or options) other than:
 - 5.3.2.1 Shares issued in terms of options or conversion rights; or

³⁰ LR Schedule 10 para 10.5(d)(ii).

³¹ LR Schedule 10 para 10.5(d)(iii).

³² Regulation 31.

³³ LR Schedule 10 para 10.1.

- 5.3.2.2 Shares to be held under any share option scheme or share incentive scheme which complies with the provisions of Schedule 14 of the Listings Requirements and the Companies Act; or
- 5.3.2.3 capitalisation Shares contemplated in section 47; or
- 5.3.2.4 Shares issued or to be issued as consideration for any assets or for services rendered; or
- 5.3.2.5 Shares issued pursuant to a general or specific approval given by the Shareholders in general meeting,
- such issues may only be made (i) *pro rata* to the holdings of the holders of the class of Shares to be issued and (ii) out of authorised Shares of the relevant class, and any such corporate action shall take place in accordance with the Listings Requirements (to the extent applicable).³⁴
- 5.3.3 A *pro rata* offer of any Securities to any person may be made be subject to the possible exclusion from participation in that offer of any persons who are prohibited by any law of any country to whose jurisdiction they are subject.
- 5.3.4 When the Company has received the consideration approved by the Board for the issue of any Shares:
- 5.3.4.1 those Shares are fully paid up and freely transferable;³⁵ and
- 5.3.4.2 the Company must issue those Shares (unless the Board has resolved that the shares are to be issued at a different time) and cause the name of the holder to be entered in the Securities Register in accordance with sections 49 to 51.³⁶
- 5.3.5 At all times whilst the Company's Shares are listed on the JSE, the Company shall not issue any Shares in terms of sections 40(5) to 40(7).³⁷

³⁴ LR Schedule 10 para 10.1 and 10.9(a).

³⁵ Section 40(4)(a); LR Schedule 10 para 10.2(a).

³⁶ Section 40(4)(b).

³⁷ LR para 4.17 and Schedule 10 para 10.2(a).

5.3.6 The Company may pay to any person (i) a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally) or (ii) a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Securities issued or to be issued by the Company, provided that, for so long as any Securities of the Company are listed on the JSE, any such commission shall not exceed 10% of the subscription price of the Securities subscribed for.³⁸

5.4 **provision of information by a holder of Securities to the Company**

5.4.1 A person to whom Securities have been issued or transferred shall, in order for that person's name to be entered in the Securities Register or the records to be administered and maintained by a CSDP or CSD as the Company's uncertificated Securities Register in terms of section 50(3), provide to the Company or the CSDP or CSD, as the case may be, all the information relating to that person which is required to be included in the Securities Register, including the uncertificated Securities Register in terms of the Companies Act and the Companies Regulations or in terms of this MOI.³⁹

5.4.2 If any Securities of the Company are registered in the name of a person who is not the sole holder of the Beneficial Interest in all of the Securities in the Company held by that person, that registered holder of such Securities must in accordance with section 56 disclose to the Company:

5.4.2.1 the identity of the person on whose behalf any such Securities are held; and

5.4.2.2 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.⁴⁰

5.4.3 A person is regarded to have a Beneficial Interest in a Security of the Company, if the Security is held *nomine officii* by another person on that

³⁸ LR Schedule 10 para 10.14.

³⁹ Regulations 32 to 34.

⁴⁰ Section 56(3).

first person's behalf, or if that first person falls into the categories set out in section 56(2).

5.5 **Securities Register**

5.5.1 The Company shall, in accordance with sections 24(4)(a) and 50, establish or cause to be established a register of its issued Securities in the prescribed form and maintain its Securities Register in accordance with the prescribed standards.⁴¹

5.5.2 In the case of any Security registered in the names of two or more persons as joint holders, the person first named in the Securities Register shall, save as is provided in article 5.5.4 or 5.8.8, be the only person recognised by the Company as having any title to such Security and to the related certificate of title.

5.5.3 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first named of two or more remaining joint holders, as the case may be, shall, save as permitted in articles 5.5.4 and 5.8.8, be the only person recognised by the Company as having any title to such security.

5.5.4 The Company shall be entitled to recognise any person who is not a registered Security holder in respect of any Securities as the person having title to such Securities or holding or having any beneficial right in or to such Securities, on such terms and subject to such conditions and for such period(s) as the Board deems fit.

5.5.5 The Company shall, as soon as practicable after issuing any Securities, enter or cause to be entered in its Securities Register, in respect of every class of Securities issued:

5.5.5.1 the total number of those Securities that are held in uncertificated form; and

⁴¹ Regulations 32, 33 and 34.

- 5.5.5.2 with respect to certificated Securities, the names and addresses of the persons to whom the certificated Securities were issued and the number of certificated Securities issued to each of them, and such other information that is required to be entered into the certificated Securities Register in terms of section 50(2).⁴²
- 5.5.6 The Company shall be entitled (but not required or obliged, even if given notice of it, except as required by law or as ordered by a court of competent jurisdiction) to recognise or have any regard to any one or more persons who are not registered Securities holders in respect of any Securities as the person or persons having title (including joint title) to such Securities or holding or having any beneficial right or any other interest (including any joint beneficial right or other interest) in or to such Securities and/or in or to any rights, preferences, privileges or benefits attaching to any such Securities, on such terms and subject to such conditions and for such period(s) as the Board in its discretion may from time to time determine.
- 5.5.7 To the extent required by the Companies Act, the Company shall maintain records of disclosures of Beneficial Interests made to the Company as contemplated in section 56(3).
- 5.5.8 The Board may, in its discretion, record in the Securities Register that any Security is held in trust or by a nominee, and may disclose in the Securities Register for whom that Security is held.
- 5.5.9 The Company shall be under no obligation to verify the existence of the beneficial holder (or registered holder) in respect of any Securities, or to verify the legal status of any person who holds a Security as a trustee or nominee, or to ensure the carrying out by the trustee or nominee of any trusts or mandates (whether express or implied) in respect of any such Security.

⁴² Section 50(2); regulation 32.

5.6 **certificates evidencing Securities**

5.6.1 A certificate evidencing any Securities of the Company:⁴³

5.6.1.1 must state on its face:

5.6.1.1.1 the name of the Company;

5.6.1.1.2 the name of the person to whom the Securities were issued or transferred, as the case may be;

5.6.1.1.3 the number and class of Securities and the designation of the series, if any, evidenced by that certificate; and

5.6.1.1.4 an restriction on the transfer of the Securities evidenced by the certificate;

5.6.1.2 must be signed by two persons authorised by the Board; and

5.6.1.3 may otherwise be in such form as the Board prescribes from time to time.

5.6.2 Every registered Securities holder shall be entitled to be issued a certificate evidencing ownership of the Securities on the initial issue or transfer of Securities to the Securities holder, free of charge, (or, on request, more than one certificate, subject to the discretion of the company secretary, at such charge as the Board may from time to time think fit) but for every subsequent certificate the Board may make such charge as the Board may from time to time think fit.

5.6.3 Where a Securities holder has transferred part only of his Securities evidenced by a particular certificate, he shall be entitled, free of charge, to be issued with a new certificate for the balance of his Securities.

5.6.4 The Company shall, within two business days after the issue of any certificated Securities or the lodgement of an instrument of transfer for any certificated Securities, have ready for delivery the relevant certificate/s of title.

⁴³ Section 51(1)(a) and (b).

5.6.5 A Securities certificate complying with article 5.6.1 is proof that the named Security holder owns the Securities specified in the certificate, in the absence of evidence to the contrary.⁴⁴

5.6.6 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "Duplicate Certificate" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.

5.6.7 A certificate registered in the names of two or more persons shall be delivered to the person first named in the Securities Register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that Security.

5.7 **uncertificated Securities**

5.7.1 **evidence of uncertificated Securities**

5.7.1.1 In terms of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each person for whom any uncertificated Securities are held in an uncertificated Securities register. The Company shall not issue certificates or statements evidencing or purporting to evidence title to uncertificated Securities of the Company.

5.7.1.2 A person who is entitled to and wishes to inspect an uncertificated Securities Register, may do so only through the Company in terms of section 52(2) read with section 26 and article 3.1.

5.7.2 **substitution of certificated or uncertificated Securities**

5.7.2.1 A registered holder of uncertificated Securities may withdraw all or part of the uncertificated Securities held by the person in an uncertificated Securities register, and obtain a certificate in respect of those withdrawn Securities, by notifying the applicable CSDP or the CSD only (and not the Company), in terms of section 54(1).

⁴⁴ Section 51(1)(c).

5.7.2.2 If the Company receives from the CSDP or CSD concerned only (not from the registered holder of uncertificated Securities) a notice to provide the relevant certificate in respect of any withdrawn uncertificated Securities in terms of section 54(1)(a), the Company shall make the necessary entries in the Securities register of the Company, and prepare and deliver the relevant certificate, in terms of section 54(2):

5.7.2.2.1 against receipt by the Company of any fee charged by the Company from time to time in terms of section 54(3); and

5.7.2.2.2 against the holder of the Securities in question providing to the Company the necessary information required by the Company in terms of this MOI.

5.8 **transfer of Securities**

5.8.1 **restriction on transfer of Shares other than Ordinary Shares**

The right of any Shareholder to transfer any Shares of any class of Shares shall be limited or restricted only to the extent provided for in respect of that class of Shares.

5.8.2 **no liens**

Securities shall not be subject to any lien in favour of the Company.⁴⁵

5.8.3 **Board's power to decline to register a transfer of certificated Securities**

5.8.3.1 The Board may not decline to register the transfer of any certificated Securities in terms of a proper instrument of transfer, except if and for so long as:

5.8.3.1.1 the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this MOI; and/or

⁴⁵ LR Schedule 10 para 10.12.

5.8.3.1.2 the securities transfer tax in respect of such transfer (if any) has not been paid.

5.8.3.2 The transferor shall be deemed to remain the holder of such Securities until the name of the transferee is entered in the Securities Register.

5.8.4 **proper instrument of transfer of certificated Securities**

For purposes of section 51(6)(a) and this MOI, a "**proper instrument of transfer**" means an instrument in writing, in any form, which has been signed by or on behalf of the registered Securities holder as transferor and signed by or on behalf of the transferee, specifying (a) the full name of the transferor (being the name of a person entered in the Securities Register as the registered holder of the Securities being transferred), (b) the full name of the transferee and (c) the number of and the class of Securities being transferred.

5.8.5 **documents required for registration of transfer of certificated Securities**

5.8.5.1 Any person wishing the Company to register the transfer of any certificated Securities shall deliver to the Company for registration:

5.8.5.1.1 a proper instrument of transfer; and

5.8.5.1.2 the original certificate/s (or a duplicate certificate/s issued pursuant to article 5.6.6) of the Securities being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the right or title of the transferor to transfer the Securities.

5.8.5.2 The instrument of transfer, cancelled original or duplicate certificate/s of title in the name of the transferor and such other documentary evidence shall remain in the custody of the Company at its registered office.

5.8.6 **mandates to sign instruments of transfer of certificated Securities**

5.8.6.1 All mandates or authorities to sign instruments of transfer granted by holders of Securities for the purpose of transferring Securities, which have been lodged, produced or exhibited with or to the Company, shall be held in custody by the Company at its registered office.

5.8.6.2 Such mandates or authorities shall, as between the Company and the grantor of such mandate or authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the holders of Securities as transferor pursuant to such mandate or authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Securities is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the mandate or authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.⁴⁶

5.8.7 **transfer of uncertificated Securities**

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

5.8.8 **recognition of title**

The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is an insolvent or the *curator bonis* of a Shareholder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any Shareholder shall, subject to the provisions of articles 5.5.2 and 5.5.3 regarding joint holders, be the only person recognised by the Company as having any title to any Shares registered in the name of such Shareholder, including for voting purposes.

⁴⁶ LR Schedule 10 para 10.2(b).

5.8.9 **transmission of Securities**

5.8.9.1 Subject to any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of articles 5.5.2 and 5.5.3 or article 5.8.8 as having any title to any Securities (and also the legal guardian of any minor Securities holder and any person who obtains title to any Securities by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he claims to act under this article or as to his title to any Securities, and subject to the transfer provisions in this MOI, transfer such Securities to himself or to any other person.

5.8.9.2 A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a Securities holder who is deceased or the estate of a Securities holder whose estate has been sequestrated or who is otherwise under a disability or of his appointment as the liquidator of anybody corporate which is a Securities holder, shall be entered in the Securities Register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a Securities holder.

5.9 **fractions**

If, on any issue of Shares or other Securities, or on any consolidation or sub-division of Shares or other Securities, or on any other transaction with the Company, Shareholders or other Securities holders would, but for the provisions of this article, become entitled to fractions of Shares or other Securities, all allocations of such Shares or other Securities shall be rounded up or down based on standard rounding convention (ie allocations will be rounded up to the nearest whole number if they are equal to or greater than 0.5, or rounded down to the nearest whole number if they are less than 0.5), resulting in the allocations of whole Shares or other Securities and no fractional entitlements.

5.10 **odd lot offers**⁴⁷

5.10.1 For purposes of this article 5.10:

5.10.1.1 "**odd lot**" means any total holding by a Shareholder of less than 100 Shares (or such other number as may be permitted by the Registrar), or any total holding by a Securities holder of less than 100 Securities (or such other number as may be permitted by the Registrar) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other Rand amount as may be permitted by the Registrar); and

5.10.1.2 "**odd lot offer**" means an offer by the Company to the holders of odd lots, in terms of which the holders of the odd lots may elect to retain their holdings or sell their odd lots, subject to the Listings Requirements to the extent applicable.

5.10.2 The Company may make and implement odd lot offers in accordance with the Listings Requirements or as otherwise permitted by the Registrar and if it does so and any Shareholder or Securities holder who qualifies to participate in that odd lot offer does not elect any of the election alternatives (namely to retain their odd lots or to sell their odd lots) in accordance with the terms of the odd lot offer, such holder (and any person with a Beneficial Interest in such odd lots) shall be deemed to have agreed to sell odd lots, and the Company shall be entitled (on implementation of the odd lot offer) to cause the odd lots to be sold on behalf of such persons to any party (including the Company) on such terms and conditions as the Board may determine, provided that the Company shall account to the registered holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such odd lots.

5.10.3 All unclaimed proceeds of odd lot sales may be invested or otherwise made use of by the Board for the benefit of the Company until claimed.

⁴⁷ LR paragraphs 5.123 to 5.124.

5.10.4 Whenever Shares or other Securities are to be offered or issued by the Company *pro rata* to any persons, such offer and issue shall be subject to any rounding off of entitlements to avoid odd lots of such Securities.⁴⁸

5.11 **capitalisation Shares**

The Board shall have the authority, as contemplated in section 47, to:⁴⁹

5.11.1 approve the issuing of any authorised Shares as capitalisation Shares on a *pro rata* basis to the Shareholders of one or more classes of Shares;

5.11.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or

5.11.3 resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share, provided that the Board may not resolve to do so unless it:

5.11.3.1 has considered the Solvency and Liquidity Test, as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and

5.11.3.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

5.12 **Beneficial Interest in Securities**

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

5.12.2 The Company shall be entitled (but not required or obliged, even if given notice of it, except as required by law or as ordered by a court of competent jurisdiction) to recognise or have any regard to any one or more persons who is or are not a registered Securities holder in respect of any Securities as the person or persons having title (including joint title) to such Securities or holding or having any beneficial right or any other interest (including any

⁴⁸ LR para 5.123 to 5.127, 11.53 and 16.35.

⁴⁹ Section 47; LR para 7.C.15, 11.16, 16.16 and Schedule 10 para 10.6/7.

joint beneficial right or other interest) in or to such Securities and/or in or to any rights, preferences, privileges or benefits attaching to any such Securities, on such terms and subject to such conditions and for such period(s) as the Board in its discretion may from time to time determine.

5.12.3 To the extent required by the Companies Act, the Company shall maintain records of disclosures of Beneficial Interests made to the Company as contemplated in section 56(3).

5.12.4 The Board may, in its discretion, record in the Securities Register that any Security is held in trust or by a nominee, and may disclose in the Securities Register for whom that Security is held.

5.12.5 The Company is under no obligation to verify the existence of the beneficial holder (or registered holder) in respect of any Securities, or to verify the legal status of any person who holds a Security as a trustee or nominee, or to ensure the carrying out by the trustee or nominee of any trusts or mandates (whether express or implied) in respect of any such Security.

5.13 **Securities other than Shares (debt instruments)**

5.13.1 The Board is authorised to issue secured or unsecured debt instruments, as contemplated in section 43(2).

5.13.2 Debt instruments shall not be issued with special privileges, including attending and voting at general meetings and the appointment of Directors.⁵⁰

6. **Financial assistance**

6.1 **for the acquisition of options or Securities**

The Board may authorise the Company to provide financial assistance to any person for the purpose of, or in connection with, the subscription for any option or Securities of the Company or of any company Related or Inter-Related to the Company, of for the purchase of any Securities of the Company or of any company Related or Inter-Related to the Company, subject to and in accordance with section 44.

⁵⁰ LR Schedule 10 para 10.10.

6.2 **to Directors, Prescribed Officers or Related persons**

The Board may authorise the Company to provide financial assistance to:

- 6.2.1 Directors or Prescribed Officers of the Company or of Related or Inter-Related companies;
- 6.2.2 Related or Inter-Related companies or corporations;
- 6.2.3 members of Related or Inter-Related corporations; or
- 6.2.4 persons Related to any of the aforementioned companies, corporations, Directors, Prescribed Officers or members,

subject to and in accordance with section 45.

7. **Corporate actions required to comply with the Listings Requirements**

The Company shall, for so long as the Company's Shares are listed on the JSE, ensure that all of the Company's corporate actions comply with the Listings Requirements.⁵¹

8. **Distributions**

- 8.1 In respect of Distributions to Securities holders holding Securities listed on the JSE, payments to such Securities holders must be provided for in accordance with the Listings Requirements, to the extent applicable, and must not provide that capital shall be repaid on the basis that it may be called up again.⁵²
- 8.2 The Board, may at any time authorise and/or declare a Distribution, subject to compliance with section 46, to be paid to the Shareholders of any class in proportion to the number of Shares held by them in that class.⁵³
- 8.3 Distributions shall be declared payable or distributable to Shareholders registered as such on the record date with respect to such Distribution determined in terms

⁵¹ LR Schedule 10 para 10.9.

⁵² LR Schedule 10 para 10.8.

⁵³ LR Schedule 10 para 10.17(a).

of article 10.4, which must be a date subsequent to the date of sanctioning of the Distribution or declaring the Distribution by the Board.⁵⁴

- 8.4 Distributions payable in cash shall be declared in the currency of the Republic of South Africa. The Board may resolve that Distributions to be paid to Shareholders whose registered addresses are outside of the Republic of South Africa or who have given written instructions requesting payment at addresses outside the Republic of South Africa shall be paid in such other currency or currencies as may be determined by the Board. The Board may, acting reasonably, determine the exchange rate applicable to Distributions to be paid in such other currencies.
- 8.5 Any Distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways, subject to the provisions of the Companies Act, as the Board may at the time of authorising the Distribution determine and direct. Where any difficulty arises in regard to the Distribution of such specific assets or any part thereof, the Board may settle same as it considers expedient and in particular may, if as a result of the declaration of a Distribution any Shareholders become entitled to fractions of any specific assets of the Company, sell the assets represented by such fractions and, after deducting the expenses of such sale, distribute the balance of the proceeds of the sale amongst the Shareholders entitled to the fractions in proportion to their entitlement.
- 8.6 In the case where several persons are registered as the joint holders of any Shares, any one of such persons may give to the Company effective receipts for all or any Distributions and payments on account of Distributions in respect of such Shares.
- 8.7 All cash Distributions (including dividends, interest or other moneys) payable to Shareholders shall be paid by electronic funds transfer, cheque or otherwise, as the Board may from time to time determine. Payment by electronic funds transfer into the bank account recorded in the Company's bank account register nominated by the Shareholder, or in the case of joint Shareholders into the bank account nominated by the Shareholder whose name stands first in the Securities Register in respect of the Share, shall be a good discharge by the Company.

⁵⁴ LR Schedule 10 para 10.17(b).

Payment sent by post to the last registered address nominated by a Shareholder or, in the case of joint holders, to the address nominated by the one of them first named in the Securities Register in respect of such joint holdings, shall be a good discharge by the Company. For the purpose of this article 8, no notice of change of registered address or instructions as to payment being made at any other address which is received by the Company between the record date for the Distribution and the respective date of payment of the Distribution (both dates inclusive), and which would have the effect of changing the currency in which such payment would be made, shall become effective until after such date of payment.

- 8.8 Every payment of a Distribution made by electronic funds transfer or by post shall be made at the risk of the Shareholders or joint Shareholders. The Company shall not be responsible for the loss or misdirection of any electronic funds transfer, cheque or other document.
- 8.9 No Distribution shall carry interest as against the Company, unless otherwise resolved by the Board.
- 8.10 Any unclaimed Distributions payable or distributable to a Shareholder may be invested or otherwise made use of by the Board, as it deems fit, for the benefit of the Company until it is claimed by the person entitled to the Distribution in question.
- 8.11 Any cash Distributions made by the Company from time to time shall be held by the Company in trust indefinitely until lawfully claimed by the relevant Shareholders or holder of Securities, but subject to the laws of prescription applicable from time to time, or until the Company is wound up.⁵⁵

9. **Company or its Subsidiary acquiring Company's Shares**⁵⁶

9.1 The Board may, with the approval of a Special Resolution of the Shareholders, determine that:

9.1.1 the Company will acquire a number of its own Shares; or

⁵⁵ LR Schedule 10 para 10.17(c).

⁵⁶ LR Schedule 10 para 10.9(b).

- 9.1.2 a Subsidiary of the Company will acquire a number of Shares,
subject to the provisions of section 48 and the Listings Requirements, provided that a *pro rata* repurchase by the Company of Shares from all its Shareholders will not require Shareholder approval other than in the circumstances contemplated in article 9.2.⁵⁷
- 9.2 A decision by the Board contemplated in article 9.1.1:
- 9.2.1 must be approved by a Special Resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or Prescribed Officer of the Company;
- 9.2.2 is subject to the requirements of sections 114 and 115 if, considered alone or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued Shares of any particular class of the Company's Shares.

10. Shareholders' meetings

10.1 person entitled to attend, speak and vote at meetings

- 10.1.1 No person other than a Shareholder (or its representatives or proxies) in respect of a class of Shares, held by that Shareholder as reflected in the Securities Register, shall be entitled to attend, speak and vote at a meeting of that class of Shareholders.
- 10.1.2 Directors and representatives and advisers of the Company, such as legal and financial advisers or auditors, shall be entitled to attend a meeting but shall have no right to speak (unless invited to speak by the chairperson of the meeting) or vote at such meeting.

10.2 representation of Shareholders at meetings

- 10.2.1 A company that is a Shareholder of the Company, in respect of a class of Shares may (in order for that Shareholder to be personally present),

⁵⁷ LR para 5.67(B).

authorise any individual to act as the representative of that Shareholder at any meeting of that class of Shareholders.⁵⁸

10.2.2 The governing body of any other person or group of persons (not being an individual), including but not limited to the trustees for the time being of a trust or the general partner of an *en commandite* partnership or the managing partner/s of a partnership or the managing members of a close corporation, etc. that is a Shareholder of the Company in respect of any class of Shares may (in order for that Shareholder to be personally present) authorise any individual to act as the representative of that Shareholder at any meeting of that class of Shareholders.

10.2.3 A person authorised to act as a representative of a Shareholder may exercise the same powers as the authorising Shareholder could have exercised as if it were the Shareholder.⁵⁹

10.2.4 The Company shall be entitled to disregard any authorisation of a person as the representative of the Shareholder in question, and to disregard the vote of any representative or purported representative, if:

10.2.4.1 the authorisation is not in writing signed by or on behalf of the Shareholder; or

10.2.4.2 the authorisation does not specify the name of the Shareholder and the names of the members of the Board, or other governing body of the Shareholder and confirm the power and authority of that board or other governing body to appoint and authorise a representative of the Shareholder to attend, speak and vote at the meeting of Shareholders of the Company in question (either as a general authority or as a specific authority); or

10.2.4.3 a copy of the written authorisation has not been received by the Company at the registered office of the Company, marked for the attention of the Board (or received at such other location and/or received by such other person on behalf of the Company, as may be specified in the notice convening the meeting), at least 48 hours

⁵⁸ Section 57(5).

⁵⁹ Section 57(6).

before the appointed time for the beginning of the meeting or, if the meeting is adjourned, the appointed time for the resumption of the adjourned meeting.

10.2.5 Any person who is a representative or purported representative specified in a written authorisation which is disregarded, or the voting of whom is disregarded, shall not be entitled to attend or speak or vote at the meeting of Shareholders in question, and shall forthwith remove himself from the meeting in question at the request of the chairperson of the meeting or at the request of any one or more Directors or any one or more Shareholders of the Company, failing which he may be removed from the meeting at the cost of the Shareholder for whom the representative purports to act.

10.2.6 A vote given by a representative in accordance with the terms of the written authorisation authorising that representative shall be valid, notwithstanding the previous revocation of the authority, unless notice in writing of the revocation has been received by the Company before the commencement of the meeting of Shareholders concerned.

10.3 **proxies**

10.3.1 At any time a Shareholder may, in respect of any class of Shares held by that Shareholder, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to participate in, and speak and vote at, a meeting of that class of Shareholders (or to give or withhold written consent in respect of a decision contemplated in section 60) on behalf of the Shareholder, provided that the Shareholder may appoint more than one proxy to exercise voting rights attached to different Shares of that class of Shares held by that Shareholder.⁶⁰

10.3.2 In order for the appointment by a Shareholder of a proxy to be valid, both the appointment and the proxy form (or instrument appointing a proxy), must comply with the requisite formalities, and with the requirements as to content, set out in section 58 read with this article 10.3. The proxy form (or

⁶⁰ Section 58(1)(a); LR Schedule 10 para 10.5(b).

instrument appointing a proxy) must be in writing, dated and signed by the Shareholder.⁶¹

10.3.3 If a Shareholder requests a "standard" proxy form from the Company, the company secretary shall prepare or cause to be prepared a standard proxy form, subject to and in compliance with section 58(9) and article 10.3.2.

10.3.4 The following limitations with respect to the appointment and authority of a proxy shall apply.⁶²

10.3.4.1 a Shareholder of the Company may not appoint two or more persons concurrently as proxies in respect of the same voting rights,⁶³

10.3.4.2 a proxy may not delegate the proxy's authority to act on behalf of a shareholder to another person;⁶⁴ and

10.3.4.3 a copy of the instrument appointing a proxy must be delivered to the registered office of the Company marked for the attention of the company secretary (or delivered to such other location and/or person on behalf of the Company as may be specified in the notice convening the meeting), to be received by the Company not less than 48 hours before the appointed time for the beginning of the meeting or, if the meeting is adjourned, the appointed time for the resumption of the adjourned meeting.⁶⁵

10.3.5 The Company shall be entitled to disregard any proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:

10.3.5.1 the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 or is inconsistent with or contravenes article 10.3.2 or 10.3.4 in any way;

⁶¹ Section 58(2)(a).

⁶² Section 58(3).

⁶³ Section 58(3)(a).

⁶⁴ Section 58(3)(b).

⁶⁵ Section 58(3)(c).

- 10.3.5.2 the Shareholder (if applicable, through its authorised representative) chooses at any time to exercise all or some of the voting rights attached to the Shares registered in the name of the Shareholder;⁶⁶
- 10.3.5.3 the authority of the proxy has been revoked by the Shareholder (if applicable, through its authorised representative) in terms of section 58(4)(b) and (c); or
- 10.3.5.4 the vote of the proxy is not in accordance with the express directions as to voting the Shares in question specified by the Shareholder and set out in the applicable proxy form or instrument appointing the proxy.⁶⁷
- 10.3.6 Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which is disregarded, or the voting of whom is disregarded, shall not be entitled to attend or speak or vote at the meeting of Shareholders in question and shall forthwith remove himself from the meeting in question at the request of the chairperson of the meeting or at the request of any one or more Directors or any one or more Shareholders of the Company, failing which he may be removed from the meeting at the cost of the Shareholders for whom the proxy purports to act.
- 10.3.7 A vote given by a proxy in accordance with the terms of the proxy form or instrument appointing that proxy shall be valid, notwithstanding the previous death or insanity of the principal, or revocation of the authority, unless notice in writing of the death, insanity or revocation has been received by the Company before the commencement of the meeting of Shareholders concerned.
- 10.4 **record date for determining Shareholder rights**
- 10.4.1 While the Shares of the Company remain listed on the JSE, the record date for the purposes of determining Shareholder rights shall be determined in

⁶⁶ Section 58(4)(a).

⁶⁷ Section 58(7).

accordance with the Listings Requirements and, where applicable, the rules of the CSD.⁶⁸

10.4.2 If the Listings Requirements or rules of the CSD do not provide a manner for determining the record date in any specific circumstance, or should the Shares of the Company no longer be listed on the JSE or none of its issued Shares are in uncertificated form, the Board may, in terms of section 59(1), set a record date or dates for the purposes of determining Shareholder rights to:⁶⁹

10.4.2.1 receive notice of a Shareholders' meeting;

10.4.2.2 participate in and vote at a Shareholders' meeting;

10.4.2.3 decide on any matter in terms of section 60;

10.4.2.4 exercise pre-emptive rights (where applicable);

10.4.2.5 receive a Distribution; or

10.4.2.6 be allotted or exercise other rights.

10.4.3 The record date determined by the Board:

10.4.3.1 may not be earlier than the date on which the record date is determined (ie may not be retrospective);⁷⁰ or

10.4.3.2 may not be more than 10 business days before the date on which the event or action for which the date is being set is scheduled to occur;⁷¹ and

10.4.3.3 must be published to Shareholders in a manner that satisfies any prescribed requirements.⁷²

⁶⁸ LR Schedule 10 para 10.15; regulation 37.

⁶⁹ Section 59(1).

⁷⁰ Section 59(2)(a)(i).

⁷¹ Section 59(2)(a)(ii).

⁷² Section 59(2)(b).

10.4.4 If the Board fails to determine a record date for any event or action and neither the Listings Requirements nor rules of the CSD provide a manner for determining the record date in any specific circumstance, the record date will be:

10.4.4.1 the Friday immediately preceding the date of such action or event (or if such Friday is a public holiday, the business day immediately preceding it), if such day is at least three business days prior to the date of such action or event; or

10.4.4.2 the second Friday preceding the date of such action or event (or if such Friday is a public holiday, the business day immediately preceding it), in any other case.

10.5 **calling a Shareholders' meeting**

10.5.1 The Board or any Director may call a meeting of any class of Shareholders at any time.⁷³

10.5.2 The Board or any Director must call a meeting of any class of Shareholders if one or more written and signed demands for such a meeting are delivered to the Company and:⁷⁴

10.5.2.1 each such demand describes the specific purpose for which the meeting is proposed; and

10.5.2.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

10.5.3 If there are no Directors or all of the Directors are incapacitated, the Company authorises the company secretary or, failing him, the auditors for the time being of the Company to call a Shareholders' meeting.⁷⁵

⁷³ Section 61(1).

⁷⁴ Section 61(3).

⁷⁵ Section 61(11).

10.5.4 All Shareholders' meetings that are called for by the issuer or applicant issuer as defined in the Listing Requirements must be convened by the Board for purposes of the Shareholders considering and, if deemed fit, approving those resolutions required by the Listings Requirements.⁷⁶

10.6 **calling an annual general meeting**

The Company must convene an annual general meeting once in every calendar year, but not more than 15 months after the date of the previous annual general meeting (or within an extended time allowed by the Companies Tribunal on good cause shown), for the following purposes:

10.6.1 presentation to the Shareholders of the Directors' report, any company secretary's statement contemplated in section 89(4), the audited financial statements for the immediately preceding financial year, as well as the audit committee report;⁷⁷

10.6.2 appointment of the Company's auditor and the Company's audit committee for the ensuing financial year;⁷⁸

10.6.3 approval of the remuneration of Directors for the ensuing two financial years of the Company; and

10.6.4 any other matters raised by any Shareholders in relation to the Company, with or without advance notice to the Company.⁷⁹

10.7 **location of Shareholders' meetings**

The Board, Directors, company secretary or auditor, as the case may be, of the Company convening a Shareholders' meeting may determine the location of the meeting (including the location of a meeting which has been adjourned), provided that the location shall allow for electronic participation by Shareholders in the manner contemplated in section 63(2).⁸⁰

⁷⁶ LR Schedule 10 para 10.11(d).

⁷⁷ Section 61(8)(a).

⁷⁸ Section 61(8)(c).

⁷⁹ Section 61(8)(d).

⁸⁰ Section 61(9).

10.8 **electronic participation at Shareholders' meetings**

10.8.1 Every meeting of Shareholders must be reasonably accessible within the Republic of South Africa for electronic participation by Shareholders, irrespective of the physical location of the meeting.⁸¹

10.8.2 Registered Shareholders (or, if applicable, their representatives or proxies) may participate in a meeting (including the meeting as adjourned) which they are entitled to attend by Electronic Communication, at their own expense.⁸²

10.8.3 The Electronic Communication employed by the Company must ordinarily enable all participants in the meeting to communicate concurrently with each other, without an intermediary, and to participate reasonably effectively in the meeting.⁸³

10.9 **notice of Shareholders' meetings**

10.9.1 A notice of a meeting of Shareholders must be delivered:

10.9.1.1 to each of the Shareholders as of the applicable record date for delivery of that notice and entitled to vote at such meeting;⁸⁴

10.9.1.2 to the auditors for the time being of the Company in terms of section 93(1)(c)(ii); and

10.9.1.3 if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Shareholder,⁸⁵

in form and content as prescribed in section 62(3), at least 15 business days before the date on which the meeting is to begin in the case of both

⁸¹ Sections 61(10) and 63(2).

⁸² Sections 63(2)(b) and 63(3)(b).

⁸³ Section 63(2).

⁸⁴ LR Schedule 10 para 10.11(e).

⁸⁵ Section 58(6).

Ordinary Resolutions and Special Resolutions unless, in terms of section 62(2A), the meeting is called on a shorter period of notice.⁸⁶

10.9.2 If there is an invitation by the Company to Shareholders to appoint one or more persons named by the Shareholder as a proxy, or if the Company intends to supply a form or instrument for appointing a proxy, then the invitation and/or instrument must comply with the requirements of section 58(8) and must accompany the notice calling the Shareholders' meeting in question and must be delivered to all Shareholders entitled from time to time to receive notice of the meeting.⁸⁷ For as long as the Shares of the Company are listed on the JSE, a proxy form shall, together with the notice of Shareholders' meeting, be sent to each person entitled to vote at such meeting.⁸⁸

10.9.3 The notice of a meeting (or of an adjourned meeting) must be in writing and:

10.9.3.1 must inform Shareholders of the availability of participation in the meeting (and in any postponement or adjournment of the meeting) by Electronic Communication and must provide the necessary information to enable Shareholders (or their proxies) to access the available medium or means of Electronic Communication, for the meeting and as it may be postponed or adjourned;⁸⁹ and

10.9.3.2 must include:

10.9.3.2.1 the date, time and place for the meeting, and the record date for the meeting;

10.9.3.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a), if applicable;

10.9.3.2.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting,

⁸⁶ Section 62(1)(a); LR Schedule 10 para 10.11(a) and (b).

⁸⁷ Section 58(8)(a) and 59(1)(a).

⁸⁸ LR para 3.52(a).

⁸⁹ Section 63(3)(a); article 10.8.

and a notice of the percentage of voting rights that will be required for that resolution to be adopted;

10.9.3.2.4 in the case of an annual general meeting, (a) the annual financial statements for the preceding financial year to be presented or (b) a summarised form thereof and directions for obtaining a copy of the complete annual financial statements; and

10.9.3.2.5 a reasonably prominent statement that:

10.9.3.2.5.1 a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Shareholder, or two or more proxies to the extent permitted by the MOI;

10.9.3.2.5.2 a proxy need not also be a Shareholder of the Company; and

10.9.3.2.5.3 section 63(1) requires that meeting participants provide satisfactory identification.

10.10 **chairperson of a Shareholders' meeting**

10.10.1 The chairperson of the Board for the time being shall chair Shareholders' meetings. If, however, there is no chairperson of the Board or if he has notified his inability or unwillingness to attend a Shareholders' meeting or if at any meeting he is not present within the 15 minutes after the appointed time for the meeting to begin, then the Shareholders present or represented at the meeting shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present is willing to chair the meeting, then the Shareholders present at the meeting shall choose one of their number to chair the meeting.

10.10.2 Notwithstanding anything to the contrary in this MOI, the chairperson of a Shareholders' meeting shall be entitled, in his reasonable discretion, to waive any administration and/or procedural requirement, and/or to condone and/or accept any action or document that does not strictly comply with any administrative and/or procedural requirement, of this MOI (including but not limited to the requirements of articles 10.3.5.1 and 12.6.2.3), except to the

extent that such procedure or requirement is an unalterable requirement of the Companies Act.

10.11 **identification of attendees before a Shareholders' meeting**

- 10.11.1 A person wishing to attend or speak at or participate in or vote at a Shareholders' meeting (as a Shareholder personally or as a representative or as a proxy for a Shareholder, or as the parent, guardian, executor, administrator, trustee or curator with respect to a Shareholder or as the auditor or representative of the auditor) must present reasonably satisfactory identification to the chairperson of the meeting 30 minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, 30 minutes before the appointed time for that adjourned meeting to resume, as the case may be, stipulated in the notice of the meeting or adjourned meeting in question.⁹⁰
- 10.11.2 The chairperson of the meeting must be reasonably satisfied that the right of the Shareholder or its representative or proxy/ies or any other person to participate and vote has been reasonably verified.⁹¹
- 10.11.3 If the identification process is not completed by the appointed time for that meeting to begin or adjourned meeting to resume (as specified in the notice of that meeting or adjourned meeting if applicable), then the commencement of the meeting or resumption of the adjourned meeting, as the case may be, shall be delayed until the identification process is complete.
- 10.11.4 The auditors for the time being of the Company shall be entitled to be heard on any part of the business of the meeting that concerns the auditor's duties or functions.⁹²

⁹⁰ Section 63(1)(a).

⁹¹ Section 63(1)(a).

⁹² Section 93(1)(c)(i) and (iii).

10.12 **quorum**

10.12.1 A Shareholders' meeting may not begin until:

10.12.1.1 if the Company has more than two Shareholders, at least three Shareholders are present at the meeting; and

10.12.1.2 sufficient Shareholders are present or represented at the meeting to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting.⁹³

10.12.2 A matter to be decided at the meeting may not begin to be considered unless:

10.12.2.1 if the Company has more than two Shareholders, at least three Shareholders are present at the meeting; and

10.12.2.2 sufficient Shareholders are present or represented at the meeting to exercise, in aggregate at least 25% of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.⁹⁴

10.12.3 Once a quorum has been established, sufficient Shareholders to comprise a quorum must remain present at the meeting to deal with any matter to be considered at and on the agenda for the meeting.⁹⁵

10.13 **automatic postponement of a meeting**

If, within 30 minutes of the appointed time for a meeting to begin, a quorum is not present, the meeting will be automatically postponed for one week at the same time and venue.⁹⁶ The 30 minute limit may be extended for a reasonable period by the chairperson of the meeting in the circumstances described in section 64(5).

⁹³ Section 64(1)(a); LR Schedule 10 para 10.11(h).

⁹⁴ Section 64(1)(b); LR Schedule 10 para 10.11(h).

⁹⁵ LR Schedule 10 para 10.11(h).

⁹⁶ Section 64(4)(a).

10.14 automatic adjournment of a meeting

If, at the time a matter is to be considered at a meeting, a quorum is not present with respect to that matter and there is no other business on the agenda, the meeting will be automatically adjourned for one week at the same time and venue.⁹⁷

10.15 voluntary postponement of a particular matter to later in the meeting

If at the time a particular matter is to be considered at the meeting, a quorum is not present with respect to that matter, but there is other business remaining on the agenda, consideration of that matter may be postponed by the chairperson of the meeting to a later time in the meeting.⁹⁸

10.16 further notice required for postponed/adjourned meeting

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

10.16.1 the location for the meeting is different from:

10.16.1.1 the location of the postponed or adjourned meeting;⁹⁹ or

10.16.1.2 the location announced at the time of adjournment, in the case of an adjourned meeting;¹⁰⁰ or

10.16.2 it is necessary to inform Shareholders of the availability of participation in the postponed or adjourned meeting by Electronic Communication; or

10.16.3 the meeting has been adjourned "until further notice".

10.17 deemed quorum at a postponed or adjourned meeting

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those

⁹⁷ Section 64(4)(b)(ii).

⁹⁸ Section 64(4)(b)(i).

⁹⁹ Section 64(7)(a).

¹⁰⁰ Section 64(7)(b).

Shareholders present at the meeting including those participating electronically will be deemed to constitute a quorum.¹⁰¹

10.18 **adjournment of a meeting by Shareholders**

10.18.1 A Shareholders' meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights:

10.18.1.1 held by all of the Shareholders who are present at the meeting at the time;¹⁰² and

10.18.1.2 that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be.¹⁰³

10.18.2 Any such adjournment by motion of Shareholders at a meeting may be either:

10.18.2.1 "to a fixed time and place", in which event no further notice need be given to Shareholders of the adjourned meeting;¹⁰⁴ or

10.18.2.2 "until further notice", as agreed at the meeting, in which event a further notice of the adjourned meeting must be given to all the Shareholders at the applicable record date for the giving of such notice.¹⁰⁵

10.19 **limit on period of adjournment**

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

10.19.1 a date that is 30 business days after the record date determining which shareholders are entitled to attend and vote at the meeting;¹⁰⁶ or

¹⁰¹ Section 64(8).

¹⁰² Section 64(1)(a).

¹⁰³ Section 64(1)(b).

¹⁰⁴ Sections 64(10) and 64(11)(a)(i).

¹⁰⁵ Sections 64(11)(a)(ii) and (b) and 59(1)(a).

¹⁰⁶ Section 64(12)(a) and (13).

10.19.2 a date that is 15 business days after the date on which the adjournment occurred.¹⁰⁷

10.20 **business at adjourned meeting**

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

10.21 **Shareholders voting (by polling)**

10.21.1 At a meeting of Shareholders voting shall be by polling.¹⁰⁸

10.21.2 Any Shareholder who is present at the meeting has the number of votes determined in accordance with the voting rights associated with the Shares registered in the name of the Shareholder in question.¹⁰⁹

10.21.3 The chairperson of the meeting will not, in his capacity as chairperson, have a casting vote in addition to any vote he may have by virtue of being a Shareholder.

10.21.4 Scrutineers shall be appointed by the chairperson to count the votes on a poll and to declare the result of the poll, and their declaration, which shall be announced by the chairperson of the meeting at the meeting, shall be deemed to be the resolution of the 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 dispute and his determination made in good faith shall be final and conclusive.

10.21.5 On a poll a Shareholder (or its representative or proxy) entitled to more than one vote is in relation to the Company free to vote, in his discretion, all or any of his Shares the same way or differently or to abstain from voting in respect of all or any of his Shares, as he chooses.

10.21.6 When there are joint registered holders of any Shares, any one of such persons may vote at any meeting in respect of such Shares as if he were solely entitled to do so, but if more than one of the joint holders is present

¹⁰⁷ Section 64(12)(b) and (13).

¹⁰⁸ Section 63(4).

¹⁰⁹ Section 63(6).

or represented at any meeting, that joint holder whose name appears first in the Securities Register in respect of such Shares or his proxy, as the case may be, shall alone be entitled to vote in respect of such Shares. Several executors or administrators of a deceased shareholder in whose name any Shares stand shall be deemed joint holders of those Shares.

- 10.21.7 The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholders who is deceased, the trustee of a Shareholder who is insolvent and the *curator bonis* of a Shareholder who is mentally incapacitated or prodigal, may vote at any general meeting in the same manner as if he were the registered holder of those Shares, provided that during the business day immediately preceding the date appointed for the meeting to begin or if the meeting is adjourned the date appointed for the resumption of the adjourned meeting at which he proposes to vote, he satisfies the Board that he is such parent, guardian, executor, administrator, trustee or curator or that the Board has previously admitted his right to vote in respect of those Shares.

11. Shareholders acting other than at a meeting

- 11.1 In terms of section 60, a resolution that could be voted on at a Shareholders' meeting may instead be:¹¹⁰
- 11.1.1 submitted for consideration to the Shareholders entitled to exercise voting rights in relation to the resolution; and
- 11.1.2 voted on in writing by Shareholders (or their proxies as contemplated in article 10.3) entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.
- 11.2 A resolution contemplated in article 11.1 will have been adopted if it supported by persons entitled to exercise sufficient voting rights for it to have been adopted at a properly constituted Shareholders' meeting.¹¹¹
- 11.3 Within 10 business days after adopting a resolution as contemplated in article 11.1, the Company must deliver a statement describing the results of the

¹¹⁴ LR Schedule 10 para 10.11(c).

¹¹⁴ LR Schedule 10 para 10.11(c).

vote or consent process to every Shareholder who was entitled to vote on or consent to the resolution.¹¹²

11.4 The business of the Company required by the Companies Act or this MOI to be conducted at an annual general meeting of the Company may not be conducted in the manner contemplated in this article 11.¹¹³

11.5 Where the Listings Requirements require a resolution of the Shareholders for any reason, such a resolution shall be proposed to the Shareholders at a meeting of the Shareholders and shall not be submitted to them in terms of section 60.¹¹⁴

12. **Directors and the Board**

For purposes of articles 12.2, 12.5 and 12.6, the term "Director" shall not include alternate Directors, unless expressly provided otherwise.

12.1 **powers of the Board**

The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all the powers and perform any of the functions of the Company, except to the extent that the Companies Act, this MOI or the Listings Requirements provides otherwise.¹¹⁵

12.2 **composition of the Board**

12.2.1 The Board shall comprise not less than six Directors.¹¹⁶

12.2.2 The majority of the Directors shall be non-executive Directors.¹¹⁷

12.3 **election and appointment of Directors**

12.3.1 The Ordinary Shareholders shall be entitled, at a general meeting of the Company, to elect all of the Directors of the Company (and their

¹¹⁴ LR Schedule 10 para 10.11(c).

¹¹⁴ LR Schedule 10 para 10.11(c).

¹¹⁴ LR Schedule 10 para 10.11(c).

¹¹⁵ Section 66(1).

¹¹⁶ Section 66(2)(b); LR Schedule 10 para 10.16(a).

¹¹⁷ King III principle 2.18 para 64.

alternates), by a separate Ordinary Resolution with respect to each such Director and each alternate, subject to articles 12.3.6 and 12.4.2.¹¹⁸

12.3.2 If the Ordinary Shareholders do not elect an alternate with respect to any Director as contemplated in article 12.3.1, the Board shall be entitled to appoint such alternate/s, unless such alternate is a person previously proposed to the Ordinary Shareholders as an alternate or as a Director and was not elected by the Ordinary Shareholders when put to the vote (subject thereto that at least 50% of the alternate Directors from time to time must be elected by the Shareholders).¹¹⁹

12.3.3 In any election of Directors:¹²⁰

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

12.3.3.2 in each vote to fill a vacancy:

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

12.3.3.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate;

12.3.3.3 if the election process results therein that:

12.3.3.3.1 more nominees are elected as Directors than there are vacancies, those nominees (being a number of the nominees that are equal to the number of vacancies) that received the most votes will be the elected Directors, provided that in the event that a number of nominees that compete for a lesser number of vacancies received an equal number of votes, the Director or Directors elected to fill those vacancies will be determined by lot in the manner that the chairperson will determine;

¹¹⁸ Section 66(4)(b); LR Schedule 10 para 10.16(b).

¹¹⁹ Section 66(4)(a)(iii) and 66(4)(b).

¹²⁰ Section 68(2).

12.3.3.3.2 less nominees are elected as Directors than there are vacancies, the remaining vacancies will remain, unless filled in terms of article 12.3.4.

12.3.4 The Directors shall have power at any time and from time to time to appoint any person as a Director, either to fill a vacancy or as an additional Director, provided that at least 50% of the Directors (and alternates) from time to time must be elected by the Shareholders.¹²¹ Any person so appointed shall retain office only until the next annual general meeting of the Company and shall then retire and be eligible for re-election.¹²²

12.3.5 If the number of Directors falls below the minimum provided for in article 12.2.1, the remaining Directors must as soon as possible and within three months from the date that the number of Directors fell below the minimum fill the vacancies or call a general meeting for that purpose. The failure by the Company to have the minimum number of Directors during the three month period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company. After the expiry of the three month period the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of Shareholders.¹²³

12.3.6 **ineligible or disqualified persons: appointment a nullity**

12.3.6.1 No person may be appointed or elected as a Director (or his alternate), or be an *ex officio* Director (or his alternate), or be entitled to serve or continue to serve as a Director (or an alternate Director) of the Company, if that person is or becomes ineligible or disqualified from being entitled to serve as a Director in terms of section 69 read with article 12.7, and if at the time of his appointment or election that person is so ineligible or disqualified then his appointment is a nullity in terms of section 66(6).¹²⁴

¹²¹ Section 66(4)(b).

¹²² Section 68(3); LR Schedule 10 para 10.16(c).

¹²³ LR Schedule 10 para 10.16(d).

¹²⁴ Sections 66(5)(a), 69 and 66(6).

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

12.3.7 **alternate Directors**

If a person (for whom another person has been appointed or elected as an alternate Director) ceases to be a Director of the Company for any reason, then such other person will at the same time cease to be the alternate for that person.

12.3.8 **filing a notice with the Commission**

The Company shall File with the Commission a notice within 10 business days after a person becomes or ceases to be a Director of the Company.¹²⁵

12.4 **register of Directors**

12.4.1 The Company must establish and maintain a record of its Directors, including all the details about each Director required in terms of and for the periods stipulated in the Companies Act and the Regulations, in a register of Directors.¹²⁶

12.4.2 No person shall be entitled to serve or act as a Director (including as an alternate Director) of the Company, or have his name entered in the register of Directors of the Company, unless and until that person has been appointed in terms of article 12.3 and has delivered to the Company:

¹²⁵ Section 70(6).

¹²⁶ Section 24(3)(b) and (5); regulation 23.

- 12.4.2.1 all the details about that person which are required to be included in the register of Directors in terms of the Companies Act and the Companies Regulations;¹²⁷
- 12.4.2.2 a written undertaking signed by that person representing and warranting to the Company that he is not and will not be, at the time of his proposed appointment, ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve as a Director of the Company¹²⁸, and a written undertaking signed by that person undertaking to disclose in writing to the Board any facts, circumstances or events from time to time, which might or are likely to result in his being or becoming ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve as a Director of the Company, within five business days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such undertaking or any decision or approval of the Board being reversed;
- 12.4.2.3 a written undertaking signed by that person, undertaking to disclose in writing to the Board from time to time any facts, circumstances or events from time to time, which might or are likely to result in him or a person Related to him, having or acquiring a personal financial interest as contemplated in section 75 within five business days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company, at any time arising out of or in connection with a breach of such undertaking or any transaction or agreement approved by the Board, being invalid as a result thereof as contemplated in section 75(7) or (8); and

¹²⁷ Article 12.4.1.

¹²⁸ Sections 66(5)(a) and (6) and 69(2) read with article 12.7.

12.4.2.4 a written statement signed by that person confirming that he has read and is familiar with the provisions of the constitution of the Company and understands that he will in his capacity as a Director of the Company be bound by the terms of this MOI in terms of section 15(6) and consenting to serve as a Director of the Company.¹²⁹

12.5 remuneration of Directors and alternate Directors

12.5.1 Subject to article 12.5.2, the Company shall be entitled to pay to a Director, for services as a Director, such remuneration as has been approved by a Special Resolution of the Ordinary Shareholders, adopted within the period of two years immediately before the date of any proposed payment of any such remuneration.¹³⁰ The remuneration so payable shall accrue from day to day and shall be paid as determined by the Board from time to time.

12.5.2 Executive Directors shall not be entitled to any remuneration for their services as Director in addition to the remuneration they may receive as employees of the Company.

12.5.3 An alternate Director shall not be entitled to any remuneration from the Company for services as an alternate, but may be remunerated by the Director for whom he acts as an alternate.

12.5.4 The Directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Directors or of committees thereof from any place in the Republic. If any Director is required to perform extra services or to reside abroad or shall be specifically occupied about the Company's business or perform services which, in the opinion of the Board, are outside of the scope of the ordinary duties of a Director, he may receive such remuneration as is determined by a disinterested quorum of Directors, which may be either in addition to or in substitution for any other remuneration.¹³¹

¹²⁹ Section 66(7)(b).

¹³⁰ Section 66(8) and (9).

¹³¹ LR Schedule 10 para 10.16(f).

12.6 **period for holding office and nomination of Directors for election**

12.6.1 **fixed term/rotation**¹³²

12.6.1.1 At each annual general meeting one third of all Directors or, if their number is not a multiple of three, the number nearest to but not less than one third shall retire from office.

12.6.1.2 The Directors so to retire at each annual general meeting shall, firstly, be those retiring in terms of article 12.3.3 or 12.8 and, secondly, those who have been longest in office since their last election or appointment. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot.

12.6.1.3 If at the date of any annual general meeting any Director has held office for a period of three years since his last election or appointment, he shall retire at such meeting, either as one of the Directors to retire pursuant to articles 12.6.1.1 and 12.6.1.2 or additionally thereto.

12.6.1.4 A retiring Director shall continue to be and act as a Director throughout the meeting at which he retires.

12.6.1.5 The length of time a Director has been in office shall, save in respect of Directors appointed or elected in terms of articles 12.3.3 and 12.8, be computed from the date of his last election or appointment

12.6.1.6 Life directorships and directorships for an indefinite period shall not be permitted.

12.6.2 **nomination process**

12.6.2.1 Retiring Directors may be re-elected if eligible.

12.6.2.2 The Board, through the nomination committee, should recommend eligible persons for election to the Board, taking into account past performance and contribution made.¹³³

¹³² LR Schedule 10 para 10.16(g) and (k).

12.6.2.3 Any Shareholder who will be entitled to attend and speak at that meeting may:

12.6.2.3.1 during the period of two months following the end of the financial year of the Company which immediately precedes the annual general meeting; or

12.6.2.3.2 in respect of any other Shareholders' meeting, not less than six days nor more than 14 days before the day appointed for the meeting,

lodge at the registered office of the Company a written notice proposing a person as a Director (and his alternate, if required), together with the details, written undertakings and consents of the proposed candidate referred to in article 12.4.2.

12.7 **additional grounds of ineligibility**

In addition to the grounds of eligibility set out in section 69(7)(a) and (b), a person is ineligible to be a Director of the Company if the person:

12.7.1 becomes insolvent, is sequestrated and/or compromises with his creditors;

12.7.2 is, or a Related person is, in the reasonable opinion of the Board, a Director of, or employed or otherwise engaged by, or in any way interested in (including but not limited to having a personal financial interest in), in any capacity whatsoever, any person who carries on activities in competition with any of the businesses or activities of the Company;¹³⁴ or

12.7.3 has at any time been placed under an order of probation in terms of section 162 or in terms of section 47 of the Close Corporations Act 69 of 1984;¹³⁵ or

12.7.4 has, in the reasonable opinion of the Board, not delivered to the Company to the reasonable satisfaction of the Board any of the details, statements,

¹³³ LR Schedule 10 para 10.16(g).

¹³⁴ Section 69(7)(c).

¹³⁵ Section 69(7)(c).

undertakings, indemnities or consents required in terms of article 12.4.2;¹³⁶
or

12.7.5 has, in the reasonable opinion of the Board, at any time been involved in, or is involved in, as the subject or one of the subjects of any investigation, audit, enquiry, charge, court proceeding or other proceeding of any nature whatsoever, in any jurisdiction, which is contemplated in or similar to any contemplated in section 69(8), whether or not that person is or is likely to be disqualified from serving as a Director in terms of section 69(8);¹³⁷ or

12.7.6 is, or is accepts any appointment as, a director and/or employees of a competitor of the Company;

12.7.7 is prohibited from being a Director as a result of a legitimate directive or requirement by the Financial Services Board, as the regulator of the JSE, for so long as the JSE is a self regulatory organisation, as defined in the Securities Services Act; or

12.7.8 has, in the reasonable opinion of the Board, been absent without good cause shown from Board meetings for six consecutive months without the leave of the Board and without being represented at such meetings by an alternate Director, and the Board resolves that his office be vacated.¹³⁸

12.8 **removal of an elected Director by Ordinary Shareholders**

12.8.1 In terms of section 71(1), a Director may be removed by an Ordinary Resolution of the Shareholders before the expiry of his period of office, and by Ordinary Resolution may elect another person in his stead. A person so elected shall hold office only for such time as the Director in whose place he is elected would have held office.¹³⁹

12.8.2 In terms of section 71(2), before the Shareholders of the Company may consider a resolution contemplated in section 71(1):

¹³⁶ Section 69(7)(c).

¹³⁷ Section 69(7)(c).

¹³⁸ Section 69(7)(c).

¹³⁹ Section 71(1).

12.8.2.1 the Director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a Shareholder is entitled to receive, irrespective of whether or not the Director is a Shareholder of the Company; and

12.8.2.2 the Director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

12.9 **removal of a Director by the Board**

If a Shareholder or a Director contends that a Director should be removed as a Director of the Company on any of the grounds contemplated in section 71(3), being:

12.9.1 ineligibility or disqualification in terms of section 69, other than on the grounds contemplated in section 69(8)(a); or

12.9.2 incapacity to the extent that the Director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

12.9.3 neglecting, or being derelict in the performance of, the functions of director, that Shareholder or Director shall first submit to the Board in writing each of its contentions and the specific grounds of each such allegation, together with all supporting evidence available to that Shareholder or Director. On receipt the Board must investigate the allegation(s) and determine the matter by resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

12.10 **resignation by Directors**

A Director shall be entitled to resign as a Director on one month's written notice to the Company (or such shorter period as may be determined by the Board).

12.11 **Board committees**

12.11.1 Subject to this article 12.11, the Board may appoint any number of committees of Directors and delegate to any such committee any of the

authority of the Board, provided that all members of these committees must be Directors.¹⁴⁰

12.11.2 Any committee so appointed by the Board shall, in the exercise of the authority so delegated to it, have the full authority of the Board in respect of the matter referred to it save that it must conform to any requirements that may from time to time be imposed by the Board.¹⁴¹

12.11.3 The meetings and proceedings of any such Board committee consisting of two or more members shall *mutatis mutandis* be governed by the provisions in this MOI for the regulation of Board meetings and proceedings of the Directors (unless provided otherwise in the terms of reference of a committee as approved by the Board), save that in the case of an equality of votes the chairperson shall not have a second or casting vote.

12.11.4 Any committee appointed by the Board may invite persons who are not Directors of the Company to attend such committee meetings, provided that any such non-Director may not vote on any matter to be decided by the committee and will not be or be regarded as a member of the committee.

12.11.5 The Company has established a social and ethics committee as required by section 72(4) and regulation 43(2), which committee shall comprise not less than three Directors or Prescribed Officers of the Company, at least 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 three financial years.¹⁴²

12.12 Executives

12.12.1 The Board may from time to time appoint a Director or Directors to be managing Director, chief executive officer or joint managing Directors/chief executive officers of the Company, or acting managing Director or chief executive officer, or chief financial officer, or to be the holder of any other executive office in the Company, may determine the period of office of such appointee and may, subject to any contract between him or them and the

¹⁴⁰ Section 72(1).

¹⁴¹ Section 72(2)(c).

¹⁴² Regulation 43(2) and (4).

Company, from time to time terminate his or their appointment and appoint another or others in his or their place or places.

- 12.12.2 A managing Director or chief executive officer, or chief financial officer, may be appointed by contract for a maximum period of three years at any one time or for an indefinite period, provided the managing Director's or chief executive officer's contract may be terminated upon reasonable notice. Subject to the terms of his contract he shall 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 managing Director or chief executive officer. The managing Director or chief executive officer shall be eligible for re-appointment at the expiry of any period of appointment.
- 12.12.3 A managing Director or chief executive officer, or chief financial officer, so appointed shall, notwithstanding 12.12.1 and 12.2.2 above, while holding such office, be subject to retirement by rotation and be taken into account in determining the rotation of retirement of Directors.
- 12.12.4 A Director who is appointed in terms of the provisions of article 12.12.1 to the office of managing Director or chief executive officer of the Company, or chief financial officer, or to any other executive office in the Company, may be paid such remuneration not exceeding a reasonable maximum in each year in respect of such office or services as may be determined by a disinterested quorum of the Directors.
- 12.12.5 The Directors may from time to time entrust and confer upon a managing Director or chief executive officer, chief financial officer or other executive officer appointed under article 12.12.1 from time to time 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 conditions and with such restrictions as they may think expedient, and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities.

12.13 Board meetings

12.13.1 calling a Board meeting

A Director authorised by the Board to do so:

12.13.1.1 may call a Board meeting at any time;¹⁴³ or

12.13.1.2 must call a Board meeting if required to do so by at least one Director,¹⁴⁴

provided that there shall be at least four Board meetings per annum.

12.13.2 location of Board meetings

The Director/s of the Company convening a Board meeting may determine the location of the meeting or an adjourned meeting.

12.13.3 electronic participation at Board meetings

12.13.3.1 Every meeting of the Board must be reasonably accessible within the Republic of South Africa for electronic participation by Directors, irrespective of the physical location of the meeting.¹⁴⁵

12.13.3.2 Except if the Companies Act provides otherwise, a Director may participate in a Board meeting (including the meeting as adjourned) by Electronic Communication, at the expense of the Company.¹⁴⁶

12.13.3.3 The Electronic Communication facility employed by the Company must ordinarily enable all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.¹⁴⁷

¹⁴³ Section 73(1)(a).

¹⁴⁴ Section 73(1)(b)(ii) and 73(2).

¹⁴⁵ Section 73(3).

¹⁴⁶ Section 73(3)(b).

¹⁴⁷ Section 73(3).

12.13.4 **regulation of Board meetings**

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

12.13.5 **notice of Board meetings**

12.13.5.1 Subject to section 73(5)(a), a notice of a Board meeting must be in writing and delivered to each Director of the Company (including each alternate Director):

12.13.5.1.1 at his business address nominated by him for such purpose;

12.13.5.1.2 so as to be received by the Director in question in the ordinary course not less than 48 hours before the date appointed for the Board meeting, unless:

12.13.5.1.2.1 the managing Director/chief executive officer and chairperson determine, in their sole discretion, that the business to be conducted is of sufficient urgency to justify a shorter notice period; or

12.13.5.1.2.2 all the Directors waive such notice.¹⁴⁸

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

12.13.5.2.1 the date, time and place for the meeting;

12.13.5.2.2 a detailed agenda for the meeting;

12.13.5.2.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by Electronic Communication and the necessary information to enable Directors (including their alternates), to access the available medium or means of communication;

12.13.5.2.4 the general purpose of the meeting;

¹⁴⁸ Section 73(4) and (5)(a).

- 12.13.5.2.5 any specific purpose of the meeting; and
- 12.13.5.2.6 as a standing agenda item an opportunity for any Director to disclose any personal financial interest relevant to a decision to be taken by the Board.
- 12.13.6 **quorum**
- 12.13.6.1 A Board meeting may not begin unless at least three Directors are present, the majority of which must be non-executive¹⁴⁹
- 12.13.6.2 A matter to be decided at the Board meeting may not begin to be considered unless the requirement as set out in 12.13.6.1 is satisfied.
- 12.13.6.3 A person whose appointment as a Director (including as an alternate Director) is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.
- 12.13.7 **chairperson of the meeting**
- 12.13.7.1 The Board may elect one of the non-executive Directors as chairperson of their meetings, and one or more non-executive Directors as deputy chairperson/s to preside in the absence of the chairperson, and may determine a period for which the chairperson and deputy chairperson/s are to hold office, which period shall not exceed three years. The chairperson and deputy chairperson/s shall be eligible for re-election.
- 12.13.7.2 If no such chairperson or deputy chairperson is elected by the Board or if at any meeting neither the chairperson nor a deputy chairperson is present at the time appointed for the beginning of the Board meeting, the Directors then present shall choose one of their number to be chairperson of such meeting.¹⁵⁰

¹⁴⁹ Section 73(5)(b).

¹⁵⁰ LR Schedule 10 para 10.16(i).

12.13.8 **automatic postponement of a meeting**

12.13.8.1 If within 30 minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed for one week at the same time and venue.

12.13.8.2 The 30 minute limit may be extended for a reasonable period not exceeding two hours by the chairman of the meeting.

12.13.9 **automatic adjournment of a meeting**

If at the time a matter is to be considered at a meeting, a quorum is not present and there is no other business on the agenda, the meeting will be automatically adjourned for one week at the same time and venue.

12.13.10 **voluntary postponement of a particular matter to later in the meeting**

If at the time a particular matter is to be considered at the meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed to a later time in the meeting.

12.13.11 **further notice required for postponed/adjourned meeting**

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

12.13.11.1 the location for the meeting is different from:

12.13.11.1.1 the location of the postponed or adjourned meeting; or

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

12.13.11.2 it is necessary to inform Directors of the availability of participation in the postponed or adjourned meeting by Electronic Communication.

12.13.12 **deemed quorum at a postponed or adjourned meeting**

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those

Directors present in person at the meeting including those participating electronically will be deemed to constitute a quorum.

12.13.13 continuing quorum during meeting

After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one Director is present at the meeting.

12.13.14 adjournment by Directors

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

12.13.15 voting by Directors

12.13.15.1 Each Director has one vote on a matter before the Board,¹⁵¹ save that:

12.13.15.1.1 a Director whose eligibility or ineligibility to serve as a Director is being determined shall not have a vote in respect of that matter;¹⁵²

12.13.15.1.2 a Director who has been suspended in terms of section 70(2), shall not have a vote on any matter before the Board;¹⁵³

12.13.15.1.3 a Director who has a personal financial interest in respect of a matter to be considered by the Board, or who knows that a Related person has a personal financial interest in the matter must comply with the requirements of section 75.

12.13.15.2 A majority of the votes of the Directors present and entitled to exercise their vote on a matter is sufficient to approve a Board resolution, provided that there is at least a quorum of Directors present.¹⁵⁴

¹⁵¹ Section 73(5)(c).

¹⁵² Section 71(3).

¹⁵³ Section 70(2).

¹⁵⁴ Section 73(5)(d).

12.13.15.3 Where the vote is tied the chairperson may cast a deciding vote..¹⁵⁵

12.13.16 **recusal by Directors from Board meetings**

A Director (or in his absence his alternate) shall be required to attend all Board meetings in person or electronically, and to vote on all matters before the Board at Board meetings or by round robin resolution, as the case may be, unless that Director (and/or his alternate) is required not to do so in terms of the Companies Act or this MOI.

12.13.17 **minutes**

12.13.17.1 Minutes of Board and Board committee meetings must be kept and minutes must include all resolutions adopted by the Board or Board committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75.¹⁵⁶

12.13.17.2 Each resolution adopted by the Board must be dated and sequentially numbered.¹⁵⁷ Signature of the minutes or of a resolution by the chairperson of the meeting (or by the chairperson of the next meeting) is evidence of the proceedings of that meeting or adoption of the resolution, as the case may be.¹⁵⁸

12.13.17.3 Any extract from such minutes or extract from any resolution in writing, if signed by any Director or the company secretary, shall be evidence of the matters stated in such minutes or extract.

12.13.17.4 Minutes of Board meetings called on less than 48 hours' notice shall be circulated to all Directors as soon as reasonably possible after such meeting.

¹⁵⁵ Section 73(5)(e)(ii); LR Schedule 10 para 10.16(i).

¹⁵⁶ Section 73(6).

¹⁵⁷ Section 73(7)(a).

¹⁵⁸ Section 73(8).

12.14 round robin resolutions by the Board

12.14.1 A resolution that could be voted on at a Board meeting (other than a Board resolution that the Company voluntarily begin business rescue proceedings and place the Company under supervision as contemplated in section 129(1)) may, instead of being voted on at a meeting, be:

12.14.1.1 submitted (by the Directors proposing the resolution) for consideration to each Director;¹⁵⁹ and

12.14.1.2 voted on in writing by Directors entitled to exercise voting rights on that matter within 10 business days after the resolution was submitted to them.

12.14.2 A round robin resolution will have been adopted as a Board resolution if it has been supported in writing by a majority of the Directors, in person or by Electronic Communication, who are entitled to exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a Board meeting.¹⁶⁰

12.14.3 A round robin resolution shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution, provided that effective date is not a date earlier than the date the resolution was submitted to Directors for their consideration and, if deemed fit, adoption. If an effective date has not been specified, the resolution shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors entitled to do so.¹⁶¹

12.14.4 Within 10 business days after the adoption or failing of a round robin resolution, the Company shall:

12.14.4.1 deliver to each Director a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and

12.14.4.2 insert a copy of the resolution and statement in the minute book of the Company.

¹⁵⁹ Section 74(1).

¹⁶⁰ Section 74 (1) and (2).

¹⁶¹ Section 73(7)(b); LR Schedule 10 para 10.16(j).

12.15 **contracting with and employment of Directors, and Directors' financial interests**

12.15.1 No Director or intending Director shall be disqualified by his office from contracting with the Company, whether with regard to such office or as vendor or purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company, in which any Director shall in any way be interested, be or be liable to be avoided. A Director so contracting or being so interested shall not be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established, but the nature of this interest shall be declared by him in accordance with the provisions of section 75 and this article 12.15.

12.15.2 For the purposes of this article 12.15:

12.15.2.1 "**Director**" includes a Prescribed Officer and a person who is a member of a Board committee of the Company;¹⁶²

12.15.2.2 "**Related Person**", in addition to the meaning set out in article 1.1.21, also includes a second company of which the Director or Related person is also a director, or a close corporation of which the Director or Related person is a member.

12.15.3 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 interest, to be used generally for the purposes of section 75 and this article 12.15 until changed or withdrawn by further written notice from that Director.¹⁶³

12.15.4 If a Director has a personal financial interest in respect of a matter to be considered at a Board meeting, or knows that a Related Person has a personal financial interest in the matter, the Director:¹⁶⁴

¹⁶² Section 75(1)(a).

¹⁶³ Section 75(4).

¹⁶⁴ Section 75(5).

- 12.15.4.1 must disclose the interest and its general nature before the matter is considered at the meeting;
- 12.15.4.2 must disclose to the meeting any material information relating to the matter and known to the Director;
- 12.15.4.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 12.15.4.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in article 12.15.4.2 or 12.15.4.3;
- 12.15.4.5 must not take part in the consideration of the matter, except to the extent contemplated in articles 12.15.4.2 and 12.15.4.3;
- 12.15.4.6 while absent from the meeting in terms of this article 12.15.4:
- 12.15.4.6.1 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and
- 12.15.4.6.2 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
- 12.15.4.7 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.
- 12.15.5 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 the nature and extent of that interest, and the material circumstances relating to the Director or Related Person's acquisition of that interest.¹⁶⁵

¹⁶⁵ Section 75(6).

12.15.6 A decision by the Board, 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:¹⁶⁶

12.15.6.1 it was approved following disclosure of that interest in the manner contemplated in this article 12.15; or

12.15.6.2 despite having been approved without disclosure of that interest, it:

12.15.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholders following disclosure of that interest; or

12.15.6.2.2 has been declared to be valid by a court in terms of section 75(8).

12.15.7 A Director may be employed in any other capacity in the Company or as a Director or employee of a company controlled by, or itself a Subsidiary of, the Company and in this event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.¹⁶⁷

12.16 **indemnification and Director's insurance**

The Company may, subject to the limitations set out in section 78:

12.16.1 advance expenses to a Director of the Company to defend litigation in any proceedings arising out of the Director's service, as a Director, to the Company;¹⁶⁸

12.16.2 directly or indirectly indemnify a Director for expenses contemplated in article 12.16.1, irrespective of whether the Company has advanced those expenses, if the proceedings in question:

12.16.2.1 are abandoned or exculpate the Director;¹⁶⁹ or

¹⁶⁶ Section 75(7).

¹⁶⁷ LR Schedule 10 para 10.16(e).

¹⁶⁸ Section 78(4)(a).

¹⁶⁹ Section 78(4)(b)(i).

12.16.2.2 arise in respect of any liability for which the Company may, indemnify the Director in terms of section 78(5) and (6);¹⁷⁰ and

12.16.3 purchase market related insurance to protect the Directors of the Company as contemplated in section 78(7).

13. **Winding up**

13.1 While the Company is:

13.1.1 solvent, the Company may be wound-up in terms of Part G (*Winding-up of solvent companies and deregistering companies*) of Chapter 2 of the Companies Act;¹⁷¹ or

13.1.2 insolvent, the Company may be wound-up as an insolvent company in terms of the applicable laws of insolvency prevailing.¹⁷²

13.2 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be distributed, among the Shareholders in proportion to the number of ordinary Shares held by each of them, provided that the provisions of this article shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.

13.3 In a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a Special Resolution of the Company, be paid to the Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

¹⁷⁰ Section 78(4)(b)(ii).

¹⁷¹ Section 79(1).

¹⁷² Section 79(3).

14. Remedies and enforcement

14.1 protection for whistle-blowers

The Company must establish and maintain a system to receive disclosures contemplated in section 159 confidentially, and act on them, where appropriate.¹⁷³

14.2 dispute resolution

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

15. Notices

15.1 A notice required in terms of the Companies Act or this MOI to be given to Shareholders shall be delivered by the Company to all Shareholders by any method prescribed by regulation 7 and Table CR 3 in Annexure 3 to the Companies Regulations, to any of the registered addresses provided by the Shareholders and recorded in the Securities Register. If a Shareholder has not nominated an address, or an e-mail address, as required by the Companies Act, that Shareholder shall be deemed to have waived his right to be served with notices.

15.2 All notices with respect to any Shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of article 5.5.2 and notice so given shall be sufficient notice to all the holders of such Shares.

15.3 A notice may be given by the Company to the persons entitled to a Share in consequence of the death or insolvency of a Shareholder, or by sending it

¹⁷³ Section 159(7).

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

- 15.4 Any notice shall be deemed to have been delivered at the time stipulated in Table CR 3 in Annexure 3 to the Companies Regulations, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and delivered to the post office.
- 15.5 A notice given to any Shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.
- 15.6 Notices for Shareholders' meetings must be sent to the Registrar at the same time as the notice is given to the Shareholders. Notices for Shareholders' meetings must, also be published via the Stock Exchange News Service of the JSE, or any successor service.¹⁷⁴

¹⁷⁴ LR Schedule 10 para 10.11(f).