

16.04.2019

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, NO. 71 OF 2008, AS AMENDED

MEMORANDUM OF INCORPORATION OF A PUBLIC COMPANY

(Sections 8(1), 8(2) and 13; regulations 14 and 15)

SOUTHERN SUN LIMITED

Registration Number

2002/006356/06

Adopted on: _____

Signed by: _____
Director (name)

duly authorised by the Company

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1. INTRODUCTION

- 1.1 The Memorandum of Incorporation in the prescribed form, as contemplated in section 13(1)(a)(i) of the Companies Act, shall not apply to the Company.
- 1.2 The Company:
- 1.2.1 is a profit company;
- 1.2.2 is not a state-owned company;
- 1.2.3 is not a personal liability company; and
- 1.2.4 may offer any of its Securities to the public.
- 1.3 The transferability of the Company's Securities is not restricted.
- 1.4 The Company is accordingly a public company as contemplated in section 8(2)(d) of the Companies Act.
- 1.5 This Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Companies Act and does not contain any requirement for the amendment of any particular provision of this Memorandum, in addition to the requirements of the Companies Act.

2. INTERPRETATION

- 2.1 In this Memorandum, unless the context otherwise requires –
- “**address**” shall include a physical, postal and/or an electronic mail address;

S61(7)

“**Annual General Meeting**” means a General Meeting held in terms of section 61(7) of the Companies Act for the purposes of transacting at least the business as set out in section 61(8) of the Companies Act;

“**Articles**” means the numbered paragraphs of this Memorandum;

S56 “**Beneficial Owner**” means any Person who, in terms of the Companies Act, has or is deemed to have a beneficial interest in any Security issued by the Company;

“**Board**” means the board of directors of the Company, as constituted from time to time;

“**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa;

S35 “**Capital**” means the share capital of the Company as constituted from time to time;

“**Central Securities Depository**” means a Person who is licensed as a Central Securities Depository under section 32 of the Securities Services Act;

“**CIPC**” means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

“**Companies Act**” means the Companies Act, No 71 of 2008, including all Schedules to such Act and the Regulations;

“**Company**” means Southern Sun Limited, registration number 2002/006356/06;

“**Director**” means a member of the Board as contemplated in section 66 of the Companies Act or an alternate director of the Company, and includes any Person occupying the position of a director or alternate director, by whatever name designated;

“**Distribution**” shall have the meaning attributed to it in section 1 (Definitions) of the Companies Act;

“**Electronic Communication**” shall have the meaning attributed to it in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;

“General Meeting” means, unless otherwise qualified or required by the context, a meeting of Shareholders holding Ordinary Shares and any other Shareholders holding shares, the preferences, rights, limitations or other terms of which entitle the holders thereof to exercise voting rights at such meeting, and shall include an Annual General Meeting;

“in writing” includes, to the extent that the Board so resolves, Electronic Communication but as regards any Shareholder, only to the extent that such Shareholder has notified the Company of an address to be used for the purposes of Electronic Communication;

“JSE” means the JSE Limited (registration number 2005/022939/06), a company licensed as an exchange under the Securities Services Act (or any other name by which such Act may be known in the future), or its successor body;

“Listings Requirements” means the Listings Requirements of the JSE and of any other exchange on which the Securities of the Company are listed, in force from time to time;

“Meeting” means a meeting of the holders of any shares (or class of shares, as the case may be) in the issued Capital convened or held for purposes of transacting any business in relation to which such holders are entitled to exercise the voting rights associated with such shares (or class of shares) and of which notice has been given to Shareholders entitled to exercise such voting rights;

“Memorandum” means this memorandum of incorporation of the Company, as amended or replaced from time to time;

“Office” means the registered office of the Company for the time being;

“Ordinary Resolution” means a resolution adopted with the support of more than 50% (fifty per cent) of the voting rights exercised on that resolution at a General Meeting;

“Ordinary Share” means a share in the Capital, irrespective of the nominal or par value thereof, which, upon being issued, will rank *pari passu* with every other issued Ordinary Share in all respects, for which purposes the expression “rank *pari passu*” shall have the meaning attributed to it in paragraph 3.29 of the Listings Requirements. Each Ordinary Share shall entitle the holder to - **10.5(a) and (b)**

1. 1 (one) vote on any matter to be decided by Shareholders at a General Meeting by way of a poll;
2. receive a pro-rata portion of the net assets of the Company upon its winding-up or liquidation;
3. receive any distribution in accordance with its holder’s voting power;
4. all of the preferences, rights or other terms set out in the Companies Act or this Memorandum; and
5. all other rights at common law insofar as such rights are consistent with this Memorandum or the Companies Act;

“Participant” means a Person that holds in custody and administers Securities or an interest in Securities and that has been accepted in terms of section 34 of the Securities Services Act by a Central Securities Depository as a participant in that Central Securities Depository;

“Person” includes any body of persons, whether or not incorporated under any laws of any jurisdiction;

“Preference Share” means preference shares with no par value, designated as the “Preference Shares”, having such preferences, rights, limitations and/or other terms (the **“Preference Rights”**) as may be determined by the Board pursuant to section 36(1)(d)(ii) of the Companies Act (such determination being subject to the approval of the JSE), and in respect of which class of shares the Board shall accordingly have the power to determine and file an amendment to this Memorandum to incorporate and effect such Preference Rights as contemplated in sections 36(2)(b), 36(3) and 36(4) of the Companies Act and, notwithstanding any other provision to the contrary in this Memorandum, the power to effect such

consequential amendments to any other provision of this Memorandum as are required to give effect to such Preference Rights;

S66(10)

“Prescribed Officer” means a Person who, within a company, performs any function that has been designated in terms of section 66(10) of the Companies Act;

“Present at a Meeting” means present in person at a Meeting or able to participate in such Meeting by Electronic Communication, or to be represented by a proxy who is present in person or able to participate in such Meeting by Electronic Communication;

“Profits” includes revenue and capital profits;

“Regulations” means the regulations prescribed in terms of section 223 of the Companies Act from time to time;

“Secretary” means the company secretary and/or the assistant company secretary (if any) of the Company for the time being or any Person duly authorised to represent a body corporate which is the company secretary of the Company;

“Securities” means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;

“Securities Holder” means the holder of an issued Security who is entered as such in the Securities Register;

“Securities Register” means the register required to be established by the Company in terms of section 50(1) of the Companies Act;

“Securities Services Act” means the Securities Services Act, No. 36 of 2004;

“SENS” means the Securities Exchange News Service of the JSE;

“Shareholder” means the holder of a share issued by the Company and who is entered as such in the Securities Register, subject to the provisions of section 57 (Interpretation and application of Part F) of the Companies Act;

“Special Resolution” means a resolution adopted with the support of at least 75% (seventy five per cent) of the voting rights exercised on that resolution at a General Meeting; 10.11(a)

“Statutes” means the Companies Act and any and every other statute or ordinance from time to time in force concerning companies and affecting the Company;

“South Africa” means the Republic of South Africa;

“Transfer Office” means the office of the transfer secretaries for the time being of the Company or, if no transfer secretaries are appointed, the Office;

“Uncertificated Securities” means Securities that are not evidenced by a certificate or written instrument and are transferable by entry without a written instrument.

- 2.2 In this Memorandum, unless the context otherwise requires, references to **“Shareholders represented by proxy”** shall include Shareholders represented by an agent appointed under a general or special power of attorney and references to **“Shareholders present or acting in person”** shall include corporations represented or acting in the manner prescribed in the Statutes.
- 2.3 In this Memorandum, unless the context otherwise requires, words in the singular number shall include the plural, words in the plural number shall include the singular, words importing the masculine gender shall include females, and words importing Persons shall include created entities (corporate or not).
- 2.4 Where figures are referred to in numerals and in words in this Memorandum, if there is any conflict between the two, the words shall prevail.
- 2.5 Expressions defined in this Memorandum shall bear the same meanings in schedules or annexures to this Memorandum (if any) which do not themselves contain their own definitions.

- 2.6 Where any term is defined within the context of any particular Article in this Memorandum, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article, shall bear the meaning ascribed to it for all purposes in terms of this Memorandum, notwithstanding that that term has not been defined in this Article 2.
- 2.7 Any word or expression which is defined in the Companies Act or in the Listings Requirements and which is not otherwise defined in this Memorandum, shall have the meaning assigned thereto in the Companies Act or in the Listings Requirements; provided that if a word or expression is defined in both the Companies Act and the Listings Requirements and there is a conflict between such definitions, the definition contained in the Companies Act shall prevail.
- 2.8 This Memorandum is to be construed as not including the headings to Articles, the references in the left-hand margin to sections of the Companies Act and the references in the right-hand margin to the numbers of the paragraphs of the Listings Requirements, all of which are inserted for information only.
- 2.9 In this Memorandum, any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the date of filing of this Memorandum with the CIPC, and as amended, substituted or re-enacted from time to time.

3. **CALCULATION OF BUSINESS DAYS**

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

- 3.1 excluding the day on which the first such event occurs;
- 3.2 including day on or by which the second event is to occur; and
- 3.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 3.1 and 3.2 respectively.

4. **NAME**

The name of the Company is **SOUTHERN SUN LIMITED**.

5. **JURISTIC PERSONALITY AND LIMITATION OF LIABILITY**

5.1 The Company is a “pre-existing company” as defined in the Companies Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of the Fifth Schedule to the Companies Act.

5.2 This Memorandum replaces and supersedes the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof with the CIPC.

5.3 No person shall, solely by reason of being an incorporator, Shareholder or Director, be liable for any liabilities or obligations of the Company, except to the extent that the Companies Act provides otherwise.

S5(6)(6),
S6(15)

6. **CONFLICTS**

Subject to the provisions of section 6(15) of the Companies Act, if the provisions of this Memorandum are in any way inconsistent with the provisions of the Statutes, the provisions of the Statutes shall prevail, and this Memorandum shall be read in all respects subject to the Statutes.

S19(1)(b)

7. **POWERS OF THE COMPANY**

7.1 The Company has all the legal powers and capacity of a natural person, except to the extent that a juristic person is incapable of exercising any such powers or having such capacity, or this Memorandum provides otherwise.

7.2 At the date of filing of this Memorandum, the main business of the Company is to engage in all aspects of the business of, directly or indirectly, owning property and directly or indirectly owning and operating casinos, hotels and resorts and all matters ancillary or incidental thereto.

- S36(1) 8. **AUTHORISED SHARES**
- The authorised Capital of the Company is 2 000 000 000 (two billion) Ordinary Shares of no par value.
- S37(5) and (6), S38, S41 and S42 9. **ISSUE OF SHARES AND OTHER SECURITIES AND VARIATION OF RIGHTS** 10.5(a), 10.9
- 9.1 Subject to any relevant provisions of the Companies Act, this Memorandum and the Listings Requirements, and without prejudice to any rights previously conferred on the holders of any existing issued shares or class of issued shares, the Board, with the prior approval of an Ordinary Resolution (or, if so required by the Companies Act, with the prior approval of a Special Resolution) adopted at a General Meeting, may resolve to issue any authorised shares in the Company or other Securities or grant options to subscribe for unissued Securities, with such preferred, deferred or other preferences, rights, limitations or other terms, whether in regard to Distributions, voting, return of capital or otherwise and for such consideration, whether payable in cash or otherwise, as the resolution adopted at the General Meeting may from time to time determine. Without limiting the generality of the foregoing, Preference Shares may be issued, and existing shares may be converted into Preference Shares, on the basis that they are, or at the option of the Company or the Shareholder are, liable to be redeemed on such terms and in such manner as shall be prescribed in this Memorandum. 10.1, 10.9(a)
- 9.2 Notwithstanding the provisions of Article 9.1, no shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of shares may be varied in response to any objectively ascertainable external fact or facts, as provided for in sections 37(6) and 37(7) of the Companies Act. 10.5(g)
- 9.3 Ordinary Shares which the Company wishes to issue shall first be offered for subscription to the existing Ordinary Shareholders pro rata to their holdings of Ordinary Shares, unless - 10.1
- 9.3.1 otherwise determined by a General Meeting; or
- 9.3.2 they are issued for the acquisition of assets.

- S37(3),
S60(1), S64(1)** 9.4 All or any rights, preferences, limitations and other terms for the time being attached to any class of shares of the Company may (unless otherwise provided by the terms of issue of the shares of that class), whether or not the Company is being wound up, be varied in any manner by – **10.5(e)**
- 9.4.1 a Special Resolution on which the holders of the class of shares concerned shall be entitled to vote; and
- 9.4.2 either with the consent in writing of the holders of not less than three-fourths of the issued shares of that class, or with the sanction or ratification of a resolution passed in the same manner as a Special Resolution at a separate meeting of the holders of the shares of that class.
- The provisions of this Memorandum relating to a General Meeting shall, *mutatis mutandis*, apply to any such separate meeting except that –
- 9.4.3 the necessary quorum shall be a holder or holders of the class present in person or represented by proxy and holding at least 25% (twenty-five per cent) of the issued shares of that class;
- 9.4.4 if, at any adjourned meeting of such class of holders, a quorum as above defined is not present, those holders who are present shall constitute a quorum; and
- 9.4.5 any holder of shares of the class present in person or represented by proxy may demand a poll and, on a poll, shall have 1 (one) vote for each share of the class of which such Person is the holder.
- 9.5 The Company may only issue shares which are – **10.2(a)**
- 9.5.1 fully paid up;
- 9.5.2 freely transferable; and
- 9.5.3 within the classes that have been authorised by or in terms of this Memorandum.

9.6 All shares for which a listing on the JSE is sought and all shares of the same class as shares which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Companies Act, only be issued after the Company has received the consideration approved by the Board for the issuance of such shares. **10.2(a)**

9.7 No Person shall be recognised by the Company as holding any share upon any trust, and no notice of any trust, expressed, implied or constructive, shall be entered in the Securities Register or be accepted by the Company. The Company shall not, except as otherwise provided by this Memorandum or by the Statutes or by any order of a Court of competent jurisdiction, be bound by or compelled in any way to recognise any equitable, contingent, future, partial or representative interest in any share or any right in or in respect of any share other than an absolute right to the entirety thereof in the registered holder and such other rights in case of transmission thereof as are hereinafter mentioned.

S43(3) 9.8 The Company may not create or issue any debt instruments which confer on the holder thereof any special privileges, such as attending and voting at a General Meeting and the appointment of any Directors. **10.10**

9.9 Notwithstanding any provision of this Memorandum to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of any of its Securities or those of a related or inter-related company without first complying with section 44(3) of the Companies Act.

9.10 Securities shall not be subject to any lien in favour of the Company. **10.12**

S49, S51, S54 10. **CERTIFICATES**

10.1 Securities Holders shall be entitled to elect whether to hold Securities in certificated or uncertificated form. If a Securities Holder elects to hold some or all of its Securities in certificated form -

10.1.1 Securities certificates shall be issued under the authority of the Board in such manner and form as the Board shall from time to time prescribe, subject to the provisions of section 51(1) of the Companies Act. If any

Securities are not numbered, all Securities certificates in respect of such Securities shall be numbered in numerical progression and each Securities certificate shall be distinguished by its appropriate number and by such endorsement as may be required by the Statutes. Each Securities' certificate must be signed by two persons authorised by the Board. All signatures on Securities certificates shall be autographic unless the Board determines that signatures generally or in any particular case or cases shall be affixed to such certificates by any manner provided for in the Electronic Communications and Transactions Act, No. 25 of 2002;

- 10.1.2 each Securities Holder shall be entitled to 1 (one) certificate for all the shares of a particular class registered in his name, or to several certificates, each for a part of such Securities. Every Securities certificate shall specify the number of Securities in respect of which it is issued;
- 10.1.3 a certificate for Securities registered in the names of 2 (two) or more Persons shall be delivered to the Person first named in the Securities Register as a holder thereof, and delivery of a certificate for a Security to that Person shall be a sufficient delivery to all joint holders of that Security;
- S56 10.1.4 in the case of any Security registered in the names of 2 (two) or more Persons as joint holders, the Person first named in the Securities Register shall, save as may otherwise be provided in this Memorandum, be the only Person recognised by the Company as having any title to such Security and to the certificate therefor;
- 10.1.5 if any certificate is worn out or defaced, then upon production thereof to the Company the same may be cancelled and a new certificate in lieu thereof issued. If any certificate is lost or destroyed, then upon proof thereof to the satisfaction of the Board and on such indemnity being given and after such advertisement (if any) of the loss or destruction as the Board deems adequate at the expense of the Securities Holder claiming the new certificate, a new certificate in lieu thereof may be issued to the Securities Holder entitled to such lost or destroyed certificate. In case of loss or destruction, the Securities Holder to whom the new certificate is issued shall be liable to pay all expenses incidental to the investigation by the

Company of the evidence of such destruction or loss and arising from such indemnity.

S49, S52,
S53, S54

- 10.2 Notwithstanding any provisions to the contrary contained in any agreement or this Memorandum –
- 10.2.1 the relevant provisions of the Companies Act shall apply to the Uncertificated Securities of the Company;
- 10.2.2 a holder of Uncertificated Securities in the Company shall not be entitled to be issued a certificate, and the Company shall not issue certificates, evidencing or purporting to evidence title to Uncertificated Securities of the Company, unless the Securities Holder concerned gives the Participant notice that such Securities Holder wishes to withdraw its Uncertificated Securities and to obtain a certificate in respect of all or part of that Securities Holder's Uncertificated Securities;
- 10.2.3 subject to the provisions of section 51(1) of the Companies Act, in the event of a withdrawal referred to in Article 10.2.2, certificates shall be issued under the authority of the Board in such manner and form as the Board shall from time to time determine;
- 10.2.4 each original certificate issued to a Securities Holder of specific Securities in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Securities Holder or every certificate issued in respect of a withdrawal requested in terms of Article 10.2.2, the Board shall be entitled, as it may deem fit, to require a charge in settlement of the reasonable costs incurred in such issue; and
- 10.2.5 if any certificate is defaced, lost or destroyed, it may be replaced on such terms as the Board may determine.
- 10.3 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint Securities Holder, the sole remaining joint Securities Holder or the first named of 2 (two) or more remaining joint Securities Holders,

as the case may be, shall be the only Person recognised by the Company as having any title to such Security.

11. **COMMISSION**

The Company may pay to any Person in consideration of that Person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or for procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities of the Company, a commission not exceeding 10% (ten percent) of the subscription price paid for the Securities concerned. **10.14**

S56

12. **TRANSMISSION OF SECURITIES**

12.1 The executor or administrator of a deceased Securities Holder or the trustee of an insolvent Securities Holder or the curator of any insane or prodigal Securities Holder or any Person duly appointed by competent authority to represent or act for any Securities Holder shall, subject to the provisions of Articles 10.1.3, 10.1.4 and 10.3 regarding joint holders, be the only Person recognised by the Company as having any title to any Security of the Company registered in the name of such Securities Holder.

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

12.2.1 the parent, guardian or curator of any Securities Holder who is a minor;

12.2.2 any Person becoming entitled to any Securities in consequence of such Person's marriage;

12.2.3 the trustee of an insolvent Securities Holder;

12.2.4 the liquidator of a body corporate which is a Securities Holder;

12.2.5 the tutor or curator of a Securities Holder under disability;

12.2.6 the executor or administrator of any deceased Securities Holder's estate; or

12.2.7 any other Person becoming entitled to any Securities held by a Securities Holder by any lawful means other than transfer in terms of this Memorandum,

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

- A. to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the registered holder of the Securities registered in the name of the Securities Holder concerned; or
- B. himself to be registered as a Securities Holder in respect of those Securities and to make such transfer of those Securities as the Securities Holder concerned could have made.

12.3 Securities which are registered in the name of a deceased or insolvent estate shall not be forfeited if the executor or liquidator thereof fails to register them in his own name or in the name of the heir or legatee when called upon by the Board to do so. 10.13

S51, S53

13. **TRANSFER OF SECURITIES**

13.1 The transferor of any Security shall be deemed to remain the holder of such Security until the name of the transferee is entered in the Securities Register in respect thereof.

13.2 The transfer of any Security shall be implemented in accordance with the then common form of transfer.

13.3 The Board may decline to register any transfer of certificated Securities to a minor or to a Person of unsound mind or to any trustee, curator, executor, administrator or other Person in any representative capacity of any Security.

- 13.4 All authorities to sign transfer deeds granted by Securities Holders for the purpose of transferring Securities which may be lodged with or delivered to the Company at the Office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon, until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Office. Even after the delivery and lodging of such notice, the Company shall be entitled to give effect to any instrument signed under the authority to sign, and certified by any officer of the Company as being in order, before the delivery and lodging of such notice. 10.2(b)
- 13.5 The Company shall not be bound to allow the exercise of any act or matter by an agent for a Security Holder unless a duly certified copy of such agent's authority is produced and filed with the Company.
- 13.6 All instruments of transfer which are registered shall be retained by the Company at the Office or at such other place as the Directors may from time to time determine. Any instrument of transfer which the Board declines to register shall (except in the case of fraud), on demand, be returned to the Person who lodged the same.
- 13.7 The instrument of transfer must be accompanied (unless the Directors either generally or in any particular case otherwise resolve) by:
- 13.7.1 the certificate evidencing the Securities to be transferred; and
- 13.7.2 such other evidence (if any) as the Directors or other persons in charge of the Securities Register may require to prove the title or capacity of the intending transferor or transferee.
- 13.8 The Directors may decline to register any transfer of any Security where:
- 13.8.1 the instrument of transfer has not been lodged with the Company;
- 13.8.2 the provisions of any law affecting transfer have not been complied with; or
- 13.8.3 the instrument of transfer is not in respect of only one class of Security.

- 13.9 The transfer books and Securities Register may, upon notice having been given by advertisement in the Government Gazette and a newspaper circulating in the district in which the Office is situate, and, in the case of any branch register, be closed during such time as the Board thinks fit, but not exceeding, in aggregate, 60 (sixty) days in each year.
- 13.10 Should a Shareholder be required in terms of applicable Gambling legislation or regulations promulgated thereunder, to undergo probity or obtain regulatory approval as a result of his shareholding, he is required to do so in terms of this Memorandum. Should the Shareholder fail to do so or fail to obtain the relevant approval he will be required to reduce his shareholding to a level where the approval is no longer required. If the Shareholder does not attend to such reduction, the Company may sell his shares on his behalf.

S36 14. **ALTERATION OF SHARE STRUCTURE AND CHANGE OF NAME OF THE COMPANY**

- 14.1 Subject to 14.2, the Company may from time to time by Special Resolution –
- 14.1.1 create any class of shares;
- 14.1.2 if it has authorised shares having no par value, increase the number of its authorised shares having no par value, as it thinks expedient;
- 14.1.3 if it has issued shares having no par value or having a par value, decrease the number of its issued no par value shares or par value shares, as the case may be;
- 14.1.4 sub-divide or consolidate the authorised shares of any class;
- 14.1.5 vary the preferences, rights, limitations or other terms of any shares having no par value;
- 14.1.6 convert any class of its shares having a par value into shares having no par value, but not vice versa;

- 14.1.7 cancel shares which at the time of the passing of the resolution in that regard have not been subscribed for or agreed to be subscribed for by any person and reduce the number of its authorised shares by the number of the shares so cancelled; and
- 14.1.8 subject to the provisions of the Statutes, convert any class of its shares having no par value or having a par value into shares of a different class having no par value, whether issued or not, and in particular (but without derogating from the generality of the foregoing), convert any class of shares having no par value or having a par value into redeemable shares having no par value; and
- 14.1.9 change the name of the Company,
- provided that moneys, other than dividends, due to Shareholders or the amount payable on the redemption of any class of redeemable shares, shall be held in trust by the Company indefinitely (subject to the applicable laws relating to prescription) until lawfully claimed by the Shareholder concerned.
- 14.2 Save as otherwise expressly limited in this Memorandum, the Board shall have the powers under section 36(3) of the Companies Act (whether in relation to a specific exercise of such power/s or generally), and otherwise such powers shall vest in the Shareholders in General Meeting.

15. **MEETINGS OF SHAREHOLDERS**

- S61(1) 15.1 The Board, at such times and places as it may determine, shall convene a General Meeting in accordance with the provisions of the Companies Act and the Listings Requirements, to be known and described in the notice calling such meeting as an Annual General Meeting.
- S61(8) 15.2 An Annual General Meeting must, at a minimum, provide for the business set out in section 61(8) of the Companies Act and in Regulation 43(5)(c) to be transacted at such Meeting. 10.11(g)
10.19
- S61(1) 15.3 The Board may convene a General Meeting whenever it thinks fit. A General Meeting shall also be convened on a demand made in terms of section 61(3) of 10.11(d)

the Companies Act. For the avoidance of doubt, there is no prohibition or restriction of the Company from calling any meeting of Shareholders for the purposes of adhering to the Listings Requirements.

- 15.4 An Annual General Meeting and a General Meeting called for the passing of any resolution (whether it be an Ordinary Resolution or a Special Resolution) shall be convened by giving at least 15 (fifteen) Business Days' notice in writing to Shareholders; provided that this notice period shall not apply where the Company adheres to the provisions of section 62(2A) of the Companies Act. 10.11(a), 10.11(b)
- 15.5 Notices of General Meetings (including Annual General Meetings) must be delivered to each Shareholder entitled to vote at such Meetings and who have elected to receive such documents. 10.11(e)
- 15.6 Provided that the Board has complied with the Companies Act and the Listing Requirements in giving notice of a General Meeting, the accidental or inadvertent failure to deliver a notice and/or the accidental or inadvertent giving of a defective notice (provided that it is immaterial) of a Meeting to, or the non-receipt of notice of a Meeting by, any Shareholder entitled to receive such notice shall not invalidate any action taken at that Meeting.
- 15.7 Where, in terms of the Listings Requirements, any General Meeting or a separate meeting of the holders of any class of shares is required to be held to decide or determine any matter, such matter may not be determined by means of written resolution, as contemplated in section 60 of the Companies Act, unless otherwise permitted by the Listings Requirements. 10.11(c)
- S61(10), S63(2) 15.8 Subject to compliance with the Companies Act (in particular, section 63(3) thereof), Meetings may be conducted by means of Electronic Communication as long as the Electronic Communication employed ordinarily enables all persons participating in the Meeting to communicate with each other without an intermediary, and to do so reasonably effectively. Shareholders so participating shall be deemed to be present at such Meeting.

S61 – S65

16. **PROCEEDINGS AT MEETINGS**S64(1)(a) and
(3)

16.1 Business may be transacted at any Meeting only while a quorum is present. A quorum for a General Meeting shall, unless otherwise required in terms of the Listings Requirements, be 3 (three) Persons Present at the Meeting holding, in aggregate, at least 25% (twenty five per cent) of the voting rights that are entitled to be exercised by the holders of Ordinary Shares. After a quorum has been established for a Shareholders meeting, or for a matter to be considered at a Shareholders meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting. 10.11(g)

16.2 If, within 30 (thirty) minutes from the time appointed for a Meeting, a quorum is not present, the Meeting shall stand adjourned to the same day in the next week, at the same time and place or, if that day is not a Business Day, to the next succeeding Business Day.

S63(1)

16.3 Every participant in or attendee at a Meeting shall be obliged, prior to so doing, to present reasonably satisfactory identification, including (if applicable) evidence of such Person's right (if any) to participate in and vote thereat, as reasonably satisfies the person presiding at the Meeting that such Person's right to so participate in and vote at the Meeting, has been reasonably verified.

16.4 The chairperson, if any, of the Board shall preside as chairperson at every Meeting. If there is no such chairperson, or if such chairperson is not present within 15 (fifteen) minutes after the time appointed for holding the Meeting or is unwilling to act as chairperson at the Meeting, any Director shall preside as chairperson of the Meeting, or if no Director is present, or if all the Directors present decline to take the chair, the Shareholders present and entitled to vote at the Meeting shall choose a Shareholder present to be chairperson of the Meeting.

- S64**
- 16.5 The chairperson of a Meeting may, either in accordance with the provisions of section 64 of the Companies Act or otherwise in his or her discretion, adjourn the Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place. When a Meeting is adjourned in terms of any applicable provision of the Companies Act, notice of the adjourned Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Meeting.
- 16.6 At any Meeting, a resolution put to the vote of the Meeting shall be decided on a show of hands unless, before the resolution is put to the vote, a poll is demanded by the chairperson of the Meeting or by any Person or Persons having the right to vote at the Meeting and who satisfies or satisfy the requirements of section 63(7) of the Companies Act. Unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

- 16.7 If a poll is demanded as aforesaid, it shall be taken in such manner and at such place and time as the chairperson of the Meeting directs and either immediately or after an interval or adjournment not exceeding 7 (seven) days. A scrutineer or scrutineers may be appointed by the chairperson of the Meeting to check the forms of proxy received, count the votes and to declare the result of the poll. The declaration of the scrutineer or scrutineers, which shall be announced by the chairperson of 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 same, and the determination of the chairperson shall be final and binding. The chairperson of a meeting may act on a certificate given by any such scrutineers without requiring production at the Meeting of the forms of proxy or himself counting the votes.
- 16.8 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 16.9 The demand for a poll shall not prevent the continuation of a Meeting for the transaction of any business other than the resolution upon which the poll has been demanded. The demand for a poll may be withdrawn.
- S63, S64** 16.10 Subject to the Companies Act and this Memorandum, the chairperson of any Meeting shall determine the procedure to be followed at that Meeting.
- 16.11 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution unless:
- 16.11.1 the error is brought to the attention of the chairperson at the Meeting; and
- 16.11.2 in the opinion of the chairperson of the Meeting, the error is of sufficient magnitude to vitiate the resolution.
- 16.12 Even if a Person is not a Securities Holder:

- 16.12.1 any Director; or
- 16.12.2 the Company's legal counsel (or where the Company's legal counsel is a firm or company, any partner or director thereof),

may attend and speak at any General Meeting, but may not vote unless he is a Securities Holder or the proxy or representative of a Securities Holder.

17. VOTES OF SHAREHOLDERS

- 17.1 Subject to any rights or restrictions as to voting attaching to any class or classes of share –
- 17.1.1 on a show of hands, a Shareholder of the Company present in person or by proxy and entitled to exercise voting rights shall have only 1 (one) vote, irrespective of the number of voting rights that Person would otherwise be entitled to exercise; provided that a proxy shall, irrespective of the number of shares he holds or represents, or the number of Shareholders he represents, have only 1 (one) vote;
- 17.1.2 on a poll, a Shareholder who is present in person or represented by proxy shall be entitled to the number of votes determined in accordance with the voting rights associated with the shares held by that Shareholder; and
- 17.1.3 the holders of Securities, other than Ordinary Shares and any class of shares created for the purposes of black economic empowerment in terms of the Broad-Based Black Economic Empowerment Act, No 53 of 2003 and the Broad-Based Black Economic Empowerment Codes of Good Practice, shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in paragraph 10.5(h) of Schedule 10 of the Listings Requirements (read with paragraph 10.5(c) of Schedule 10 of the Listings Requirements). In instances where such shareholders ("**Affected Shareholders**") are permitted to vote on any resolution at a meeting of Shareholders, the votes of Affected Shareholders shall not carry any special rights or privileges and each Affected Shareholder shall be entitled to one vote for each Share held; provided that the total number of voting rights of the Affected Shareholders may not exceed 24,99% (twenty four **10.5(c)**

comma nine nine per cent) of the total number of voting rights of all Shareholders at such meeting.

- 17.2 No objection shall be raised to the admissibility of any vote except at the Meeting or adjourned Meeting at which the vote objected to is or may be exercised and every vote not disallowed at such Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Meeting, whose decision shall be final and binding.
- 17.3 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 thereto but if more than one of such joint holders is present or represented at any Meeting, that one of the said Persons whose name stands 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 thereof. Several executors of a deceased Shareholder in whose name shares are registered in the Securities Register shall, for the purposes of this Article, be deemed to be joint holders of those shares.
- 17.4 Any Person entitled to a share in terms of Article 12.2 may vote at any Meeting in respect thereof in the same manner as if such Person was the registered holder of that share; provided that (except where the Board has previously accepted his right to vote in respect of that share) 48 (forty eight) hours at least (excluding Saturdays, Sundays and public holidays) before the time of holding the Meeting at which he proposes to vote, he shall have satisfied the Board that he is entitled to exercise the right referred to in Article 12.2.

S58

18. PROXIES

- 18.1 At any time, any Shareholder shall be entitled to appoint 1 (one) natural person as a proxy to attend, participate in and speak and vote (whether on a show of hands or on a poll) on such Shareholder's behalf at any Meeting. A proxy need not be a Shareholder.
- 18.2 The form appointing a proxy shall be in writing under the hand of the Shareholder or of his agent duly authorised in writing or, if the Shareholder is a corporate body, under the hand of an officer or agent authorised by that body, and must be dated

and signed by the Shareholder or his agent. The holder of a general or special power of attorney given by a Shareholder shall be entitled to vote, if duly authorised under that power to attend and take part in the Meetings and proceedings of the Company or companies generally, whether or not he is himself a Shareholder of the Company. The form appointing a proxy shall be deemed to confer authority to demand a poll and, subject to the provisions of section 58 of the Companies Act (Shareholder right to be represented by proxy), need not bear a handwritten signature but may bear a signature effected in any manner provided for in the Electronic Communications and Transactions Act, No. 25 of 2002.

18.3 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the Office (or such other place as may be decided by the Board from time to time) before the proxy exercises any rights of the Shareholder appointing the proxy, at the Meeting, (or at such earlier time as the Companies Act may allow and the Board shall determine) and, in default, the form of proxy shall be treated as invalid unless the chairperson of the Meeting determines, in the chairperson's discretion, at any time prior to the proposal of the first resolution at the Meeting to be voted upon, to treat it as valid. A Shareholder shall be entitled, if any Meeting is adjourned, to withdraw any proxy lodged in respect of the Meeting and to lodge a new proxy in respect of the adjourned Meeting in accordance with the foregoing.

S58(8)(d) 18.4 A form of proxy shall remain valid only until the end of the Meeting or any adjourned Meeting at which it is intended to be used, unless it is revoked earlier in a manner contemplated in section 58(4)(c) of the Companies Act.

18.5 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the Shareholder or the later revocation of the proxy or of the authority under which the proxy was executed, or the later transfer of the share in respect of which the proxy is given; provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the place for submission of the proxy form before the commencement of the Meeting or adjourned Meeting at which the proxy is used.

- 18.6 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form.

19. **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

The Board may set a record date, as contemplated in section 59(1) of the Companies Act; provided that, for as long as the Listings Requirements apply to the Company and prescribe a record date, such record date shall be – **10.15**

- 19.1 the record date as prescribed by the Listings Requirements; and
- 19.2 published to Shareholders in a manner that satisfies the Listings Requirements and any other prescribed requirements.

20. **BORROWING POWERS**

- 20.1 The Board may exercise all the powers of the Company to borrow money and to mortgage or encumber its undertaking and property or any part thereof and to issue debentures, bonds (whether secured or unsecured) and other debt instruments (with such special privileges, if any, as may be sanctioned by a General Meeting and are permitted by the Companies Act and the Listings Requirements), whether outright or as security for any debt, liability or obligation of the Company or of any third party.
- 20.2 For the purposes of the provisions of Article 20.1, the borrowing powers of the Company shall be unlimited.

21. **DIRECTORS**

- S66(2)(b)** 21.1 Subject to Article 21.6 and the provisions of the Companies Act, the number of Directors shall be a minimum of 4 (four) and a maximum of 15 (fifteen).

10.16(a)

- 21.2 The Board or the Company in General Meeting shall have power at any time and from time to time to appoint any Person as a Director (including an alternate Director), either to fill a casual vacancy or as an addition to the Board, but so that the total number of the Directors shall not at any time exceed 15 (fifteen); provided that: **10.16(b)**
10.16(d)
- 21.2.1 subject to Article 26.3, any Person appointed to fill a casual vacancy or as an addition to the Board shall retain office only until the next Annual General Meeting of the Company and shall then retire and be eligible for re-election; **10.16(c)**
- S66(4)(b)** 21.2.2 subject to Article 21.7, not less than 50% (fifty per cent) in number of the Directors and 50% (fifty per cent) in number of any alternate Directors shall be elected by the Company in General Meeting; and
- 21.2.3 the appointment of all Directors shall be subject to the approval of the Shareholders at any Annual or General Meeting, provided that such meeting is not conducted in terms of section 60 of the Companies Act.
- S66(7)** 21.3 The appointment of a Director shall take effect upon compliance with Section 66(7) of the Companies Act.
- 21.4 No appointment of a Director in accordance with a resolution passed in terms of Section 60 of the Companies Act shall be competent. **10.16(b)**
- S65(11)(h)**
S66(9) 21.5 The Directors' fees shall from time to time be paid only in accordance with a Special Resolution approved at a General Meeting within the previous 2 (two) years.
- 21.6 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 Board or of committees thereof. If any Director is required to perform extra services or to go or to reside outside South Africa for the purposes of the Company or otherwise performs or binds himself to perform services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director, such Director shall be entitled to receive a remuneration to **10.16(f)**

be fixed by a disinterested quorum of the Board which may be either in addition to or in substitution for the remuneration provided for in Article 21.5.

- 21.7 The continuing Directors may act, notwithstanding any casual vacancy in their body, so long as there remain in office not less than the prescribed minimum number of Directors referred to in Article 21.1; provided that:
- 21.7.1 if, as a result of any such vacancy, less than half the total number of the continuing Directors were elected by the Company in General Meeting, such vacancy shall be filled by election at the earlier of the next General Meeting or Annual General Meeting; **10.16(d)**
- 21.7.2 if the number of continuing Directors is reduced below the minimum number of Directors required to act as such for the time being and such vacancy has not been filled within 3 (three) months from the time it arose, the continuing Directors may act only to - **10.16(d)**
- 21.7.2.1 increase the number of Directors to the required minimum; or
- 21.7.2.2 summon a General Meeting for that purpose;
- provided that if there is no Director able or willing to act, then any Ordinary Shareholder may convene a General Meeting for that purpose.
- S70(3)(b)(i)** 21.8 If a vacancy arises on the Board, such vacancy shall be filled by a new election conducted at the next Annual General Meeting.
- 21.9 A Director may be employed in any other capacity by the Company or in conjunction with the office of Director, other than as the auditor of the Company, and may also be employed as a director or employee of any subsidiary of the Company, upon such terms as to appointment, remuneration and otherwise as the Board may determine, and any remuneration so paid may be in addition to the remuneration payable in terms of Article 21.5; provided that the appointment of a Director in any other capacity as aforesaid and his remuneration must be determined by a disinterested quorum of Directors. **10.16(e)**

- S71(1) 21.10 The Company may by Ordinary Resolution remove any Director before the expiration of his period of office and by an Ordinary Resolution elect another Person in his stead. The Person so elected shall hold office until the next following Annual General Meeting of the Company and shall then retire and be eligible for re-election.
- 21.11 The Company may by Ordinary Resolution in General Meeting from time to time increase or reduce (but not above 15 (fifteen) or below 4 (four)) the number of Directors and may also determine in what manner or rotation such increased or reduced number is to retire from office. Whenever such increase is made, the Shareholders at the said Meeting or, failing them, the Board may fill the new vacancies so created.
- S71(3) and (4) 21.12 The Board may remove any Director before the expiration of his period of office in accordance with the provisions of sections 71(3) and (4) of the Companies Act.
- 21.13 No Director shall be appointed for life or for an indefinite period. 10.16(k)

S69 22. **TERMINATION OF OFFICE OF DIRECTORS**

A Director shall cease to hold office as such –

- 22.1 if he becomes insolvent, or assigns his estate for the benefit of his creditors, or files an application for the liquidation of his affairs, or compounds generally with his creditors; or
- 22.2 if he becomes incapacitated to the extent that he is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
- 22.3 if he is absent from meetings of the Board for 6 (six) consecutive months without leave of the Board and is not represented at any such meetings during such 6 (six) consecutive months by an alternate Director and the Board resolves that the office be vacated; provided that the Board shall have power to grant any Director leave of absence for an indefinite period; or
- 22.4 if he is removed under Article 21.10 or Article 21.12; or

22.5 1 (one) month or, with the permission of the Board, earlier, after he has given notice to the Board in writing of his intention to resign; or

S69(6) 22.6 if he is disqualified to be a director or ceases to hold office as a Director or is otherwise prohibited from acting as a director by the Companies Act or any other public regulation.

S75 23. **INTERESTS OF DIRECTORS**

23.1 The Company and the Directors shall comply with the provisions of the Companies Act with regard to the disclosure of the personal financial interests of Directors in contracts or proposed contracts. Subject thereto, no Director or intending Director shall be disqualified by his office from contracting with the Company, either with regard to such office or as vendor, 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 Directors shall be in any way interested, be or be void or voidable, nor shall any Directors so contracting or being so interested 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.

S75(1)
S75(5)(f) 23.2 A Director shall not vote in respect of any contract, arrangement or any other proposal whatsoever to be considered at a meeting of the Board in which such Director has or knows that a "related person" (as defined in the Companies Act) has any material interest (other than by virtue of his interest in shares or other Securities issued by the Company or by virtue of his office as a Director). Such a Director shall absent himself from the meeting during the consideration of such resolution and shall not be regarded as Present at the Meeting for the purpose of determining whether such resolution has sufficient support to be adopted. Each Director shall, however, be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting.

23.3 For the purposes of this Article, an alternate Director shall not be deemed to be interested in any contract or arrangement merely because the Director for whom he is an alternate is so interested.

23.4 Nothing in this Article 23 shall be construed so as to prevent any Director, in his capacity as a Shareholder, from taking part in and voting upon all questions submitted to a General Meeting whether or not such Director is personally interested or concerned in such questions.

24. **SECURITIES REGISTER**

S50 24.1 The Board shall cause a Securities Register to be maintained in accordance with the provisions of section 50 (Securities register and numbering) of the Companies Act.

24.2 The Company shall comply with the provisions of sections 51 (Registration and transfer of certificated securities), 52 (Registration of uncertificated securities), 53 (Transfer of uncertificated securities) and 54 (Substitution of certificated or uncertificated securities) of the Companies Act.

25. **ROTATION OF DIRECTORS**

25.1 At the Annual General Meeting held in each year, 1/3 (one-third) of the non-executive Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than, 1/3 (one-third) shall retire from office. The non-executive Directors so to retire at each Annual General Meeting shall be, firstly, those retiring in terms of Article 21.2.1 and, secondly, those referred to in terms of Article 21.10 and, lastly, those who have been longest in office since their last election or appointment. As between non-executive Directors of equal seniority, the non-executive Directors to retire shall, in the absence of agreement, be selected from among them by lot; provided that, notwithstanding anything to the contrary herein contained, if, at the date of any Annual General Meeting, any non-executive Director will have held office for a period of 3 (three) years since his last election or appointment, he shall retire at such Meeting, either as one of the non-executive Directors to retire in pursuance of the foregoing or additionally thereto. A retiring non-executive Director shall act as a Director throughout the Meeting at which he retires. The length of time a non-executive Director has

10.16(g)

been in office shall, save in respect of Directors appointed or elected in terms of the provisions of Articles 21.2 and 21.10, be computed from the date of his last election or appointment.

- 25.2 Retiring non-executive Directors shall be eligible for re-election. No Person (other than a non-executive Director retiring at the Annual General Meeting) shall, unless recommended by the Board for election, be eligible for election to the office of Director at any General Meeting unless, not less than 21 (twenty-one) Business Days before the day appointed for the General Meeting, there shall have been given to the Secretary notice in writing by a Shareholder who is duly qualified to be present and to vote at the Meeting for which such notice is given, of the intention of such Shareholder to propose such Person for election together with a notice in writing, signed by the Person to be proposed, of his willingness to be elected as a Director. Any Shareholder will have the right to nominate any eligible person for appointment as a Director. **10.16(b)**
- 25.3 Subject to Article 25.2, the Company in General Meeting may fill the vacated offices by electing a like number of Persons to be Directors and may fill any other vacancies. In electing Directors, the provisions of the Companies Act shall be complied with.
- 25.4 If at any General Meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled, such Director shall, if willing, continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, unless it shall be determined at such Meeting not to fill such vacancy.
- 25.5 The Board shall provide Shareholders with a recommendation in the notice of the Meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution. **10.16(g)**
- 25.6 Unless otherwise agreed by the JSE, the proposal of any resolution to Shareholders in terms of sections 20(2) and 20(6) of the Companies Act shall be prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the Listings Requirements. **10.3**

26. **EXECUTIVE DIRECTORS AND CHAIRPERSON**

- 26.1 The Board may from time to time appoint one or more of their number to be chief executive officer or joint chief executive officer of the Company or to be the holder of any other executive office in the Company and may, subject to any contract between him or them and the Company, from time to time terminate his or their appointment and appoint another or others in his or their place or places.
- 26.2 The Company in General Meeting, and on the recommendation of the Board, shall be entitled to appoint any non-executive Director to be the chairperson of the Company for such period as the Shareholders may deem fit.
- 26.3 An executive Director may, subject to the provisions of the Companies Act and the Listings Requirements, be appointed as such by contract for such period as the Board may determine. An executive Director shall not be subject to retirement by rotation or be taken into account in determining the rotation by retirement of Directors during the period of any such contract; provided that the number of executive Directors so appointed shall at all times be less than one-half ($\frac{1}{2}$) of the total number of Directors in office. An executive Director shall be eligible for reappointment at the expiry of any period of his appointment. Subject to the terms of his employment contract, an executive Director shall be subject to the same provisions as to removal as the other Directors and if he ceases to hold the office of Director for any reason, he shall *ipso facto* cease to be an executive Director.
- 26.4 A Director appointed in terms of the provisions of Article 26.1 to the office of chief executive officer of the Company, or to any other executive office in the Company may, subject to the provisions of the Companies Act, be paid, in addition to the remuneration payable in terms of Article 21.5 and 21.6, such remuneration in respect of such office as may be determined by a disinterested quorum of the Board. **10.16(f)**
- 26.5 Without in any way derogating from the obligations of a Director in terms of section 72(3) of the Companies Act, the Board may from time to time entrust and confer upon a chief executive officer or other executive officer for the time being such of the powers and authorities vested in it as it thinks fit, and may confer such powers and authorities for such time and for such objects and purposes and upon such terms and conditions and with such restrictions as it may deem fit. The

Board may confer such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Board in that respect and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities. A chief executive officer appointed pursuant to the provisions hereof shall not be regarded as an agent or delegatee of the Board and, after the aforesaid powers and authorities have been conferred upon him by the Board, he shall be deemed to derive such powers directly from this Article.

27. **PROCEEDINGS OF DIRECTORS**

- S73** 27.1 Subject to the succeeding provisions of this Article 27, the Board may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- S73(1) and (2)** 27.2 In addition to the provisions of section 73(1) of the Companies Act, any Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board. The Board may determine what period of notice shall be given of meetings of the Board and may determine the medium of giving such notice, which may include telephone, other means of Electronic Communication or telefax; provided that at least 7 (seven) days' notice must be given.
- S73(3)** 27.3 A meeting of the Board may be conducted by Electronic Communication or one or more Directors may participate in a meeting by Electronic Communication.
- S73(5)(a)** 27.4 Notwithstanding the provisions of Article 27.2, if all of the Directors -
- 27.4.1 acknowledge actual receipt of the notice;
- 27.4.2 are present at a meeting of the Board; or
- 27.4.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

- S75(b)**
- 27.5 The quorum for a meeting of the Board shall be a majority of the Directors for the time being in office, of whom at least half must be non-executive Directors and one of whom must be an executive Director. If, within 30 (thirty) minutes from the time appointed for the Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place or, if that day is not a Business Day, to the next succeeding Business Day, and those present at such adjourned meeting will constitute a quorum.
- 27.6 The Board shall elect one of its number to act as chairperson of its meetings provided that: **10.16(i)**
- 27.6.1 if no chairperson is elected, or if elected, the chairperson is not present at the time appointed for holding any meeting of the Board, the lead independent Director, as contemplated in the King Report on Corporate Governance for South Africa for the time being (if any), shall preside as chairperson of such meeting; and
- 27.6.2 if there is no lead independent Director or if the lead independent Director is not present at the time appointed for holding such meeting, the Board shall choose one of its number to be the chairperson of such meeting.
- 27.7 Each Director shall be entitled to exercise 1 (one) vote on any matter at a Board meeting. Questions arising at any meeting of the Board shall be decided by a majority of votes and in the case of an equality of votes, the chairperson shall not have a second or casting vote. In particular, the chairperson shall not have a casting vote where the quorum of Directors is 2 (two) and any 2 (two) Directors are present at the meeting. **10.16(i)**
- 27.8 A meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions conferred by or under this Memorandum for the time being that are vested in or exercisable by the Directors generally.

- S74 27.9 The Board shall have the power to – 10.16(j)
- 27.9.1 consider any matter and/or adopt any resolution other than at a meeting of the Board, as contemplated in section 74 of the Companies Act. Accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of more than 50% (fifty percent) of the Directors, given in person or by Electronic Communication; provided that each Director has received notice of the matter to be decided and has acknowledged their receipt of such notice to the Secretary in writing. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors;
- 27.9.2 conduct a meeting of the Board entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3) of the Companies Act; provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting; 10.16(j)
- 27.10 Any resolution referred to in Article 27.9.1 may consist of several documents, each signed by one or more Directors or their alternates in terms of this Memorandum. 10.16(j)
- 27.11 Any resolution referred to in Article 27.9.1 shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last Director or alternate required to sign it and, where it states a date as being the date of its signature by any Director or alternate, that document shall be *prima facie* evidence that it was signed by that Director or alternate on that date. 10.16(j)
28. **BOARD COMMITTEES**
- S72 28.1 The Board may appoint any number of committees of Directors and may delegate any of its authority to an executive or other committee consisting of such Director or Directors or any other Person or Persons as it thinks fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Board. The Board

may include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act.

- 28.2 Any Director who serves on an executive or other committee, or who devotes special attention to the business of the Company, or who otherwise performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration (in addition to the remuneration he may be entitled to as a Director) by way of salary or otherwise as determined by a disinterested quorum of the Board, but subject to the applicable provisions of the Companies Act. 10.16(f)
- 28.3 The meetings and proceedings of any such committee consisting of 2 (two) or more members shall be governed by the provisions contained herein for regulating the meetings and proceedings of the Board so far as the same are applicable thereto and are not superseded by any regulations made by the Board under this Article 28.
- 28.4 All acts done at any meeting of the Board or of any executive or other committee of the Board, or by any Person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Board or Persons acting as aforesaid, or that they or any of them were disqualified or had vacated office or were not qualified to vote, be as valid as if every such Person had been duly appointed and was qualified to be and to act and vote as a Director or a member of such committee.

S66(4)(b) 29. **ALTERNATE DIRECTORS**

- S66(4)(b) 29.1 Provided that the number of alternate Directors appointed by Directors does not, in the aggregate, exceed the number of alternate Directors elected by the Company in General Meeting, any Director shall have the power to nominate another Person approved by the Board to act as alternate Director in his place during his absence or inability to act as such Director, and to remove such alternate Director from office. On such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company. A Person may be appointed as alternate to more than one Director. Where a Person is alternate to more than one Director or where an alternate Director is also a Director, he shall have a

separate vote on behalf of each Director he is representing, in addition to his own vote, if any.

- 29.2 The alternate Directors, whilst acting in the place of the Directors to whom they are appointed as alternate Director, shall exercise and discharge all the duties and functions of the Directors to whom they are alternate Directors. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms of this Memorandum or if the Director to whom he is an alternate ceases to be a Director, or gives notice to the Secretary that the alternate Director representing him has ceased to do so. An alternate Director shall look to the Director to whom he is appointed as an alternate for his remuneration, and shall have no claim against the Company for any remuneration.

S66(1)

30. **POWERS OF DIRECTORS**

- 30.1 The business and affairs of the Company shall be managed by or under the direction of the Board which, in addition to the powers and authorities expressly conferred upon them by this Memorandum, has the authority to exercise all of the powers and perform any of the functions of the Company except to the extent that the Companies Act or this Memorandum provides otherwise. The general powers given to the Board by this Article 30.1 shall not be limited or restricted by any special authority or power given to the Board by any other Article.
- 30.2 The Board shall have power to delegate to any Person or Persons any of its powers and discretions and to give to any such Person or Persons power of sub-delegation.
- 30.3 Without in any way limiting or restricting the general powers of the Board to grant pensions, allowances, gratuities and bonuses to officers or ex-officers, employees or ex-employees of the Company or the dependants of such Persons, it is hereby expressly declared that the Board, after consulting the remuneration committee of the Company, may from time to time grant pensions, gratuities or other allowances to any Person or to the widow or dependants of any deceased Person in respect of services rendered by that Person to the Company as executive Director, general manager, manager or in any other office or employment by the Company, notwithstanding that he may continue to be or be

elected a Director or may have been a Director, of such amounts, for such period, whether for life or for a definite period or for a period terminable on the happening of any contingency or event, and generally upon such terms and conditions as the Board in its discretion may from time to time think fit. For the purpose of this Article, the expression "executive Director" shall mean a Director appointed to an executive office in the Company and receiving, in addition to his fees as a Director, salary or remuneration for additional services whether under a service agreement or otherwise.

- 30.4 The Board may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds or associations or Persons as it deems advisable or desirable in the interests of the Company.

31. **LOCAL COMMITTEE/S**

- 31.1 Without prejudice to the general powers conferred by this Memorandum, the Board shall have the power to:
- 31.1.1 appoint persons resident in a foreign country to be a local committee for the Company in that country, and at their discretion to remove or suspend such local committee and any member thereof and to fix and vary their remuneration;
 - 31.1.2 open offices of the Company where necessary and to close the same at its discretion;
 - 31.1.3 appoint and remove agents to represent the Company for the issue, subdivision, conversion and consolidation and transmission of shares and for such other purposes as the Board may, subject to the provisions of this Memorandum, determine;
 - 31.1.4 give the members of such committees or any such agents the power to appoint alternates to committee members or substituted agents and to remove such alternates and substitutes; and

- 31.1.5 appoint others or to act themselves, and also to grant to such committee members or agents the power to appoint other Persons as co-committee members or joint agents.

Any Director may act on the local committee whenever in the country for which the committee is appointed to act and may take part in the proceedings of such committee and may have the same rights and privileges as any member of the committee.

- 31.2 All appointments of alternate committee members or substituted agents by members of any local committee or agents made in accordance with the provisions of Article 31.1 shall be subject to the approval of the remaining members of the local committee or agents and shall be reported forthwith to the Board. No local committee member or his alternate or agent or substituted agent shall be obliged to be a Shareholder.

S24, S25, S26,
S28, Regs 22,
24, 25

32. **STATUTORY RECORDS**

- 32.1 The Board shall –

32.1.1 comply with all the requirements of the Statutes as to the keeping of statutory books and records, including accounting records;

32.1.2 keep proper minutes which shall record, among other things, the names of all Directors present at each meeting of the Board or of any committee, all appointments of officers and all resolutions and proceedings of General Meetings and of meetings of the Board and committees.

32.2 Any minutes of any meetings of the Board or of the Company and of resolutions in pursuance of Article 27.9, if purporting to be signed by the chairperson of such meeting, or by some Person present thereat and appointed by the Board to sign the same in his place, or by the chairperson of the next succeeding meeting of the Board, or by any 2 (two) Directors, shall be admissible as evidence of the matters stated in such minutes.

- 32.3 Any extract from such minutes or extract from any resolution in writing passed in terms of Article 27.9, if signed by any Director or by the Secretary or by any Person duly authorised, in the manner prescribed by the Companies Act, to act as the representative of a company or other corporate body acting in the place of the Secretary, shall be admissible as evidence of the matters stated in such minutes or extracts.

33. **LOSS OF DOCUMENTS**

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

34. **CAPITALISATION**

- S47 The Company in General Meeting or the Board may at any time and from time to time pass a resolution that, subject to compliance with the provisions of section 47 of the Companies Act, the Company shall capitalise any sum standing to the credit of the Company's reserve fund, or any sum in the hands of the Company and available for payment as a dividend, or any sum carried to reserves as the result of a sale or revaluation of the assets of the Company or part thereof, or any sum received by way of premium on the issue of any shares, debentures or other Securities of the Company, and that any such sum or sums be applied by the Board, in accordance with such resolution, in paying up fully paid shares or other Securities of the Company, and appropriate such shares or other Securities to or distribute the same amongst the Shareholders rateably according to their rights and shareholdings in such manner as the Board may direct, or otherwise deal with such sum or sums as provided for in such resolution; provided that no such capitalisation shall be made by the Company unless recommended by the Board. Where any difficulty arises in respect of such capitalisation, the Board may settle the same as it thinks expedient (but it may not issue fractional certificates and fractions which would otherwise have been distributed shall be consolidated and sold for the benefit of the Shareholders who would have been entitled to the fractions), fix the value for capitalisation of any shares or other Securities, make cash payments to any holders of shares on the footing of the value so fixed in order to adjust rights, and vest any shares or assets in trustees upon such trusts for the Persons entitled to participate in the appropriation or capitalisation as

10.7
10.6

may seem just and expedient to the Board. The Board shall be entitled to grant to the Shareholders the right to elect to receive scrip dividends in lieu of cash dividends or a cash dividend in lieu of capitalisation or bonus shares.

35. **RESERVE FUND**

35.1 The Board may, before declaring or recommending any dividend, set aside out of the amount available for distribution as a dividend, such sum as it thinks proper as a reserve fund or an addition thereto. The Board may divide the reserve fund into such special funds as it thinks fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the same in such investments (other than Shares) as they may select without being liable for any depreciation of or loss in consequence of such investments, whether the same are usual or authorised investments for trust funds or not.

35.2 The reserve fund may, at the discretion of the Board, be applied for the equalisation of dividends or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company or for any of the objects or powers of the Company, or for any other purpose to which the Profits of the Company may be properly applied.

35.3 The Board may at any time divide among the Shareholders by way of bonus, or special dividends, any part of the reserve funds which it, in its discretion, may determine are not required for the purposes referred to in Article 35.2.

S28, S29,
S30, S31

36. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

36.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of the Companies Act, any other law with respect to the preparation of financial statements to which the Company may be subject and this Memorandum.

36.2 The annual financial statements of the Company shall be prepared and audited in accordance with the provisions of, amongst others, section 30 of the Companies Act.

36.3 The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records and other records and books of the Company, or any of them, shall be open for inspection by the Shareholders. No Shareholder (not being a Director) shall have the right to inspect any accounting records or book, other record or document of the Company, except as conferred by the Statutes or authorised by the Board, or by a resolution of the Company in General Meeting.

S31, S33

36.4 A copy of the Company's annual financial statements, including every document required by the Companies Act to be attached thereto, shall be sent or made available in any manner permitted by this Memorandum or the Companies Act to every Shareholder and other Person entitled to receive notices of Annual General Meetings of the Company at least 15 (fifteen) Business Days before the date of the Annual General Meeting at which they will be considered. 10.19

36.5 Not later than 3 (three) months after the expiration of the first period of 6 (six) months of its financial year, the Company shall send or make available in any manner permitted by this Memorandum or the Companies Act to every Shareholder, an interim report prescribed by the Statutes containing the information referred to in the Statutes.

36.6 At the same time that the annual financial statements and interim reports referred to in Articles 36.4 and 36.5 are sent or made available in terms thereof, the number of copies thereof required by the JSE from time to time, shall be forwarded to the JSE.

37. **AUDIT**

37.1 An auditor shall be appointed by the Company. The auditor's duties shall be regulated in accordance with the provisions of the Statutes.

37.2 The annual financial statements of the Company, when audited and approved by the Board, shall be deemed to be conclusively correct and shall not be re-opened;

provided that if any error is discovered therein within 3 (three) months after their approval by the Board, they shall forthwith be corrected and thenceforth shall be conclusive.

S6(9), S6(10),
S6(11), S62,
Reg 7

38. **NOTICES**

38.1 Subject to the provisions of this Memorandum and to the Listings Requirements and except as otherwise required by the Companies Act, any notice which is required to be given to Shareholders, Beneficial Owners or Directors shall be in writing and may be given to -

38.1.1 any Shareholder, Beneficial Owner or Director who has notified the Company of his electronic mail address or telefacsimile number for this purpose, by faxing such notice or sending the notice or a copy of the notice by electronic mail;

38.1.2 any Shareholder, Beneficial Owner or Director by delivery in person;

38.1.3 any Shareholder or Beneficial Owner by delivering it or sending it by pre-paid registered post, properly addressed, to -

38.1.3.1 a Shareholder at his address shown in the Securities Register;

38.1.3.2 a Beneficial Owner, at the address which has been disclosed to the Company in respect of that Beneficial Owner and which has been recorded in the Securities Register or in any register of Beneficial Owners which may be maintained by it or by any other person and made available to the Company for this purpose;

S24(5) 38.1.4 any Director by -

38.1.4.1 Electronic Communication;

38.1.4.2 delivering it to his business address shown in the Directors' register;
or

- 38.1.4.3 sending it through the post, properly addressed, to his postal address shown in the Directors' register.
- 38.2 If, in a particular matter, it proves impossible to deliver a notice in any manner provided for in this Memorandum or in the Companies Act, the Company may apply to either the Companies Tribunal or the High Court for an order of substituted service.
- 38.3 Any notice to Shareholders of any General Meeting shall at the same time be given to the secretary or other suitable official of the JSE and any other recognised stock exchange on which the Securities of the Company are listed for the time being, in accordance with the requirements of that stock exchange. Notice of such meeting shall, in the case of the JSE, be announced through SENS or, in the case of any other stock exchange, be published in accordance with the requirements of such stock exchange. **10.11(e)**
10.11(f)
- Reg 7,
Annexure 3
(Table CR3)** 38.4 Unless otherwise prescribed by applicable law, every such notice shall be deemed to have been received -
- 38.4.1 if it is delivered, on the date on which it is so delivered;
- 38.4.2 if it is sent by post on the 7th (seventh) day after it was so posted, unless there is conclusive proof that it was delivered on a different day;
- 38.4.3 if it or a message referred to in Article 38.1.1 is sent by electronic mail, on the day on which it was so sent, unless there is conclusive proof that it was delivered on a different date or at a different time;
- 38.4.4 if it or a message referred to in Article 38.1.1 is sent by telefacsimile, on the day on which it was successfully transmitted, unless there is conclusive proof that it was delivered on a different date or at a different time,
- notwithstanding that such notice may not actually have been received.
- 38.5 It shall be sufficient if any notice that is required to be given and, if sent by telefacsimile or Electronic Communication, can be printed by the recipient within a reasonable time and at a reasonable cost or contains a summary of such

notice and refers to the availability of such notice on a website, together with instructions for retrieving or receiving the complete notice.

- 38.6 When a given number of days' notice or notice over any period is required to be given, the date on which it is deemed to be received shall not be counted in such number of days or period.
- S62(6) 38.7 The accidental omission to give notice of a General Meeting or of a meeting of Directors to or the non-receipt of, or delay in transmission of any such notice by or to any Shareholder or Director, as the case may be, shall not invalidate any resolution passed at any such meeting.
- 38.8 For the purposes of this Article 38, the term "notice" shall include any financial statements, document, record, statement or other information to be given to Shareholders, Beneficial Owners or Directors.
- 38.9 A Shareholder shall be bound by every notice given in terms of this Article 38.
- 38.10 Any Shareholder whose address in the Securities Register is an address not within South Africa shall be entitled to have notices served upon him at such address. 10.18
- 38.11 Any notice to be given by advertisement shall, subject to the provisions of the Statutes, be made through SENS and published in such Johannesburg daily newspaper or newspapers and in such daily newspaper or newspapers circulating in the district in which any branch or duplicate Securities Register or Transfer Office has been established, as the Board may determine.
- 38.12 All notices may, with respect to any registered shares to which Persons are jointly entitled, be given to whichever of such Persons is recognised by the Company as having any title to such shares in terms of Article 10.1.4, as the case may be, and notice so given shall be sufficient notice to all the holders of such shares.
- 38.13 Every Person who by operation of law, transfer or other means whatsoever becomes entitled to any share shall be bound by every notice in respect of such share which, prior to his name and address being entered on the Securities Register, was given to the Person from whom he derives his title to such share.

- 38.14 Any notice or document sent by post to any Securities Holder in pursuance of this Memorandum shall, notwithstanding that such Securities Holder is then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other Persons by such Securities Holders, until some other Person is registered in his stead as the holder or joint holder thereof. Such service shall, for all purposes of this Memorandum, be deemed a sufficient service of such notice or document on such Securities Holder's heirs, executors or administrators, and all Persons (if any) jointly interested with him in any such Securities.
- 38.15 Where a given number of days' notice extending over any other period is required to be given, the day of service and the day of the Meeting shall not, unless it is otherwise provided, be counted in such number of days or other period.
- 38.16 Every notice calling any General Meeting of the Company shall comply with the provisions of the Statutes.
- 38.17 The holder of a warrant shall not, unless it is otherwise expressed in the warrant, be entitled in respect thereof to notice of any General Meeting of the Company or otherwise.
- 38.18 Any notice required to be given by the Company to the holder of a share warrant to bearer or to the Shareholders or any of them, and not expressly provided for by this Memorandum, shall be sufficiently given if given, by advertisement in a Johannesburg daily newspaper, provided that where a branch Securities Register or Transfer Office has been established, such advertisement shall also be inserted in at least one daily newspaper circulating in the district in which any branch Securities Register or Transfer Office is located. Any notice given by advertisement shall be deemed to have been served on the first day when the newspaper containing such advertisement is published.

39. **ELECTRONIC COMMUNICATION**

- 39.1 To the extent permitted by the Statutes from time to time, but as regards any Securities Holder only to the extent that such Securities Holder has furnished an appropriate address for Electronic Communication, any documents or notices

referred to in this Memorandum may be sent or given by Electronic Communication.

- 39.2 Any Securities Holder notifying the Company of an address for the purposes of receiving Electronic Communication from the Company shall be deemed to have agreed to receive documents and notices by Electronic Communication. Any amendment or withdrawal of any such notice from a Securities Holder shall only take effect if signed by the Securities Holder concerned and received by the Company.
- 39.3 Any document or notice sent by Electronic Communication shall be deemed, unless the contrary is proved, to be received by the Securities Holder at 09:00 Central African Time on the day following that on which it was transmitted.
- 39.4 The signature of an Electronic Communication shall be in such form as the Board may require to demonstrate that the document or notice is genuine.

40. **REPRESENTATION**

The Company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which must be executed shall be signed by any Person or Persons authorised so to do by resolution of the Board.

41. **WINDING UP**

S79 – S83

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

42. **INDEMNITY**

42.1 Every Director, alternate Director, former Director, Prescribed Officer, member of a committee of the Board and member of the audit committee of the Company and its related or inter-related companies (as defined in the Companies Act) shall be indemnified out of the Company's funds to the fullest extent permitted in terms of the Companies Act against all and any liability, cost or expense incurred by him arising out of his appointment or conduct as such.

42.2 Save as otherwise provided in the Companies Act, no Director, Prescribed Officer, manager, Secretary or other officer or servant of the Company shall be liable for the acts, receipts, neglects or defaults of any other Director, Prescribed Officer or officer or servant or for joining in any receipt or other act of conformity, or for loss or expenses happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Board for the Company, or of any security in or upon which any of the moneys of the Company are invested, or for any loss or damage arising from the insolvency or delictual acts of any Person with whom any moneys, Securities or effects are deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office, or in relation thereto, unless the same happen through his own negligence or dishonesty.

43. **BRANCH REGISTER**

The Company, or the Board on behalf of the Company, may cause to be kept in any foreign country a branch register or Securities Register of Securities Holders resident in such foreign country and the Board may, subject to the provisions of the Companies Act, make and vary such regulations as it may think fit respecting the keeping of any such branch register or Securities Register.

44. **FRACTIONS OF SECURITIES**

If, pursuant to any corporate action or event, including any capitalisation issue, rights issue or consolidation of shares, Securities Holders would, but for the provisions of this Article, become entitled to fractions of Securities ("**Fractional Entitlements**"), such Fractional Entitlements shall be dealt with in accordance with the Listings Requirements

and any other requirements of the JSE applicable to the treatment of Fractional Entitlements in such circumstances at such time.

S48 S48(8),
S114, S115

45. **ACQUISITION OF SHARES AND OTHER SECURITIES**

45.1 Subject to the provisions of the Companies Act, the Listings Requirements from 10.9(b)
time to time and any other relevant authority, and notwithstanding anything to the contrary contained in this Memorandum, the Company or any of its subsidiaries may from time to time by Special Resolution approve the acquisition of shares issued by the Company, either as a general approval or a specific approval for a particular acquisition.

S48(8), S114,
S115

45.2 Unless otherwise permitted in terms of the Companies Act, the Company may only with the sanction of a Special Resolution adopted by a General Meeting, acquire shares issued by the Company from a Director or Prescribed Officer of the Company and/or any related party of any such Director or Prescribed Officer.

S38, S39, S40
and S41

46. **ISSUE OF SHARES AND CONVERTIBLE SECURITIES AND GRANT OF OPTIONS, 10.9**
FOR CASH

The Company may issue, and/or grant options to acquire, Shares and/or other Securities for cash, in accordance with the provisions of the Listings Requirements.

S46, S4

47. **DISTRIBUTIONS TO SECURITIES HOLDERS**

47.1 Subject to the provisions of section 46 of the Companies Act and the Listings 10.17
Requirements, the Company may make Distributions to its Securities Holders from time to time. The Company may transmit any payment to its Securities Holders by ordinary post to the address of the Securities Holder recorded in the Securities Register (or such other address as the Securities Holder may previously have given to the Company in writing) or by electronic funds transfer to such bank account as the Securities Holder may previously have given to the Company in writing.

47.2 Subject to the provisions of section 46 of the Companies Act, the Company in 10.8
General Meeting or the Board may, from time to time, determine a dividend or other Distribution to be made to the Shareholders in such manner as the

Company in General Meeting or the Board, as the case may be, may determine. Without limiting the foregoing, the Company in General Meeting or the Board, as the case may be, may direct at the time of such determination, that a payment shall be made by Distribution of specific assets or in a specific currency (and if the latter, the date of conversion of the currency in which the dividend or other payment is approved, into such other currencies). If any difficulty arises in regard to any payment, the Board may settle same as it considers appropriate, provided that capital repaid may not be called up again. A period of 14 (fourteen) days at least shall be allowed between the date of declaration or confirmation of any Distribution, whichever is the later, and the date of closing of the Securities Registers in respect of such Distribution.

- 47.3 Dividends shall be payable to Shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later, in accordance with the provisions of the Listings Requirements. 10.17(b)
- 47.4 No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in General Meeting or the Board, shall become effective until after the dividend or other Distribution has been made, unless the Company in General Meeting or the Board so determines at the time the dividend or other Distribution is approved.
- 47.5 All unclaimed dividends shall be held by the Company for a period of three years from the date that the Shareholders become entitled to such Distribution provided that other Distributions to Shareholders as contemplated in this Article may be held indefinitely by the Company and invested or otherwise be made use of by the Board for the benefit of the Company until claimed. 10.17(c)
- 47.6 The Company shall be entitled at any time to delegate its obligations to any Shareholder in respect of unclaimed dividends or other unclaimed Distributions to any one of the Company's bankers from time to time.
- 47.7 Unless this Memorandum and/or the Listings Requirements require a resolution to be passed by the Company in General Meeting to authorise the reduction by the Company of its Capital, any capital redemption reserve fund or any share premium account, the Board shall have the power, to the extent necessary, to resolve that the Company reduce its Capital, and any capital redemption reserve

fund or any share premium account, whether accompanied by a Distribution to Shareholders as contemplated in this Article 47 or without any Distribution to Shareholders.

48. **LISTING ON STOCK EXCHANGES**

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

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

49. **ODD-LOTS**

If, upon implementation of any odd-lot offer made by the Company in accordance with the Listings Requirements, there are Shareholders holding less than 100 (one hundred) shares (or such number as determined by the Board of the Company) in the Company ("**Odd-lots**"), then the Company shall, unless such Odd-lot holders have elected to retain their Odd-lots, cause the Odd-lots to be sold on such basis as the Board may determine and the Company shall procure that such Odd-lot holders receive the proceeds thereof.

50. **APPOINTMENT OF SECRETARY**

The Board is authorised to appoint any one or more of their number or any company associated with any one or more of their number as the Secretary.

51. **ALTERATIONS TO MEMORANDUM**

S16,
S65(11)(a)

51.1 Notwithstanding any contrary provision of the Companies Act (and to the extent not expressly thereby precluded), and subject further to the Listings Requirements, no provision of this Memorandum or any Article hereof may be altered except as provided in Article 51.2 or if such amendment is in compliance with a court order as contemplated in Sections 16(1)(a) and 16(4) of the

10.5(d)

Companies Act or as approved by a Special Resolution adopted by the Company in General Meeting, or unless such alteration is expressly permitted in terms of such provision or the Article in question.

S17(1) 51.2 The Board may from time to time alter this Memorandum in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document in the manner contemplated in section 17(1) of the Companies Act.

52. **MANDATORY SHAREHOLDER APPROVALS**

S6(15), S15(1) Except as otherwise required in terms of the Companies Act or the Listings Requirements, and notwithstanding any contrary provision of this Memorandum, the sanction of a Special Resolution adopted by the Company in General Meeting will be required in relation to or in respect of the following matters: -

S65(11)(b) 52.1 to ratify a consolidated revision of the Company's Memorandum contemplated in section 18(1) of the Companies Act;

S65(11)(c) 52.2 to ratify any action taken by the Company or Directors in excess of their authority, as contemplated in section 20(2) of the Companies Act;

S65(11)(d) 52.3 to issue any shares or Securities (including the grant of options for the allotment or subscription of any such shares or Securities), as contemplated in sections 41(1) and 41(3) of the Companies Act;

S65(11)(e)
S65(11)(f) 52.4 to grant financial assistance to any Person in the circumstances contemplated in sections 44(3)(a)(ii) and 45(3)(a)(ii) of the Companies Act;

S65(11)(g) 52.5 to approve a decision of the Board for the re-acquisition of any Securities in the circumstances contemplated in section 48(8) of the Companies Act;

S65(11)(h) 52.6 to authorise the basis for compensation to Directors, as required by section 66(9) of the Companies Act;

S65(11)(i) 52.7 to approve the voluntary winding-up of the Company as contemplated in section 80(1) of the Companies Act;

- S65(11)(j)** 52.8 to approve the winding-up the Company in the circumstances contemplated in section 81(1) of the Companies Act;
- S65(11)(k)** 52.9 to approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5) of the Companies Act;
- S65(11)(k)** 52.10 to approve any proposed fundamental transaction as contemplated in Part A of Chapter 5 of the Companies Act, to the extent required in terms of the provisions of that Part; and
- S65(11)(m)** 52.11 to revoke any resolution contemplated in section 164(9) of the Companies Act.

S15 53. **RULES**

10.4

The Board may not make or amend “rules” as contemplated in section 15 of the Companies Act.