

**THE COMPANIES ACT, NO. 71 OF 2008**  
(AS AMENDED)

**MEMORANDUM OF INCORPORATION**

OF

**FIRSTRAND LIMITED**

**A PUBLIC COMPANY**

**REGISTRATION NUMBER: 1966/010753/06**

**REGISTRATION DATE: 11 NOVEMBER 1966**

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## **SCHEDULES**

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**SCHEDULE "2" : "A" PREFERENCE SHARES**

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**SCHEDULE "4" : "C" PREFERENCE SHARES**

**SCHEDULE "5" : "D" PREFERENCE SHARES**

## 1 INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.1.1 "**Banks Act**" means the Banks Act, No. 94 of 1990, as amended, consolidated or re-enacted from time to time, and includes all schedules to, and regulations published in terms of, such Act;

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

1.1.3 "**Central Securities Depository**" has the meaning set out in the Securities Services Act;

1.1.4 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

1.1.5 "**Commission**" means the Companies and Intellectual Property Commission established in terms of the Companies Act;

1.1.6 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to, and the regulations published in terms of, such Act;

1.1.7 "**Company**" means FirstRand Limited, registration number 1966/010753/06, a limited liability public company duly incorporated in the Republic;

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

1.1.9 "**Electronic Communication**" has the meaning set out in the Electronic Communications and Transactions Act, No. 25 of 2002;

1.1.10 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the International Accounting Standards Board (IASB), or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council (FRSC) established in terms of the Companies Act;

- 1.1.11 "**JSE**" means the exchange, licensed under the Securities Services Act, operated by JSE Limited, registration number 2005/022939/06, a public company duly incorporated in the Republic;
- 1.1.12 "**JSE Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;
- 1.1.13 "**Office**" means the registered office of the Company;
- 1.1.14 "**Participant**" has the meaning set out in the Securities Services Act;
- 1.1.15 "**Registrar of Banks**" means the Registrar of Banks designated as such in terms of the Banks Act;
- 1.1.16 "**Regulations**" means the regulations published in terms of the Companies Act from time to time;
- 1.1.17 "**Republic**" means the Republic of South Africa;
- 1.1.18 "**Securities**" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.19 "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of the Companies Act;
- 1.1.20 "**Securities Services Act**" means the Securities Services Act, No 36 of 2004, including any amendment, consolidation or re-enactment thereof;
- 1.1.21 "**SENS**" means the Securities Exchange News Service established and operated by the Listings Division of the JSE;
- 1.1.22 "**Share**" means one of the units into which the proprietary interest in the Company is divided, which shall include the ordinary Shares referred to in clause 7.1.1 but shall exclude the further classes of Shares referred to in clause 7.1.2 unless specifically otherwise provided;
- 1.1.23 "**Shareholder**" means the holder of a Share and who is entered as such in the Securities Register;
- 1.1.24 "**Solvency and Liquidity Test**" has the meaning attributed thereto in the Companies Act;

- 1.1.25 "**Sub-register**" means the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Companies Act;
- 1.1.26 "**Transfer Office**" means in respect of Certificated Securities, the Office and any office maintained for the purpose of receiving for registration transfer of Shares or other Securities;
- 1.1.27 "**Uncertificated Securities**" means any "securities" defined as such in the Securities Services Act; and
- 1.1.28 "**Uncertificated Securities Register**" means the record of Uncertificated Securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;
- 1.2.2 a reference to the Companies Act shall include reference to the Regulations;
- 1.2.3 a reference to a section by number refers to the corresponding section of the Companies Act notwithstanding the renumbering of such section after the date on which this Memorandum of Incorporation is adopted by the Company;
- 1.2.4 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
- 1.2.5.1 an alterable or elective provision of the Companies Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.5.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict, provided that the Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction,

longer period of time or similarly more onerous requirement, than would otherwise apply to the Company in terms of such provision;

- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes -
  - 1.2.7.1 any gender includes the other genders;
  - 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
  - 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.8 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.9 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation; and
- 1.2.10 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act.
- 1.3 Any reference in this Memorandum of Incorporation to –
  - 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
  - 1.3.2 "**month**" shall be construed as months of the Gregorian calendar, unless the context requires otherwise;
  - 1.3.3 "**law**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other

enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and

- 1.3.4 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Companies Act.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

## 2 **BANKS ACT AND RESTRICTIONS**

- 2.1 The Company is a controlling company in respect of a bank as defined in terms of the Banks Act, and accordingly -
- 2.1.1 this Memorandum of Incorporation and all of its contents and the Companies Act shall apply subject to, and be interpreted in conjunction with, any applicable provision of the Banks Act, or any regulations, notices or instructions issued in terms of the Banks Act which have the power of law, or any lawful directive, circular or guidance note issued by the Registrar of Banks



which is binding on the Company in law and to which the Company is subject (each an "**Applicable Provision**" for purposes of this clause 2.1); and

2.1.2 to the extent that any provision or part of any provision in this Memorandum of Incorporation or the Companies Act irreconcilably conflicts with any peremptory Applicable Provision, such Applicable Provision shall prevail.

2.2 The restrictive conditions which apply to the Company (and the requirements, if any, additional to those prescribed in the Companies Act, for their alteration), are those conditions imposed on the Company or with reference to the Company in terms of the Banks Act, and then only for so long as and to the extent that the Banks Act is applicable to the Company. Such restrictive conditions include the following –

2.2.1 the Company may not acquire or establish either within or outside the Republic, any subsidiaries, joint ventures, branch offices, divisions, trusts or other financial or business undertakings, other interests and representative offices of banks or controlling companies other than subject to the provisions of the Banks Act;

2.2.2 the Company shall not acquire or hold shares in long-term or short-term insurance companies as defined in the Long-Term Insurance Act No. 52 of 1998 and the Short-Term Insurance Act No. 53 of 1998, respectively, other than in accordance with the limitations and provisions of the Banks Act;

2.2.3 the Company may not do anything which would contravene any provision of the Banks Act which applies to the Company and the Company shall comply at all times with any restrictions imposed on it in terms of the permitted investments, advances and business practices applicable to the Company in terms of the Banks Act; and

2.2.4 the Company may not do anything, conduct any branch or conduct any kind of business contrary to the limitations and provisions of the Banks Act.

### 3 **SECURITIES EXCHANGES**

3.1 The ordinary Shares of the Company are, as at the date on which this Memorandum of Incorporation is adopted, listed on the JSE and the Namibian Stock Exchange. The Company may seek listings on such further securities exchanges as the Directors may consider appropriate from time to time.

- 3.2 For so long as the Shares of the Company are listed on any securities 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, the Company shall, to the extent required, also obtain the consent at the same time of any other securities exchanges on which it is listed.

#### **4 JURISTIC PERSONALITY**

- 4.1 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, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.

- 4.2 The Company is incorporated in accordance with and, subject to the provisions of clause 2, governed by –

- 4.2.1 the unalterable provisions of the Companies Act, provided that the Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement than such provision; and

- 4.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and

- 4.2.3 the other provisions of this Memorandum of Incorporation.

#### **5 LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator, Shareholder or Director, be liable for any liabilities or obligations of the Company.

#### **6 POWERS OF THE COMPANY**

- 6.1 The Company has all of the legal powers and capacity contemplated in the Companies Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever, save to the extent to which any such power or capacity is inconsistent with the Banks Act or the provisions of clause 2.2.

- 6.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Companies Act, save to the extent contemplated in clause 2.2 or the Banks Act.
- 6.3 Without derogating from the provisions of clauses 6.1 and 6.2, the main business which the Company is to carry on, is that of a bank controlling company in terms of the Banks Act, and to carry on the business of an investment holding company in the financial services sector and other related sectors.
- 6.4 Subject to any limitations imposed by the Banks Act, the management and control of any business of the Company shall be vested in the Directors who in addition to the powers and authorities expressly conferred upon them by this Memorandum of Incorporation, may exercise all such powers and do all such acts and things as may be exercised or done by the Company, and are not hereby or by law expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to such management and control not being inconsistent with this Memorandum of Incorporation nor with any resolution passed by the Company in general meeting; but so that no such resolution shall invalidate any prior act by the Directors which would have been valid if such resolution had not been passed. The general powers given by this clause 6.4 shall not be limited or restricted by any special authority or power given to the Directors by any other clause of this Memorandum of Incorporation.
- 6.5 The Directors may arrange that any branch of the business carried on by the Company or any other business in which the Company may be interested, shall be carried on by or through one or more subsidiaries of the Company and they may on behalf of the Company make such arrangements as they think advisable for taking the profits or bearing the losses of any branch or business so carried on, or for financing, assisting or subsidising any such subsidiary or guaranteeing its contracts, obligations or liabilities.

## 7 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 7.1 The Company is authorised to issue –
- 7.1.1 6,001,688,450 (six billion one million six hundred and eighty eight thousand and four hundred and fifty) ordinary Shares with a par value of R0.01 (one cent) each, of the same class, each of which ranks *pari passu* in respect of all rights and the holder shall be entitled in respect of each ordinary Share,

subject to any preferential rights, limitations and other terms associated with those classes of Shares referred to in clause 7.1.2, to –

- 7.1.1.1 vote on any matter to be decided by the Shareholders of the Company and to 1 (one) vote in the case of a vote by means of a poll;
- 7.1.1.2 participate proportionally in any distribution made by the Company; and
- 7.1.1.3 receive proportionally the net assets of the Company upon its liquidation;
- 7.1.2 such number of each of such further classes of shares in the Company, if any, as are set out in Schedule 1 hereto. The shares in each such further class shall rank *pari passu* in respect of all rights and be subject to the preferences, rights, limitations and other terms associated with each such class set out in the applicable Schedule to this Memorandum of Incorporation.

7.2 The Board shall not have the power to –

- 7.2.1 convert one class of Shares into one or more other classes;
- 7.2.2 increase or decrease the number of authorised Shares of any class of Shares;
- 7.2.3 reclassify any classified Shares that have been authorised but not issued;
- 7.2.4 classify any unclassified Shares that have been authorised but not issued;
- 7.2.5 determine the preferences, rights, limitations or other terms of any Shares;
- 7.2.6 consolidate or subdivide any Securities; and/or
- 7.2.7 change the name of the Company,

and such powers shall only be capable of being exercised by the Shareholders by amending the Memorandum of Incorporation by way of a special resolution of the Shareholders (as contemplated in clause 42) and subject to the provisions of clause 7.5.

7.3 Without derogating from the provisions of clause 7.2, the Board shall not have the power, without the written approval of the Registrar of Banks and in accordance with any conditions imposed by the Registrar of Banks in writing, to –

- 7.3.1 issue any preference Shares, hybrid debt instruments or debt instruments;

- 7.3.2 convert any of its Shares into preference Shares, hybrid debt instruments or debt instruments; or
- 7.3.3 convert any of its preference Shares of a particular class into preference Shares of any other class,

that will qualify as primary capital, secondary capital or tertiary capital, as the case may be.

- 7.4 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in clause 21.2.
- 7.5 The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the Shareholders and in accordance with the JSE Listings Requirements, and such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting.
- 7.6 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.
- 7.7 The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 7.8 The Board may, subject to the remaining provisions of this clause 7, resolve to issue Shares at any time, but –
- 7.8.1 only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and
- 7.8.2 only to the extent that such issue has been approved by the Shareholders of the applicable class of Shares in general meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares,

provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any general meeting of the Shareholders prior to such annual general meeting.

- 7.9 All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be in accordance with the JSE Listings Requirements.
- 7.10 All Securities for which a listing is sought on the JSE and all Securities of the same class as Securities which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Companies Act, but unless otherwise required by statute, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.
- 7.11 Subject to what may be authorised by the Companies Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with clause 7.13, and subject to clause 7.12, the Board may only issue unissued ordinary Shares if such ordinary Shares have first been offered to existing Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such ordinary Shares are issued for the acquisition of assets by the Company.
- 7.12 Notwithstanding the provisions of clauses 7.11 and 7.13, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of the Companies Act, require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.
- 7.13 Notwithstanding the provisions of clause 7.11, the Shareholders may at a general meeting authorise the Directors to issue ordinary Shares of the Company at any time and/or grant options to subscribe for ordinary Shares as the Directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements.

- 7.14 Except to the extent that any right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

## 8 CERTIFICATED AND UNCERTIFICATED SECURITIES

- 8.1 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Companies Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.
- 8.2 Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities, if so determined by the Board.
- 8.3 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.
- 8.4 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –
- 8.4.1 immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and
- 8.4.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and

deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.

- 8.5 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause 8.

## 9 SECURITIES REGISTER

- 9.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Companies Act and maintain the Securities Register in accordance with the prescribed standards.

- 9.2 As soon as practicable after issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –

9.2.1 the total number of Uncertificated Securities;

9.2.2 with respect to Certificated Securities –

9.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;

9.2.2.2 the number of Certificated Securities issued to each of them;

9.2.2.3 in the case of Securities other than Shares as contemplated in section 43 of the Companies Act, the number of those Securities issued and outstanding, and the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and

9.2.2.4 any other prescribed information.

- 9.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 8.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

9.3.1 forms part of the Securities Register; and

9.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 9, any details referred to in clause 9.2.2, read with the changes



required by the context or as determined by the rules of the Central Securities Depository.

- 9.4 The Securities Register or Uncertificated Securities Register maintained in accordance with the Companies Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 9.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 9.6 A certificate evidencing any Certificated Securities of the Company –
- 9.6.1 must state on its face –
- 9.6.1.1 the name of the Company;
- 9.6.1.2 the name of the person to whom the Securities were issued; and
- 9.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
- 9.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 9.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 9.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 9.8 If, as contemplated in clause 9.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 9.8.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and
- 9.8.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified.

- 9.9 As the Company is a pre-existing company (as defined in the Companies Act), and having regard to the provisions of item 6(4) of schedule 5 to the Companies Act, the failure of any Share certificate to satisfy the provisions of clauses 9.6 to 9.8 is not a contravention of the Companies Act and does not invalidate that certificate.
- 9.10 Every person whose name is entered as a Shareholder in the Securities Register shall be entitled, without payment, to receive within 1 (one) month after allotment or 21 (twenty one) days after lodgement of transfer one certificate for all his Shares of any one class, or several certificates each for 1 (one) or more of his Shares of such class upon payment of such sum not exceeding R5.00 (five rand) for every certificate after the 1<sup>st</sup> (first) certificate, as the Directors shall from time to time determine. Every certificate of Shares shall specify the number of Shares in respect of which it is issued. Any Shareholder who has transferred a part of his holding of Shares of any class shall be entitled to receive a certificate free of charge for the balance of his holding, provided that, notwithstanding anything contained in this Memorandum of Incorporation or implied to the contrary, where Shares are registered in the names of two or more persons they shall be treated as one Shareholder for the purposes of this clause 9.10.
- 9.11 If a Share certificate is defaced, lost or destroyed, it may be replaced on such terms (if any) as to evidence, indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same, as the Directors may think fit and, in the case of defacement, on delivery of the old certificate to the Company.
- 9.12 The certificate for Shares registered in the names of 2 or more persons shall be delivered to the person 1<sup>st</sup> (first) named in the Securities Register in respect thereof, or to his authorised agent, and in case of the death of any one or more of the joint registered holders of any Shares, the survivor then 1<sup>st</sup> (first) named in the Securities Register shall be the only person recognised by the Company as being entitled to such certificate, or any new certificate which may be issued in place thereof, provided always that the Company shall not be bound to register more than 4 (four) persons as the holders of any Share.

## 10 TRANSFER OF SECURITIES

- 10.1 Transfer Offices shall be maintained at such place or places whether in the Republic or elsewhere, as the Directors may from time to time prescribe. The Directors may appoint local committees (to be designated "*Registrars*" or by such

other title (if any) as the Directors may think fit) whether in the Republic or elsewhere consisting of two or more natural persons or of a corporate body to whom the Directors may delegate all or any of their powers, authorities and discretions with regard to the registration of transfer, the keeping of registers and other records required by the Companies Act to be kept at the Office or the Transfer Office and the issuing of certificates of title to Securities and may appoint a person to be a secretary to such local committee or authorise such local committee to appoint a person to be its secretary.

- 10.2 Subject to any statutory restrictions on transfer and to the provisions of this Memorandum of Incorporation, any Shareholder may transfer all or any of its Shares but every transfer must be in writing in the usual common form or in such other form as the Directors may approve and must be left at the Transfer Office where the register of transfers relating to the Share comprised therein is for the time being kept or at such other place as the Directors may prescribe accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to be transferred and such other evidence (if any) as the Directors or other person in charge of such register may require to prove the title or capacity of the intending transferor or transferee or the rights of the intending transferor to transfer the Shares.
- 10.3 The instrument of transfer of a Security shall be signed by the transferor and the transferee, unless the signature of the transferee is not required –
- 10.3.1 by any law from time to time in force in the Republic; or
- 10.3.2 where the Directors decide at their discretion to dispense therewith in such case or cases as they may deem fit.
- 10.4 The transferor shall be deemed to remain the holder of the Security transferred until the name of the transferee is entered in the Securities Register in respect thereof. All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide; but any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who deposited it.
- 10.5 The Directors may decline to register any transfer, unless –
- 10.5.1 the instrument of transfer is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by

the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it; and

- 10.5.2 the instrument of transfer is in respect of only one class of Share.
- 10.6 If the Directors refuse to register a transfer they shall within 30 (thirty) days after the date on which the instrument of transfer was lodged, send to the transferee notice of the refusal.
- 10.7 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its Office or Transfer 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 such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.
- 10.8 The transfer of Uncertificated Securities may be effected only –
- 10.8.1 by a Participant or Central Securities Depository;
- 10.8.2 on receipt of an instruction to transfer, sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and
- 10.8.3 in accordance with the Companies Act and the rules of the Central Securities Depository.
- 10.9 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.

10.10 A transfer of ownership in accordance with this Memorandum of Incorporation and the Companies Act occurs despite any fraud, illegality or insolvency that may -

10.10.1 affect the relevant Uncertificated Securities; or

10.10.2 have resulted in the transfer being effected,

but a transferee who was a party to or had knowledge of the fraud or illegality, as the case may be, may not rely on the provisions of this clause 10.10.

## 11 NO LIEN

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

## 12 TRANSMISSION OF SECURITIES

12.1 The executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholder, as determined by the Board, shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.

12.2 Subject to the provisions of clause 12.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself –

12.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and

- 12.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

### 13 DEBT INSTRUMENTS

Subject to the provisions of the Banks Act, the Board may authorise the Company to issue secured or unsecured debt instruments, but no special privileges associated with any such debt instruments may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation.

### 14 CAPITALISATION SHARES

- 14.1 Subject to the JSE Listings Requirements -

14.1.1 the Company in general meeting may upon the recommendation of the Directors at any time and from time to time resolve that it is desirable to capitalise all or any part of the amount for the time being standing to the credit of any of the Company's reserves or of any share premium account or capital redemption reserve fund or to the credit of the income statement or otherwise available for distribution and not required for the payment of the fixed dividends on any preference Shares of the Company, and accordingly that such amount be set free for distribution among the Shareholders or any class of Shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions on the footing that the same be not paid in cash but either be applied in paying up unissued Shares to be issued to such Shareholders as fully paid capitalisation Shares having a par value or be transferred to the Company's stated capital and be applied in distributing to such Shareholders Shares of no par value; and

14.1.2 the Board, by resolution, shall have the power or authority to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share.

14.2 The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation Share, as contemplated in clause 14.1.2, unless the Board –

14.2.1 has considered the Solvency and Liquidity Test as required by the Companies Act, on the assumption that every such Shareholder would elect to receive cash; and

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

and has otherwise complied with the provisions of clause 37.

14.3 Without derogating from the provisions of clause 37, if any difficulty arises in regard to any distribution under clause 14.1, the Directors may settle the same as they think it expedient. They may make all appropriations and applications of the undivided profits or sum resolved to be capitalised thereby, and all allotments and issues of Shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to provide that whenever fractions would be included in the holding of any Shareholder such fraction will be rounded up or down based on standard rounding convention, thereby resulting in no fractional entitlement. The Directors may also appoint any person to enter, on behalf of all Shareholders entitled to the benefit of such appropriations and applications or to participate in such distribution, into any contract requisite or convenient for giving effect thereto, and such appointment and contract made under such appointment shall be effective and binding on all such Shareholders.

## 15 **BENEFICIAL INTERESTS IN SECURITIES**

15.1 Subject to the provisions of the Banks Act, the Company's issued Securities may be held by, and registered in the name of one person for the beneficial interest of another person, as set out in the Companies Act.

15.2 The Directors shall cause to be established and maintain a register of disclosures made to the Company of the identity of beneficial holders, as required in terms of the Companies Act.

## 16 **FINANCIAL ASSISTANCE**

Provided that any applicable provisions of the Banks Act and Companies Act are complied with –

16.1 the Board may authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such securities of the Company or a related or inter-related company; and

16.2 the Board may authorise the Company to provide direct or indirect financial assistance to a Director or prescribed officer of the Company or of a related or inter-related company, or to a related or inter-related company or corporation, or to a member of a related or inter-related corporation, or to a person related to any such company, corporation, director, prescribed officer or member,

and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

## 17 ACQUISITION BY THE COMPANY OF ITS OWN SHARES

17.1 Subject to the JSE Listings Requirements, the provisions of the Companies Act and the further provisions of this clause 17 –

17.1.1 the Board may determine that the Company acquire a number of its own Shares; and

17.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –

17.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and

17.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.

17.2 Any decision by the Company to acquire its own Shares must satisfy the JSE Listings Requirements and the requirements of the Companies Act and, accordingly, the Company may not acquire its own ordinary Shares unless –

17.2.1 for as long as it is required in terms of the JSE Listings Requirements, the acquisition has been approved by a special resolution of the Shareholders, whether in respect of a particular repurchase or generally approved by Shareholders and unless such acquisition otherwise complies with sections 5.67 to 5.69 of the JSE Listings Requirements (or such other sections as may be applicable from time to time);

17.2.2 the acquisition –



- 17.2.2.1 is pursuant to an existing legal obligation of the Company, or a court order; or
  - 17.2.2.2 the Board, by resolution, has authorised the acquisition;
  - 17.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and
  - 17.2.4 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition.
- 17.3 A decision of the Board referred to in clause 17.1.1 –
- 17.3.1 must be approved by a special resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or prescribed officer of the Company, or a person related to a Director or prescribed officer of the Company; and
  - 17.3.2 is subject to the requirements of sections 114 and 115 of the Companies Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% (five percent) of the issued Shares of any particular class of the Company's Shares.
- 17.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –
- 17.4.1 Shares held by one or more subsidiaries of the Company; or
  - 17.4.2 convertible or redeemable Shares.

## 18 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

- 18.1 The record date for the purpose of determining which Shareholders are entitled to –
- 18.1.1 receive notice of a Shareholders' meeting;
  - 18.1.2 participate in and vote at a Shareholders' meeting;

- 18.1.3 decide any matter by written consent or by Electronic Communication;
- 18.1.4 receive a distribution; or
- 18.1.5 be allotted or exercise other rights,

shall be determined by the Board, provided that, for as long as the JSE Listings Requirements apply to the Company, such record date shall be the record date as required by the JSE Listings Requirements.

- 18.2 Such record date must be published to the applicable class of Shareholders in a manner that satisfies the JSE Listings Requirements and any other prescribed requirements.

## 19 SHAREHOLDERS' MEETINGS

- 19.1 The Board, or any prescribed officer or company secretary of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.

- 19.2 Subject to the provisions of section 60 of the Companies Act dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –

- 19.2.1 at any time that the Board is required by the Companies Act, the JSE Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or

- 19.2.2 whenever required in terms of the Companies Act to fill a vacancy on the Board; or

- 19.2.3 when required in terms of clause 19.3 or by any other provision of this Memorandum of Incorporation.

- 19.3 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –

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

- 19.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those

demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

- 19.4 Notwithstanding any provision of the Companies Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting.
- 19.5 Subject to the provisions of the JSE Listings Requirements, any such annual general meeting –
- 19.5.1 shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation; and
- 19.5.2 shall not be capable of being held in accordance with the provisions of section 60 of the Companies Act set out in clause 24.
- 19.6 Each annual general meeting of the Company contemplated in clause 19.4 shall provide for at least the following business to be transacted –
- 19.6.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 19.6.2 the election of Directors, to the extent required by the Companies Act and by clause 25.7 of this Memorandum of Incorporation;
- 19.6.3 the appointment of an auditor and an audit committee for the following financial year (the appointment, duties and obligations of which shall be subject to the provisions of the Banks Act);
- 19.6.4 the sanctioning or declaration of distributions; and
- 19.6.5 any matters raised by the Shareholders, with or without advance notice to the Company.
- 19.7 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Companies Act and the JSE Listings Requirements.

- 19.8 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 19.9 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice and in accordance with the provisions of clause 41.
- 19.10 The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and present in person. In addition –
- 19.10.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 19.10.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.
- 19.11 If within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of clause 19.10 –
- 19.11.1 for that meeting to begin have not been satisfied, the meeting may be postponed, without any motion, vote or further notice, for not less than 7 (seven) days and not more than 21 (twenty one) days;
- 19.11.2 for consideration of a particular matter to begin have not been satisfied –
- 19.11.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
- 19.11.2.2 if there is no other business on the agenda of the meeting, the meeting may be adjourned, without any motion or vote, for not less than 7 (seven) days and not more than 21 (twenty one) days,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 19.10 may extend the 15 (fifteen) minute limit allowed in clause 19.11 for a reasonable period on the grounds that –

- 19.11.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or
- 19.11.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 19.10.
- 19.12 If within 15 (fifteen) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of Shareholders in terms of clause 19.3, shall be dissolved.
- 19.13 Notwithstanding the provisions of clause 19.11, the chairperson of the meeting may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
- 19.14 An immaterial defect in the formal manner of giving notice of a Shareholders' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Shareholder to whom it was addressed, does not invalidate any action taken at the meeting.
- 19.15 Save as required in terms of the Companies Act, the Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 19.11 or clause 19.13, as the case may be, unless the location for the meeting is different from –
  - 19.15.1 the location of the postponed or adjourned meeting; or
  - 19.15.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 19.16 If at the time appointed in terms of clause 19.11 or clause 19.13, as the case may be, for a postponed meeting to begin, or for an adjourned meeting to resume, the

requirements of clause 19.10 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

- 19.17 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.
- 19.18 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in the Companies Act, without variation.
- 19.19 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 19.20 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 19.21 The chairperson of a Shareholders' meeting may –
- 19.21.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
- 19.21.2 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.
- 19.22 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 -
- 19.22.1 it is brought to the attention of the chairperson at the meeting; and
- 19.22.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 19.23 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised -

19.23.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

19.23.2 at the meeting or adjourned meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

19.24 Even if he is not a Shareholder -

19.24.1 any Director; or

19.24.2 the company's attorney (or where the company's attorneys are a firm, any partner or director thereof),

may attend and speak at any Shareholders' meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder .

## 20 SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION

20.1 Subject to the provisions of the JSE Listings Requirements, the Company may conduct a Shareholders' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in the Companies Act, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

20.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or

20.1.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

20.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary

information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

## 21 VOTES OF SHAREHOLDERS

- 21.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –
- 21.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
- 21.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder; and
- 21.1.3 the holders of Securities other than ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 21.2.
- 21.2 If any resolution is proposed as contemplated in clause 7.4, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of Shareholders as contemplated in clause 21.1, provided that the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and the Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held, provided that the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 21.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote by –
- 21.3.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or



- 21.3.2 a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 21.3.3 the chairperson of the meeting.
- 21.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 21.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings 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. The demand for a poll may be withdrawn.
- 21.5 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 21.6 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 in addition to the vote or votes to which he may be entitled as a Shareholder.
- 21.7 No poll shall be demanded on the election of the chairperson of the meeting or on any question of adjournment. A poll demanded on any other question shall be taken at such time and place and in such manner as the chairperson of the meeting directs, and any business, other than upon which a poll has been demanded, may be proceeded with pending the taking of the poll.
- 21.8 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.

- 21.9 The board of any company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –
- 21.9.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Shares; and
- 21.9.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

## 22 PROXIES AND REPRESENTATIVES

- 22.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –
- 22.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or
- 22.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60 of the Companies Act,
- provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.
- 22.2 A proxy appointment –
- 22.2.1 must be in writing, dated and signed by the Shareholder; and
- 22.2.2 remains valid for –
- 22.2.2.1 1 (one) year after the date on which it was signed; or
- 22.2.2.2 any longer or shorter period expressly set out in the appointment,

unless it is revoked in a manner contemplated in the Companies Act or expires earlier as contemplated in the Companies Act.

- 22.3 All of the remaining provisions of the Companies Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –
- 22.3.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in the Companies Act;
- 22.3.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in the Companies Act;
- 22.3.3 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in the Companies Act;
- 22.3.4 the instrument or power of attorney appointing a proxy which is not received by or on behalf of the Company by or through an electronic medium and the power of attorney or other authority (if any) under which the instrument or power of attorney is signed (or notarially certified copy of such power or authority) shall be deposited at the Office or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting. In default, the instrument or power of attorney shall not be treated as valid, provided that if the Shareholder appointing a proxy is registered on a branch register kept in any foreign country any instrument or power of attorney appointing a proxy and the power of attorney or other authority (if any) under which it is signed may be deposited as aforesaid at any such branch or other office of the Company outside the Republic at which he is registered. The transfer secretary of the Company in that place shall communicate to the Company in the Republic by such means as the Directors may from time to time direct, a summary of all the votes for and against each resolution represented by valid proxies duly accepted by them, so that such communication shall be received by the Company before the time appointed for the meeting to commence;

- 22.3.5 the instrument or power of attorney appointing a proxy which is received by or on behalf of the Company by or through an electronic medium (where an address has been specified for that purpose in the notice of meeting or in the instrument itself), subject to any applicable law for the time being in force and to any terms and conditions decided on by the Directors from time to time, and the power of attorney or other authority (if any) under which the instrument or power of attorney is signed (or notarially certified copy of such power or authority) shall be received at that specified address, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting and in default the instrument or power of attorney shall not be treated as valid;
- 22.3.6 a vote given in accordance with the terms of an instrument or power of attorney appointing a proxy shall be valid notwithstanding the previous legal incapacity of the Shareholder or revocation of the instrument or power of attorney or the transfer of the Share in respect of which the vote is given, unless notice in writing of such legal incapacity, revocation or transfer shall have been received by or on behalf of the Company at the Office or by or through an electronic medium (where an address has been specified for the purpose of receiving instruments of proxy or powers of attorney in the notice of meeting or in the instrument itself) not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting,

and, save as provided for in this Memorandum of Incorporation, none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

- 22.4 In determining any period of 48 (forty eight) hours referred to in clause 22.3, only business days shall be taken into account.
- 22.5 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We \_\_\_\_\_

being a shareholder of \_\_\_\_\_ Limited do hereby appoint

\_\_\_\_\_

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at \_\_\_\_\_ on \_\_\_\_\_ and at any adjournment thereof as follows:-

	In favour of	Against	Abstain
Special Resolution 1	.....	.....	.....
Ordinary Resolution 1	.....	.....	.....

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_.

\_\_\_\_\_  
SHAREHOLDER'S SIGNATURE

(Note: A shareholder entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a shareholder of the Company)."

## 23 SHAREHOLDERS' RESOLUTIONS

- 23.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution, as provided in the Companies Act. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, to the extent that the JSE Listings Requirements requires a higher percentage in respect of any particular ordinary resolution, the Company shall not implement such ordinary resolution unless the Company has obtained the support of the applicable percentage prescribed in terms of the JSE Listings Requirements.
- 23.2 For a special resolution to be approved it must be supported by the holders of 75% (seventy five percent) or more of the voting rights exercised by Shareholders on the resolution, as provided in the Companies Act.
- 23.3 No matters, except those matters set out in section 65(11) of the Companies Act and any other matter required by the Companies Act, this Memorandum of Incorporation and the JSE Listings Requirements to be resolved by means of a special resolution, require a special resolution adopted at a Shareholders' meeting of the Company.

- 23.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.
- 23.5 Anything done in pursuance of any ordinary resolution or special resolution shall be done in a manner provided and subject to any conditions imposed by the Companies Act and the Banks Act, so far as they shall be applicable, and so far as they shall not be applicable, in accordance with the terms of the applicable resolution authorising the same.

## 24 SHAREHOLDERS ACTING OTHER THAN AT A MEETING

- 24.1 In accordance with the provisions of section 60 of the Companies Act, but subject to clause 24.4, a resolution that could be voted on at a Shareholders' meeting may instead be –
- 24.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 24.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.
- 24.2 A resolution contemplated in clause 24.1 –
- 24.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 24.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 24.3 Within 10 (ten) business days after adopting a resolution the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution.
- 24.4 The provisions of this clause 24 shall not apply to any Shareholder meetings that are called in terms of the Listings Requirements or the passing of any resolution in terms of clause 25.2 or to any annual general meeting of the Company.

## 25 COMPOSITION OF THE BOARD OF DIRECTORS

- 25.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Companies Act to appoint an audit committee and a social and ethics committee, the Board must comprise at least 4 (four) Directors but not more than 24 (twenty four) Directors.
- 25.2 Subject to the provisions of the Banks Act, all Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed in terms of section 60 of the Companies Act shall be valid.
- 25.3 Every person holding office as a Director, prescribed officer, company secretary or auditor of the Company immediately before the effective date of the Act will, as contemplated in item 7(1) of schedule 5 to the Companies Act, continue to hold that office.
- 25.4 In any election of Directors –
- 25.4.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled; and
- 25.4.2 in each vote to fill a vacancy –
- 25.4.2.1 each vote entitled to be exercised may be exercised once; and
- 25.4.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate.
- 25.5 Subject to the provisions of clauses 28.1 and 25.11, the Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in the Companies Act.
- 25.6 Subject to the provisions of the Banks Act, apart from satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, a person need not satisfy any other eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.
- 25.7 Subject to the provisions of clause 27.1, the Directors shall rotate in accordance with the following provisions of this clause 25.7 –

- 25.7.1 at each annual general meeting referred to in clause 19.4, 1/3 (one third) of the non-executive Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 1/3 (one third), but not less than 1/3 (one third), shall retire from office, provided that the chairperson and the lead independent director (if any) elected in terms of clause 29.3 shall retire from office at each annual general meeting referred to in clause 19.4;
- 25.7.2 the non-executive Directors to retire in every year (other than the chairperson and the lead independent director (if any) elected in terms of clause 29.3) shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot, provided that notwithstanding anything to the contrary contained in this Memorandum of Incorporation, if at the date of any annual general meeting any non-executive Director shall 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;
- 25.7.3 a retiring Director (including the chairperson and the lead independent director (if any) elected in terms of clause 29.3) shall be eligible for re-election but no person, other than a Director retiring at the meeting, shall, unless recommended by the Directors, be eligible for election to the office of a Director at any general meeting unless not more than 13 (thirteen) but at least 6 (six) clear days before the day appointed for the meeting, there shall have been left at the Office, a notice in writing by some Shareholder duly qualified to be present and vote at the meeting for which such notice is given of his intention to propose such person for election and also notice in writing signed by the person to be proposed of his willingness to be elected (so that the period of days shall not include the day on which the notices are left at the Office or the day appointed for the meeting);
- 25.7.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with clause 24; and
- 25.7.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not



to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 19.11 to 19.16 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

- 25.8 The Board shall, through its nominations committee constituted in terms of clause 33, provide the 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. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the Director is to be proposed to allow nominations to reach the Office from any part in the Republic.
- 25.9 Notwithstanding any contrary provision contained in this Memorandum of Incorporation -
- 25.9.1 an executive Director shall vacate his office at the close of the first annual general meeting of the Company after the Director reaches the age of 60 (sixty) years, provided that the Board shall have a discretion to extend that age on one or more occasions up to the financial year in which a Director reaches the age of 65 (sixty five) years; and
- 25.9.2 a non-executive Director shall vacate his office at the close of the first annual general meeting of the Company after the Director reaches the age of 70 (seventy) years, provided that the Board shall have a discretion to extend that age on one or more occasions for an additional one year period in each instance.
- 25.10 Without derogating from the provisions for retirement by rotation or otherwise contained in this Memorandum of Incorporation, the office of a Director shall be vacated if he –
- 25.10.1 is removed by an ordinary resolution adopted at a Shareholders meeting by the persons entitled to exercise voting rights in an election of that Director, and otherwise in accordance with any applicable provisions of the Companies Act;

- 25.10.2 is removed by a resolution of the Directors passed at a duly constituted meeting of the Directors convened either in the ordinary course or on not less than 48 (forty eight) hours' notice specifically for this purpose;
- 25.10.3 resigns his office by notice in writing to the Company; or
- 25.10.4 is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors otherwise than on the business of the Company and is not represented at any such meetings during such 6 (six) consecutive months by an alternate Director, and the Directors resolve that his office be, by reason of such absence, vacated.
- 25.11 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 28.1.1 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation.
- 25.12 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 (three) month period contemplated in clause 25.11, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) of the Companies Act or of summoning general meetings of the Company, but not for any other purpose.
- 25.13 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the appointment of Directors shall be subject to the provisions of the Banks Act.
- 25.14 Life directorships and directorships for an indefinite period are not permissible.

## 26 ALTERNATE DIRECTORS

Each Director may appoint either another Director or any person approved for that purpose by a resolution of the Directors to act as alternate Director in his place and

during his absence and may at his discretion remove such alternate Director. A person so appointed shall, except as regards power to appoint an alternate, and remuneration, be subject in all respects to the terms and conditions existing with reference to the other Directors, and each alternate Director, whilst so acting, shall be entitled to receive notices of all meetings of the Directors or of any committee of the Directors of which his appointer is a member, and to attend and vote at any such meeting at which his appointer is a member, and to attend and vote at any such meeting at which his appointer is not personally present and he shall generally be entitled to exercise and discharge all the functions, powers and duties of his appointer in such appointer's absence as if he were a Director. Any Director acting as alternate shall (in addition to his own vote) have a vote for each Director for whom he acts as alternate. An alternate Director shall *ipso facto* cease to be an alternate Director if his appointer ceases for any reason to be a Director, provided that if any Director retires by rotation or otherwise but is re-elected at the same meeting, any appointment made by him pursuant to this clause which was in force immediately before his retirement shall remain in force as though he had not retired. Any appointment or removal of an alternate Director shall be effected by notice in writing delivered at the Office and signed by the appointer or remover, as the case may be. The remuneration of an alternate Director shall be payable only out of the remuneration payable to the Director appointing him and he shall have no claim against the Company for his remuneration.

## 27 EXECUTIVE DIRECTORS

- 27.1 Subject to the provisions of the Banks Act, the Directors may from time to time appoint 1 (one) or more of their body to the office of Chief Executive Officer, Chief Financial Officer or Executive Director (with or without specific designation) of the Company or to another executive office ("**Executive Director**") with the Company for such term and at such remuneration as they may think fit (subject only to the requirements of the Companies Act, including those pertaining to qualifications of directors), and may revoke such appointment subject to the terms of any agreement entered into in any particular case and having regard to applicable law (including the provisions of the Companies Act pertaining to the removal of directors), provided that the period of office of an Executive Director appointed in terms of an agreement shall be for a maximum period of 5 (five) years at any one time. An Executive Director so appointed shall be subject to retirement in the same manner as the other Directors (who are not Executive Directors) except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.

- 27.2 Subject to the provisions of any contract between himself and the Company, an Executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 27.3 The Directors may from time to time entrust to and confer upon an Executive Director for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 28 POWERS OF THE BOARD OF DIRECTORS

28.1 The Board has the power to –

- 28.1.1 fill any vacancy on the Board on a temporary basis, as set out in the Companies Act, provided that such appointment must be confirmed by the Shareholders, in accordance with clause 25.2, at the next annual general meeting of the Company, as required in terms of the Companies Act; and
- 28.1.2 exercise all of the powers and perform any of the functions of the Company, as set out in the Companies Act,

and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 28 and to the extent provided for in the applicable limitations and provisions of the Banks Act.

28.2 The Directors may at any time and from time to time appoint any person or persons to be the attorney(s) and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm (including any of the partners of such firm), or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such

attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

- 28.3 The Directors may take all steps that may be necessary or expedient in order to enable the Shares or other Securities to be introduced into and dealt with in any country or state and to procure the same to be recognised by and specially quoted upon any securities exchange or bourse in any country or state and may accept responsibility for and pay and discharge all taxes, duties, fees, expenses or other sums which may be payable in relation to any of the matters aforesaid and may subscribe to and comply with the laws and regulation of any such country or state and the rules or regulations of any such securities exchange or bourse.
- 28.4 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 28.5 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 28.6 A Director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.
- 28.7 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) of the Companies Act and the qualifications contained in section 75(3) of the Companies Act, comply with all of the provisions of section 75 of the Companies Act in the event that they (or to their knowledge any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.

- 28.8 All acts done by the Directors or by a committee or by any person acting as a Director or a member of a committee, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting aforesaid, or that they or any of them were disqualified from or had vacated office, shall be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 28.9 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement or other benefit to any Director or ex-Director or other officer or employee of the Company, its holding Company (if any) or any subsidiary of the Company or to his widow or dependants and make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance or life assurance or other benefits.
- 28.10 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the proposal to the Shareholders of those ratification resolutions contemplated in sections 20(2) and 20(6) of the Companies Act, is prohibited.

## 29 DIRECTORS' MEETINGS

- 29.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 29.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairperson of such meeting.
- 29.3 The Directors shall elect a lead independent Director in the event that the chairperson of the Board is not independent.
- 29.4 In addition to the provisions of the Companies Act, any Director shall at any time be entitled to call a meeting of the Directors.
- 29.5 The Board has the power to –

- 29.5.1 consider any matter and/or adopt any resolution other than at a meeting and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution);
- 29.5.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in the Companies Act, provided that, 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; and
- 29.5.3 determine the manner and form of providing notice of its meetings, provided that –
- 29.5.3.1 the notice period for the convening of any meeting of the Board will be at least 5 (five) days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any 2 (two) Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors; and
- 29.5.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 29.5.3.1,

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

- 29.6 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in the Companies Act, subject only to clause 29.6.5, and accordingly –

- 29.6.1 if all of the Directors –
- 29.6.1.1 acknowledge actual receipt of the notice convening a meeting; or
- 29.6.1.2 are present at a meeting; or
- 29.6.1.3 waive notice of a meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 29.6.2 a majority of the Directors who are present in the Republic at the time of the meeting of Directors shall form a quorum;
- 29.6.3 each Director has 1 (one) vote on a matter before the Board, subject to the provisions of the Banks Act;
- 29.6.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution; and
- 29.6.5 in the case of a tied vote the chairperson may cast a deciding vote in addition to any deliberative vote, provided that should the quorum be 2 (two) and should only 2 (two) Directors be present at the meeting, the chairperson shall not have a casting vote.
- 29.7 Resolutions adopted by the Board –
- 29.7.1 must be dated and sequentially numbered; and
- 29.7.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 29.8 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, by the chairperson of the next meeting of the Board, or by the company secretary, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 29.9 The Company shall keep minutes of the meetings of the Board, and of any of its committees, and include in the minutes –
- 29.9.1 any disclosure made by notice or made by a director as required by section 75 of the Companies Act, as contemplated in clause 28.7; and
- 29.9.2 every resolution adopted by the Board.



### 30 DIRECTORS' COMPENSATION

30.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a special resolution approved by the Shareholders within the previous 2 (two) years, as set out in the Companies Act, and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

30.2 Any Director who -

30.2.1 serves on any executive or other committee; or

30.2.2 devotes special attention to the business of the Company; or

30.2.3 goes or resides outside the Republic for the purpose of the Company; or

30.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.

30.3 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with -

30.3.1 the business of the Company; and

30.3.2 attending meetings of the Directors or of committees of the Directors.

### 31 INDEMNIFICATION OF DIRECTORS

31.1 The Company may –

31.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4) of the Companies Act;

31.1.2 indemnify a Director in respect of liability as set out in section 78(5) of the Companies Act; and/or

31.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7) of the Companies Act,

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

- 31.2 The provisions of clause 31.1 shall apply *mutatis mutandis* in respect of any former Director, former prescribed officer or former member of any committee of the Board, including the audit committee.

## 32 BORROWING POWERS

- 32.1 Subject to the provisions of this Memorandum of Incorporation and the JSE Listings Requirements, the Directors may from time to time -

- 32.1.1 borrow for the purposes of the Company such sums as they think fit; and
- 32.1.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company.

- 32.2 The Directors shall procure (but as regards subsidiaries of the Company only insofar as by the exercise of voting and other rights or powers of control exercisable by the Company they can so procure) that the aggregate principal amount at any one time outstanding in respect of moneys so borrowed or raised by –

- 32.2.1 the Company; and
- 32.2.2 all the subsidiaries for the time being of the Company (excluding moneys borrowed or raised by any of such companies from any other of such companies but including the principal amount secured by any outstanding guarantees or suretyships given by the Company or any of its subsidiaries for the time being for the indebtedness of any other company or companies whatsoever and not already included in the aggregate amount of the moneys so borrowed or raised),

shall not exceed the aggregate amount at that time authorised, by the Board or the Company in general meeting, to be borrowed or secured by the Company or the subsidiaries for the time being of the Company (as the case may be).

## 33 COMMITTEES OF THE BOARD

- 33.1 The Board may –

- 33.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board; and/or
- 33.1.2 include in any such committee persons who are not Directors,
- and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
- 33.2 The authority of a committee appointed by the Board as contemplated in the Companies Act, is not limited or restricted by this Memorandum of Incorporation.
- 33.3 If and for as long as it is required to do so in terms of the Companies Act (unless the Company is exempted from doing so by the Tribunal in terms of the Companies Act), the Banks Act, the JSE Listings Requirements or any other applicable law, the Board must appoint any and all such prescribed committees.

#### **34 ANNUAL FINANCIAL STATEMENTS**

- 34.1 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 –
- 34.1.1 the Companies Act;
- 34.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 34.1.3 this Memorandum of Incorporation.
- 34.2 The Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of the Companies Act.
- 34.3 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of the Companies Act and any other applicable laws.
- 34.4 A copy of the annual financial statements must be sent to Shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered. Such copy may be sent in any manner contemplated in clause 41 (including by way of

Electronic Communication) or any such other manner permitted in terms of applicable law.

34.5 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Companies Act and shall –

34.5.1 satisfy, as to form and content, the financial reporting standards of IFRS; and

34.5.2 subject to and in accordance with IFRS –

34.5.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;

34.5.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;

34.5.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and

34.5.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

34.6 All annual financial statements when audited and laid before an annual general meeting shall be deemed conclusively correct, and shall not be re-opened.

## 35 AUDITORS

35.1 The Company shall appoint auditors each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

35.2 Auditors shall be appointed and their duties regulated in accordance with the provisions of the JSE Listings Requirements, the Companies Act, the Banks Act and any other applicable law.

35.3 All acts done by any person acting as auditor, shall, as regards all persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in his appointment.

## 36 COMPANY SECRETARY

- 36.1 The Company must, as required by the Companies Act, appoint a company secretary and such company secretary may be a juristic person or partnership as contemplated in the Companies Act.
- 36.2 The company secretary must, as required by the Companies Act, have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.
- 36.3 The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.
- 36.4 The company secretary (who shall be permanently resident in the Republic) shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any company secretary so appointed may be removed by the Directors.

## 37 DISTRIBUTIONS

- 37.1 Subject to the provisions of the Companies Act, the Company may not make a proposed distribution unless –
- 37.1.1 the distribution -
- 37.1.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 37.1.1.2 is authorised by resolution of the Board, in compliance with the JSE Listings Requirements; and
- 37.1.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed distribution; and
- 37.1.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed distribution.

- 37.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.
- 37.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 37.4 Subject to the provisions of clause 37, the Company in general meeting or the Directors may from time to time declare dividends, provided that the Company in general meeting must not be able to declare a larger dividend than that declared by the Directors. The Directors may also pay the fixed dividend payable on any preference Share of the Company half-yearly or otherwise on fixed dates whenever such position in the opinion of the Directors justifies that course.
- 37.5 All unclaimed monies that are due to any Shareholder/s shall be held by the Company in trust for an indefinite period until lawfully claimed by such Shareholder/s, subject to the laws of prescription.
- 37.6 Any distribution, interest or other sum payable in cash to a Shareholder may be paid by electronic transfer for credit to an account nominated in writing by the Shareholder, or by cheque or warrant sent by post and addressed to -
- 37.6.1 the Shareholder at his registered address; or
- 37.6.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the Share, at his registered address; or
- 37.6.3 such person and at such address as the holder or joint holders may in writing direct.
- 37.7 Every such cheque or warrant shall, unless the holder or joint holders otherwise direct -
- 37.7.1 be made payable to the order of the person to whom it is addressed; and
- 37.7.2 be sent at the risk of the holder or joint holders.
- 37.8 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid or for the loss or misdirection of any electronic transfer.

Payment of any such cheque or warrant, or the making of such electronic transfer, to whomsoever effected, shall be a good discharge to the Company.

- 37.9 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
- 37.9.1 by the distribution of specific assets; or
- 37.9.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
- 37.9.3 in cash; or
- 37.9.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 37.10 Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 37.11 The Directors may -
- 37.11.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and
- 37.11.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.
- 37.12 Any distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.
- 37.13 The Directors may from time to time make such regulation as they may think fit in regard to the payment of dividends to members having registered addresses outside the Republic, and such regulations may provide for the payment of such dividends in any foreign currency and the rate of exchange at which such payment shall be made and such other matters as the Directors may think fit.
- 37.14 The Directors may before recommending any distribution whether preferential or otherwise, set aside out of the profits of the Company, whether realised or unrealised and whether of a revenue or capital nature, such sum as they think proper as reserves which shall, at the discretion of the Directors be applicable for

any purpose to which the profits of the Company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit. The Directors may also without placing the same to reserve, carry forward any profits which they may think prudent not to declare as a distribution.

- 37.15 Without derogating from the provisions of this clause 37, and subject to any requirements which may be imposed by applicable law, the Company in general meeting may (upon the recommendation of the Directors) from time to time resolve (by ordinary resolution) that it is desirable to distribute or deal with, in any way authorised by applicable law, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital, stated capital or share premium account or capital redemption reserve fund of the Company.

### **38 AUTHENTICATION OF DOCUMENTS**

Any Director or the company secretary or any person appointed by the Directors for the purpose shall have power to authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts; and where any books, records, documents or accounts are elsewhere than at the Office the local manager or other officer of the Company having the custody thereof shall be deemed to be the person appointed by the Directors aforesaid.

### **39 ACCESS TO COMPANY RECORDS**

- 39.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company –
- 39.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;
- 39.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director;



- 39.1.3 all –
  - 39.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting; and
  - 39.1.3.2 annual financial statements required by the Companies Act for a period of 7 (seven) years after the date on which each such particular statements were issued;
- 39.1.4 notice and minutes of all Shareholders' meetings, including –
  - 39.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
  - 39.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
- 39.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and
- 39.1.6 the Securities Register.
- 39.2 A person not contemplated in clause 39.1 has a right to inspect the Securities Register and the register of Directors upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.
- 39.3 A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of the Companies Act, and in accordance with the rules of the Central Securities Depository. Within 5 (five) business days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details prescribed in terms of the Companies Act at the close of business on the day on which the request for inspection was made.

#### 40 PAYMENT OF COMMISSION

- 40.1 The Company may not pay commission exceeding 10% (ten percent) of the issue price of any Security to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities.

- 40.2 The Company may, on any issue of Shares, pay such brokerage as may be lawful.

#### 41 NOTICES

- 41.1 All notices shall be given by the Company to each Shareholder entitled thereto and simultaneously to the Issuer Services Division of the JSE, and shall be given in writing in any manner authorised by the JSE Listings Requirements and the Regulations, and particularly Table CR 3 annexed to the Regulations. All notices shall, in addition to the above, be released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Companies Act.
- 41.2 For so long as the Company maintains any listings on securities exchanges in addition to that of the JSE, the Company shall, to the extent required, comply with the listings requirements of such exchanges in addition to the JSE Listings Requirements.
- 41.3 Each Shareholder of the Company –
- 41.3.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 41.3.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 41.4 Any Shareholder whose address in the Securities Register is an address not within the Republic, shall be entitled to have notices served upon him at such address.
- 41.5 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors (or any other person to which the Directors have delegated such power) agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.

- 41.6 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 41.7 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 that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 41.8 Any notice or other document delivered or sent by or through an electronic medium or by post or left at the registered address of any Shareholder or the disclosed address of any beneficial holder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder or beneficial holder be then under legal incapacity, and whether or not the Company has notice of his legal incapacity, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder or any Security in respect of which such beneficial holder has or is deemed to have a beneficial interest as a sole or joint holder unless his name shall at the time of the service of the notice or document have been removed from the relevant register as the holder of the Share or other Security; and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the Share or other Security.
- 41.9 As required in terms of the Companies Act, the Company shall provide the auditors of the Company with all notices of and other communications relating to any general Shareholders meeting.
- 41.10 The Company shall upon despatching any notice in terms of the provisions of this clause have due regard to its obligation to simultaneously forward a copy of any notice, report, return or statements to the Registrar of Banks, as required in terms of section 65 of the Banks Act.

## 42 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 42.1 Subject to the provisions of clause 7.5, this Memorandum of Incorporation may only be altered or amended by way of a special resolution of the Shareholders in accordance with section 16(1)(c) of the Companies Act, except if such amendment is in compliance with a Court order as contemplated in section 16(1)(a) of the Companies Act.

42.2 An amendment of this Memorandum of Incorporation will take effect from the later of –

42.2.1 the date on, and time at, which the notice of amendment is filed; and

42.2.2 the date, if any, set out in the said notice of amendment,

save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

#### 43 **COMPANY RULES**

The Board is prohibited from making, amending or appealing any rules as contemplated in section 15(3) of the Companies Act and the Board's capacity to make such rules is excluded.

#### **ADOPTION**

This Memorandum of Incorporation was adopted by special resolution of the Shareholders on [●] 2011.

**ADDITIONAL CLASSES OF SHARES**

In addition to the Shares contemplated in clause 7.1.1 of the Memorandum of Incorporation to which this schedule is Schedule 1, the Company is authorised to issue no more than the following further Shares –

- 1 198,311,550 (one hundred and ninety eight million three hundred and eleven thousand five hundred and fifty) "A" variable rate convertible redeemable cumulative preference shares with a par value of R0.01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 2 ("**A** Preference Shares");
- 2 100,000,000 (one hundred million) "B" variable rate non-cumulative non-redeemable preference shares with a par value of R0.01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 3 ("**B** Preference Shares");
- 3 100,000,000 (one hundred million) "C" variable rate convertible non-cumulative redeemable preference shares with a par value of R0.01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 4 ("**C** Preference Shares"); and
- 4 100,000,000 (one hundred million) "D" variable rate cumulative redeemable preference shares with a par value of R0.01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 5 ("**D** Preference Shares").

**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED  
WITH THE "A" PREFERENCE SHARES**

- 1 For purposes of this Schedule 2 , unless clearly inconsistent with or otherwise indicated by the context -
  - 1.1 "**Adjusted FINI 15**" means the FINI 15 but with any component thereof that relates to the market capitalisations of the Company and RMB Holdings Limited excluded therefrom;
  - 1.2 "**Base Valuation Date**" means 30 June or 31 December immediately preceding the Issue Date of a particular tranche of "A" Preference Shares, except in the case of "A" Preference Shares issued prior to 31 March 2000, where such date shall mean 30 June 1999;
  - 1.3 "**Conversion Date**" means the first business day following the first preference dividend payment date occurring after each of the third, fourth, fifth and sixth anniversary of the Issue Date of a particular tranche of "A" Preference Shares;
  - 1.4 "**Conversion Valuation Date**" means 30 June or 31 December immediately preceding a Conversion Date;
  - 1.5 "**FINI 15**" means the top fifteen financial and insurance shares indices as computed by the South African Actuaries Society and published by the JSE;
  - 1.6 "**Issue Date**" means the date of issue of a particular tranche of the "A" Preference Shares;
  - 1.7 "**Market Price**" of an ordinary Share on a Conversion Valuation Date means the weighted average price on the JSE for an ordinary Share in the share capital of the Company during the twenty business days preceding the Conversion Valuation Date;
  - 1.8 "**Preference Dividend Payment Dates**" in relation to an "A" Preference Share shall be the dates on which the Company pays interim and final dividends on its ordinary Shares; provided that if the Company fails to pay

an interim or final ordinary dividend for a particular period, the "A" Preference Dividend date for that period will be the last business day of March or October following the preference dividend period in question;

- 1.9 **"Prime Rate"** means the prevailing interest rate (per cent, per annum, compounded monthly) from time to time published by First National Bank (a division of FirstRand Bank Limited) as being its minimum overdraft rate (as certified by any manager of First National Bank whose appointment and designation need not be proved) expressed as a percentage; and
- 1.10 **"Subscription Price"** in relation to an "A" Preference Share means the sum of the par value and share premium received upon issue of such "A" Preference Share.

## 2 **ISSUE**

- 2.1 "A" Preference Shares shall have a par value of R0.01 (one cent) each and shall be allotted and issued, credited as fully paid, at a premium to be determined by the Directors at the time of issue, against receipt of the Subscription Price for each "A" Preference Share.
- 2.2 The "A" Preference Shares shall be issued in multiples of 1,000 (one thousand) "A" Preference Shares and may be issued in a series of tranches, as the Directors of the Company deem appropriate.

## 3 **DIVIDENDS**

- 3.1 "A" Preference Shares shall confer on the holder thereof the right to receive out of the profits of the Company a cumulative preferential cash dividend ("**A" Preference Dividend**"), which shall accrue on a daily basis and which shall be determined in the manner set out in clauses 3.2 and 3.3 of this Schedule 2. Such "A" Preference Dividend will rank in priority to any dividends which after the Issue Date may be declared in respect of any ordinary Shares but *pari passu* in respect of any dividends declared on any of the "A" Preference Shares.
- 3.2 Save for the first "A" Preference Dividend, the "A" Preference Dividends shall be due and payable six-monthly in arrear, for the six-month periods

ended on 30 June and 31 December of each year. The "A" Preference Dividends shall be payable to holders of "A" Preference Shares registered as such on the Preference Dividend Payment Dates. The first "A" Preference Dividend shall be in respect of the initial period from the Issue Date to the immediately following 30 June or 31 December (both days inclusive), as the case may be, and thereafter in respect of each following six-month period. The final "A" Preference Dividend payment in respect of an "A" Preference Share shall be due and payable on the day preceding the Conversion Date or the redemption date of that "A" Preference Share, as the case may be.

- 3.3 The preference dividend for each of the "A" Preference Shares shall be calculated in arrear in accordance with the following formula -

$$A = \frac{B \times C \times D \times E}{365}$$

where:

A = the preference share dividend per "A" Preference Share;

B = 65% (sixty five per cent);

C = the Prime Rate;

D = the number of days of the relevant period for which the dividend is payable; and

E = the Subscription Price of each of the "A" Preference Shares.

#### 4 **CONVERSION**

Subject to the provisions of the Companies Act, the Company shall be obliged to convert the "A" Preference Shares into ordinary Shares of R0.01 (one cent) each in the capital of the Company on the basis set out in this clause.

- 4.1 One-quarter of a particular tranche of "A" Preference Shares shall be converted on the applicable Conversion Date, subject to the provisions of clauses 4.2 to 4.5 of this Schedule 2, as follows -



$$A = B + C$$

where:

$$C = D \times E \times K$$

$$F \times L$$

and where:

$$D = G - H$$

and where:

$$H = I \times J$$

where:

A = the number of ordinary Shares in the share capital of the Company into which each "A" Preference Share will be converted;

B = the Subscription Price of the "A" Preference Share that is to be converted divided by the Market Price of an ordinary Share on the applicable Conversion Valuation Date;

D = the superior growth realised in the Company's ordinary Shares over the period in question;

E = a factor, expressed as a percentage, determined by the Directors of the Company at the time that the particular tranche of "A" Preference Shares is issued;

F = the Market Price of an ordinary Share on the applicable Conversion Valuation Date;

G = the market capitalisation of the ordinary Shares on the relevant Conversion Valuation Date, calculated by multiplying the number of ordinary Shares in issue on the Base Valuation Date by the Market Price of an ordinary Share on the applicable Conversion Valuation Date;

H = the recomputed, compatible market capitalisation of the Adjusted FINI 15 on the relevant Conversion Valuation Date;

I = the market capitalisation of the ordinary Shares calculated by multiplying the number of ordinary Shares in issue on the relevant Base Valuation Date by the Market Price of an ordinary Share on that date;

J = the growth in the Adjusted FINI 15, expressed as a percentage, calculated by dividing the Adjusted FINI 15 at the relevant Conversion Valuation Date by the Adjusted FINI 15 at the relevant Base Valuation Date;

K = the number of "A" Preference Shares to be converted into ordinary Shares in the capital of the Company; and

L = the number of authorised "A" Preference Shares in the capital of the Company.

- 4.2 Provided that, if in any calculation of C, the Market Price of an ordinary Share on that Conversion Valuation Date is less than the Market Price of an ordinary Share on the Base Valuation Date, C shall be deemed to equal nil.
- 4.3 Provided further that, if in any calculation of C, the value of C is nil or deemed to be nil, the Directors may, in their sole discretion, resolve to convert that proportion of the "A" Preference Shares then ranking for conversion into ordinary Shares in the capital of the Company, failing which such "A" Preference Shares shall immediately be redeemed in accordance with clause 5 of this Schedule 2.
- 4.4 Provided further that, if in any calculation of A, the value of A is more than the number of "A" Preference Shares ranking for conversion, then A shall be deemed to be equal to the number of "A" Preference Shares ranking for conversion.
- 4.5 Provided further that, if in any calculation of A, the value of A is less than the number of "A" Preference Shares ranking for conversion, the number

"A" Preference Shares not converted into ordinary Shares shall forthwith be redeemed at par plus any arrear preference dividends at that time (as determined in clause 5.2.2 of this Schedule 2).

- 4.6 In the event that the calculation as set out in this clause 4 gives rise to a fraction of an ordinary Share becoming due to a shareholder, the number of ordinary Shares arising shall be rounded down to the nearest whole number.

## 5 REDEMPTION

- 5.1 Subject to the provisions of the Companies Act, the conditions of issue, of any "A" Preference Shares may, with the sanction of a special resolution, provide or may be varied so that they are, or at the option of the Company are to be liable, to be redeemed on such terms and in such manner as the Company may by such or subsequent special resolution determine.

- 5.2 Should the Directors, in accordance with clause 4.3 of this Schedule 2, resolve not to convert a particular tranche of the "A" Preference Shares (or part thereof) the Company shall, subject to the provisions of the Companies Act, redeem such number of the "A" Preference Shares in full for an amount equal to -

- 5.2.1 the Subscription Price; plus

- 5.2.2 any arrear preference dividends which at the date of redemption are still in arrear and unpaid, on the basis that a dividend will be deemed to be in arrear and unpaid if at any earlier dividend payment date the preference dividend was neither declared nor paid or, if declared, was not paid.

- 5.3 Any premium may be paid out of the share premium account.

- 5.4 The "A" Preference Shares shall forthwith become redeemable and be redeemed upon the occurrence of anyone of the following events, namely -

- 5.4.1 the Company is placed into liquidation or under judicial management, whether provisional or final; or

- 5.4.2 the Company gives any notice or takes any steps to convene a meeting of its shareholders to adopt a resolution placing it in liquidation or under judicial management whether provisional, voluntary or otherwise; or
- 5.4.3 the Company makes or attempts to make or recommends that any general offer of compromise with any or all of its creditors.
- 5.5 The amount at which the Company shall redeem the "A" Preference Shares in terms of clause 5.4 of this Schedule 2 shall be an amount equal to the Redemption Amount calculated in accordance with clause 5.1 of this Schedule 2.
- 5.6 "A" Preference Shares that have been redeemed shall not be cancelled but shall be available for re-issue by the Directors of the Company.

## 6 OTHER

- 6.1 Save as set out in this clause 6 of this Schedule 2, the "A" Preference Shares shall not be entitled to any participation in the profits or assets of the Company, or, on a winding-up or liquidation of the Company, in any of the surplus assets of the Company; provided that the "A" Preference Shares shall on a winding-up or liquidation rank in priority to the Company's ordinary Shares to the extent of the repayment of the Subscription Price paid up thereon together with all arrears in respect of the "A" Preference Dividends.
- 6.2 The Company shall be obliged to give the "A" Preference Shareholders notice, in terms of the Companies Act, of any meeting of "A" Preference Shareholders. At every meeting of the holders of the "A" Preference Shares, the provisions of the Company's Memorandum of Incorporation relating to general meetings of holders of ordinary Shares shall apply *mutatis mutandis*, except that a quorum at any such class meeting of "A" Preference Shareholders shall be any person or persons holding or representing by proxy at least  $\frac{1}{4}$  (one quarter) of the issued "A" Preference Shares, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the said Memorandum of Incorporation relating to adjourned general meetings shall, *mutatis mutandis*, apply.

- 6.3 The registered holders of the "A" Preference Shares shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the "A" Preference Shares, unless one or more of the following circumstances prevail at the date of the meeting -
- 6.3.1 the "A" Preference Dividends or any part thereof, whether declared or not, remain in arrear and unpaid after seven days from the due date thereof; or
- 6.3.2 any redemption payment remains in arrear and unpaid after seven days from due date thereof; or
- 6.3.3 a resolution of the Company is proposed which directly affects the rights attached to the "A" Preference Shares or the interest of the holders thereof, including a resolution for the winding-up of the Company or for the reduction of its share capital or share premium account.
- 6.4 At every general meeting or adjourned general meeting of the Company at which holders of ordinary Shares and the holders of "A" Preference Shares are present and entitled to vote, upon a poll, a holder of "A" Preference Shares shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the "A" Preference Shares held bears to the aggregate amount of the nominal value of all shares issued by the Company at the relevant time.
- 6.5 Notwithstanding any provisions to the contrary contained herein, the terms of the "A" Preference Shares may not be modified, altered, varied, added to or abrogated without the prior written consent of both the Company and all the holders of the "A" Preference Shares.
- 6.6 The "A" Preference Dividends of a particular tranche of "A" Preference Shares shall cease to accrue from the date of conversion or redemption of that tranche of the "A" Preference Shares.
- 6.7 Should the holders of the "A" Preference Shares deliver or tender delivery of the share certificates to the Company in respect of the "A" Preference Shares and should the Company fail to pay the Redemption Amount on the redemption date then interest at the Prime Rate shall accrue on the

Redemption Amount from the date of redemption to the day prior to the actual date of payment of the Redemption Amount.

**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED  
WITH THE "B" PREFERENCE SHARES**

- 1 The "B" Preference Shares shall confer on the holders thereof ("**Holders**") the right, on a winding-up of the Company, to the repayment, out of the surplus assets of the Company, of the nominal capital paid up thereon and a premium (calculated by dividing the total premium paid up in respect of all of the "B" Preference Shares then in issue by the total number of "B" Preference Shares then in issue), together with the payment of all arrear dividends (being dividends that have been declared but not paid) calculated to the date of repayment of capital, in priority to the ordinary Shares and any other class of Shares not ranking in priority to or *pari passu* with the "B" Preference Shares but shall have no further right to participate in the profits or assets of the Company.
- 2 The "B" Preference Shares shall be issued in such number and at such times as the Directors in their sole discretion may determine.
- 3 In respect of each issue of "B" Preference Shares, the "B" Preference Shares shall have the special rights and privileges as set out in this Schedule 3 and shall constitute the same class of Share (and all existing "B" Preference Shares and "B" Preference Shares which were designated by the Company and listed on the JSE Limited as "B1" Preference Shares, in issue, shall henceforth constitute the same class of Share).
- 4 The "B" Preference Shares have a par value of R0.01 (one cent) each and shall be allotted and issued, credited as fully paid at a premium to be determined by the Directors at the time of issue, against receipt of the subscription price for each preference share.
- 5 The "B" Preference Shares shall confer on the Holder thereof the right to receive out of the profits of the Company a non-cumulative preference cash dividend ("**B" Preference Dividend**") which shall accrue on a daily basis but shall not be compounded and which shall be determined in the manner set out in clauses 6 and 7 of this Schedule 3 but subject to the provisions of clauses 8 and 9 of this Schedule 3, and which will rank in priority to any dividends which

after the date of issue of the "B" Preference Shares ("**Issue Date**") may be declared in respect of any ordinary Shares in the Company but *pari passu* in respect of any dividends declared on any other preference Shares in the Company.

- 6 Save for the first "B" Preference Dividend, the "B" Preference Dividend shall, if declared, be due and payable six monthly in arrear, on the last Monday in February and the last Monday in August of each year or such other dates in each year, being approximately six months apart, as may be determined by the Directors in their sole discretion, in respect of each allotment and issue of the "B" Preference Shares, provided that if any such date is not a business day then it shall be the immediately succeeding date which is a business day and provided further that if any such date is not permissible in terms of the requirements of any securities exchange on which the "B" Preference Shares may be listed at any time then it shall be the nearest date which is so permissible ("**Dividend Dates**"), to Holders registered as such on the business day immediately preceding each Dividend Date. The first "B" Preference Dividend, if declared, shall be in respect of the initial period from the Issue Date to the immediately following Dividend Date (both days inclusive), and thereafter in respect of each period preceding a Dividend Date (including the first day and the last day of such period). The "B" Preference Dividends shall, if declared, be paid on each Dividend Date.
- 7 The "B" Preference Dividend for each of the "B" Preference Shares shall, subject to clause 9 of this Schedule 3, be calculated in arrear with effect from the last Monday in August 2012 (or such other date being approximately six months after the previous Dividend Date, as contemplated in clause 6 of this Schedule 3) in accordance with the following formula –

$$A = \frac{B \times C \times D \times E}{365}$$

Where –

A = the "B" Preference Dividend per "B" Preference Share;

B = 75,56% (seventy five comma five six percent);



C = the average prevailing interest rate (percent, per annum compounded monthly) from time to time published by FirstRand Bank Limited as being its minimum overdraft rate (as certified by any manager of FirstRand Bank Limited whose appointment and designation need not be proved) ("**Prime Rate**") expressed as a percentage over the number of days of the relevant period for which the dividend is payable but ignoring, for purposes of this calculation, any change in the Prime Rate between the date on which a dividend is declared and the Dividend Date (being the date on which it is due and payable);

D = the number of days of the relevant period for which the "B" Preference Dividend is payable; and

E = R100 (one hundred rand), being the deemed issue price of each of the "B" Preference Shares.

- 8 If any "B" Preference Dividend is not declared by the Company in respect of the period to which such "B" Preference Dividend relates, the "B" Preference Dividend will not accumulate and will accordingly never become payable by the Company whether in preference to payments to any other class of Shares or otherwise. Notwithstanding the foregoing, the Company shall, if it fails to declare a "B" Preference Dividend in respect of any applicable period, be obliged to retain in reserve an amount equivalent to the aggregate amount of profits generated by the Company during such period.
- 9 If any declared "B" Preference Dividend is not paid on the due Dividend Date ("**Unpaid Dividend**") interest shall accrue on the Unpaid Dividend at the Prime Rate calculated from the due date for payment thereof, which interest shall be payable by the Company to the Holder when the Unpaid Dividend is paid.
- 10 If there is an amendment or amendments to the Income Tax Act, No 58 of 1962 ("**Income Tax Act**") that results in the "B" Preference Dividends being taxable in the hands of the Holders and which results in payment of the "B" Preference Dividends becoming a deductible expense for the Company, provided such amendment is uniformly applicable to all corporate taxpayers and not only because of the particular circumstance of the Company or any Holder, the percentage of the Prime Rate will be increased by the Company.

Such increase will be limited to the extent that the Company incurs less cost in servicing the "B" Preference Shares, which cost savings it would not have obtained but for such amendments to the Income Tax Act. If such amendments to the Income Tax Act do not result in the Company incurring lesser costs in servicing the "B" Preference Shares, then, notwithstanding that such amendment may result in a decrease in the after-tax returns of any Holder on its holding of "B" Preference Shares, no change shall be made to the percentage of the Prime Rate. The Company shall be entitled to require its auditors to verify whether it is obliged to increase the percentage of the Prime Rate in accordance with this clause 10. The auditors, in deciding whether such increase is required in terms of this clause 10, shall act as experts and not as arbitrators and their decision shall, in the absence or manifest error, be final and binding on the Company and all Holders. The cost of such auditors shall be borne and paid by the Company.

- 11 Save as set out in clause 1 of this Schedule 3, the "B" Preference Shares shall not be entitled to any participation in the profits or assets of the Company, or, on a winding up or liquidation of the Company, in any of the surplus assets of the Company.
- 12 The Company shall be obliged to give the Holder notice, in terms of the Companies Act, of any meeting of Holders. At every meeting of the Holders, the provisions of the Company's Memorandum of Incorporation relating to general meetings of ordinary Shareholders shall apply *mutatis mutandis*, except that a quorum at any such class meeting of Holders shall be any person or persons holding or representing by proxy at least  $\frac{1}{4}$  (one quarter) of the issued "B" Preference Shares, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the said Memorandum of Incorporation relating to adjourned general meetings shall, *mutatis mutandis*, apply.
- 13 Notwithstanding any provisions to the contrary contained herein -
  - 13.1 the terms of the "B" Preference Shares may not be modified, altered, varied, added to or abrogated without the prior written consent of both the Company and 75% (seventy five per centum) of the Holders or the sanction of a resolution of the Holders passed at a separate general meeting of

Holder, at which the Holders, holding in aggregate not less than  $\frac{1}{4}$  (one quarter) of the total votes of all the Holders entitled to vote at that meeting are present in person or by proxy and the resolution has been passed by not less than  $\frac{3}{4}$  (three quarters) of the total votes to which the Holders present in person or by proxy, are entitled; and

- 13.2 the share premium and non-distributable reserves of the Company may not be repaid or distributed except in such manner as is permitted by the Companies Act.
- 14 Payment in respect of "B" Preference Dividends on the Dividend Dates shall be made by electronic transfer for credit to an account nominated in writing by such Holder.
- 15 The Company shall not be entitled at any time after the date of issue of the "B" Preference Shares to create and/or issue any further Shares (whether of the same class as the "B" Preference Shares or not) ranking in priority to the "B" Preference Shares without the consent in writing of 75% (seventy five per centum) of the Holders or the sanction of a resolution of the Holders, passed at a separate general meeting of Holders, at which the Holders, holding in aggregate not less than  $\frac{1}{4}$  (one quarter) of the total votes of all the Holders entitled to vote at the meeting are present in person or by proxy, and the resolution has been passed by not less than  $\frac{3}{4}$  (three quarters) of the total votes to which the Holders present in person or by proxy are entitled; provided that the Company shall be entitled to create and/or issue further preference Shares (whether of the same class as the "B" Preference Shares or not), ranking *pari passu* with the "B" Preference Shares, provided further that preference shares of a different class shall not rank ahead of the "B" Preference Shares merely due to the rights attaching to those preference Shares differing from the rights attaching to the "B" Preference Shares (including, without limiting the generality of the foregoing rights different as to the coupon rate applicable to the dividend, the date of payment of dividends, any adjustment in accordance with clause 10 of this Schedule 3, the redemption of the preference shares, the redemption amount payable on redemption, the conversion of the preference shares and whether the preference shares are cumulative or noncumulative).

- 16 Subject to the provisions of the Companies Act, the conditions of issue, of any "B" Preference Shares may, with the sanction of a special resolution, provide or may be varied so that they are, or at the option of the Company are to be liable, to be redeemed on such terms and in such manner as the Company may by such or subsequent special resolution determine.
- 17 The Holders shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue or in respect of the "B" Preference Shares, unless any one or more of the following circumstances prevail at the date of the meeting –
  - 17.1 the "B" Preference Dividend or any part thereof remains in arrear and unpaid after seven days from the due date thereof;
  - 17.2 a resolution of the Company is proposed which affects the rights attached to the "B" Preference Shares or the interest of the Holders including, but not limited to, a resolution for the winding-up of the Company or reduction of capital or share premium account; or
  - 17.3 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole of the greater part of the assets of the Company.
- 18 At every general meeting or adjourned general meeting of the Company at which holders of the ordinary Shares and the Holders are present and entitled to vote, upon a poll, a Holder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the "B" Preference Shares held by it bears to the aggregate amount of the nominal value paid on all Shares issued by the Company at the relevant time.

**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED  
WITH THE "C" PREFERENCE SHARES**

- 1 The "C" Preference Shares shall confer on the holder thereof ("**Holder**") the right, on a winding-up of the Company, to the repayment, out of the surplus assets of the Company, of the capital and any premium paid up thereon, together with payment of all arrear dividends calculated to the date of repayment of capital, in priority to the ordinary Shares and any other class of Shares not ranking in priority to or *pari passu* with the "C" Preference Shares but shall have no further right to participate in the profits or assets of the Company.
- 2 The "C" Preference Shares shall be issued in such number and at such times as the Directors in their sole discretion may determine.
- 3 In respect of each issue of "C" Preference Shares, the "C" Preference Shares shall be designated as a separate class of Share having the special rights and privileges as set out in this Schedule 4.
- 4 The "C" Preference Shares have a par value of R0.01 (one cent) each and shall be allotted and issued, credited as fully paid at a premium to be determined by the Directors at the time of issue, against receipt of the subscription price for each preference Share.
- 5 The "C" Preference Shares shall confer on the Holder thereof the right to receive out of the profits of the Company a six monthly non-cumulative preferential cash dividend ("**C Preference Dividend**") which shall accrue on a daily basis and which shall be determined in the manner set out in clauses 6 and 7 of this Schedule 4 but subject to the provisions of clauses 9 and 14 of this Schedule 4 and which will rank in priority to any dividends which after the date of issue of the "C" Preference Shares ("**Issue Date**") may be declared in respect of any ordinary Shares but *pari passu* in respect of any dividends declared on any other preference shares.
- 6 Save for the first "C" Preference Dividend and the last "C" Preference Dividend, the "C" Preference Dividends shall be due and payable six monthly in arrear, on 31 March and 30 September of each year provided that if such

date is not a business day then the immediately preceding date which is a business day ("**Dividend Dates**") to Holders registered on the business day immediately preceding each Dividend Date. The first "C" Preference Dividend, if declared, shall be in respect of the initial period from the Issue Date to the immediately following 30 June or 31 December (both days inclusive), as the case may be, and thereafter in respect of each period preceding a Dividend Date (including the first day and the last day of such period). The final dividend payment shall be due and payable on the day preceding the conversion date or the redemption date of that "C" Preference Share, as the case may be (but excluding such Dividend Date). If so declared, the "C" Preference Dividends shall be paid on each Dividend Date.

- 7 The "C" preference dividend for each of the "C" Preference Shares shall, subject to clause 14 of this Schedule 4, be calculated in arrears in accordance with the following formula -

$$A = \frac{B \times C \times D \times E}{365}$$

Where:

A = the "C" Preference Dividend per "C" Preference Share;

B = a rate to be determined by the Directors at the time of issue;

C = the average prevailing interest rate (per cent, per annum compounded monthly) from time to time published by FirstRand Bank Limited as being its minimum overdraft rate (as certified by any manager of FirstRand Bank Limited whose appointment and designation need not be proved) ("**Prime Rate**") expressed as a percentage over the number of days of the relevant period for which the dividend is payable;

D = the number of days of the relevant period for which the "C" Preference Dividend is payable; and

E = the issue price of each of the "C" Preference Shares.

- 8 If any declared "C" Preference Dividend is not paid on due Dividend Date ("**Unpaid Dividend**") interest shall accrue on the Unpaid Dividend at the Prime

Rate calculated from the due date for payment thereof, which interest shall be payable by the Company to the Holder when the Unpaid Dividend is paid.

- 9 If a "C" Preference Dividend is not declared by the Company in respect of the period to which such "C" Preference Dividend accrual relates, the "C" Preference Dividend will not accumulate and will accordingly never become payable by the Company whether in preference to payments to any other class of Shares or otherwise. Notwithstanding the foregoing, the Company shall, if it fails to declare a "C" Preference Dividend in respect of any applicable period, be obliged to retain in reserve an amount equivalent to the aggregate amount of profits generated by the Company during such applicable period.
- 10 Subject to the provisions of the Companies Act, the conditions of issue, of any "C" Preference Shares may, with the sanction of a special resolution, provide or may be varied so that they are, or at the option of the Company are to be liable, to be redeemed on such terms and in such manner as the Company may by such or subsequent special resolution determine.
- 11 The amount at which the Company shall redeem the "C" Preference Shares in terms of clause 12 of this Schedule 4 ("**Redemption Amount**") shall be an amount equal to -
  - 11.1 the issue price; plus
  - 11.2 any Unpaid Dividends which at the date of redemption are still unpaid, on the basis that a dividend will be deemed to be in arrear and unpaid if at any earlier dividend payment date the preference dividend was declared but not paid; plus
  - 11.3 interest on Unpaid Dividends calculated daily at the Prime Rate, from the due date for payment of the preference dividend up to (but excluding) the date of actual payment, compounded monthly; plus
  - 11.4 a dividend amount equal to a rate to be determined by the Directors at the time of issue, of the prevailing Prime Rate, calculated on the issue price of the "C" Preference Shares on a daily non-compounded basis for the period

from and including the last Dividend Date prior to redemption up to (but excluding) the date of payment of the redemption proceeds; plus

- 11.5 in the event of the Company being in breach of any of its obligations to the Holder in respect of the "C" Preference Shares, an amount equal to any reduction in such Holder's net after-tax return which such Holder would have earned had the Company not been so in breach.
- 12 Subject to the provisions of the Companies Act, the Directors may in their sole discretion resolve to redeem the "C" Preference Shares in full for the Redemption Amount, three years plus one day from the Issue Date ("**Maturity Date**"). Should the Directors resolve to redeem the "C" Preference Shares on the Maturity Date they shall notify the Holders in writing and the "C" Preference Shares shall be redeemed for the Redemption Amount against surrender to the Company of the certificates in respect of the "C" Preference Shares. Should the Directors resolve not to redeem the "C" Preference Shares on the Maturity Date, the Directors shall notify the Holders of this in writing which notice shall further specify a date in the future on which the Directors resolved to redeem the "C" Preference Shares. The date on which the Directors resolve to redeem the "C" Preference Shares in terms of this clause 12 of this Schedule 4 shall be the redemption date.
- 13 Should the Directors, in accordance with clause 12 of this Schedule 4 resolve not to redeem the "C" Preference Shares on the Maturity Date the Holder may, subject to the provisions of the Companies Act, elect to convert all of its "C" Preference Shares into ordinary Shares of R0.01 (one cent) each in the capital of the Company. Should the Holder wish to convert all of its "C" Preference Shares, the Holder will, within 60 (sixty) days of dispatch by the Company of the notice referred to in clause 12 of this Schedule 4, give notice to the Company of its election to convert its "C" Preference Shares into ordinary Shares in the capital of the Company. The "C" Preference Shares in respect of those Holders who have given notice of its election to convert its "C" Preference Shares in terms of this clause 13 of this Schedule 4 will be converted to ordinary Shares of R0.01 (one cent) each in the capital of the Company on a date 15 (fifteen) days after the end of the sixty day period referred to in this clause 13 of this Schedule 4 ("**Conversion Date**").



13.1 The conversion will be done in accordance with the following formula -

$$A = B / C \times D$$

Where -

A = the number of ordinary Shares in the share capital of the Company into which each "C" Preference Share will be converted;

B = the Subscription Price of the "C" Preference Shares;

C = the price of an ordinary Share in the share capital of the Company on the JSE on the Maturity Date; and

D = a factor, expressed as a percentage, determined by the Directors at the time the "C" Preference Shares are issued.

13.2 Provided that, if in any calculation of A, the value of A is more than the number of "C" Preference Shares ranking for conversion, then A shall be deemed to be equal to the number of "C" Preference Shares ranking for conversion.

13.3 Provided further that, if in any calculation of A, the value of A is less than the number of "C" Preference Shares ranking for conversion, the number of "C" Preference Shares not converted into ordinary Shares shall forthwith be redeemed at the Redemption Amount.

13.4 In the event that the calculation as set out in this clause 13 gives rise to a fraction of an ordinary Share becoming due to the Holder, the number of ordinary Shares arising shall be rounded down to the nearest whole number.

13.5 Such conversion will be done on the first business day following the Maturity Date ("**Conversion Date**").

14 Notwithstanding anything to the contrary herein contained, if there be any change in any law, Act, regulation or in the interpretation thereof or the introduction of any new law, Act or regulation (save for any change arising

from any change in the basic corporate tax rate of such Holder, or any change in rate of secondary tax on companies) which -

- 14.1 increases or reduces the cost of holding the "C" Preference Shares to any corporate Holder thereof; or
- 14.2 increases or reduces the net after tax dividend receipt to any Holder; or
- 14.3 increases or reduces the net after tax return to the Holder,

then the "C" Preference Dividend shall be increased or reduced, as the case may be, by the amount necessary to place such Holder in the same position as if such increase or reduction referred to in clause/s 14.1 and/or 14.2 and/or 14.3 of this Schedule 4 had not taken place. Such increase or decrease, as the case may be, in the "C" Preference Dividend shall take effect on the date upon which such Holder shall have notified the Company in writing of any adjustment required. A certificate by the auditors of such Holder shall be conclusive proof as to any adjustment required in terms hereof.

- 15 Notwithstanding any provisions to the contrary contained herein, if the Company is obliged to adjust the "C" Preference Dividend in terms of clause 14 of this Schedule 4, the Company will have the right to redeem, at its sole and exclusive discretion, which discretion will be exercised by the board of Directors, within 30 (thirty) days after having notified the Holders thereof, all of the "C" Preference Shares at any time before the redemption date, provided that the Redemption Amount will be calculated as set out in clause 10 of this Schedule 4.
- 16 Notwithstanding anything else to the contrary contained in this Schedule, it is agreed that if there is any change in the laws or banking regulations of the Republic which has the result that the cost to the Company of issuing redeemable preference shares is increased, and the Holder having received written notice from the Company, the Company shall be entitled to redeem all but not some of the "C" Preference Shares, within 30 (thirty) days after receipt of such notice by the Holder. The Redemption Amount will be calculated as set out in clause 10 of this Schedule 4.

- 17 Save as set out in clause 1 of this Schedule 4, the "C" Preference Shares shall not be entitled to any participation in the profits or assets of the Company, or, on a winding up or liquidation of the Company, in any of the surplus assets of the Company.
- 18 The Company shall be obliged to give the Holder notice, in terms of the Companies Act, of any meeting of Holders. At every meeting of the Holders, the provisions of the Company's Memorandum of Incorporation relating to general meetings of holders of ordinary Shares shall apply *mutatis mutandis*, except that a quorum at any such class meeting of Holders shall be any person or persons holding or representing by proxy at least  $\frac{1}{4}$  (one quarter) of the issued "C" Preference Shares, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the said Memorandum of Incorporation relating to adjourned general meetings shall, *mutatis mutandis*, apply.
- 19 Notwithstanding any provisions to the contrary contained in this Schedule -
- 19.1 the terms of the "C" Preference Shares may not be modified, altered, varied, added to or abrogated without the prior written consent of both the Company and 75% (seventy five per centum) of the Holders or the sanction of a resolution of the Holders of the "C" Preference Shares, passed at a separate general meeting of Holders, at which the Holders, holding in aggregate not less than  $\frac{1}{4}$  (one quarter) of the total votes of all the Holders entitled to vote at that meeting are present in person or by proxy, and the resolution has been passed by not less than  $\frac{3}{4}$  (three quarters) of the total votes to which the Holders present in person or by proxy, are entitled; and
- 19.2 the share premium and non-distributable reserves of the Company may not be repaid or distributed except in such manner as is permitted by the Companies Act.
- 20 The "C" Preference Dividends shall cease to accrue from the redemption date. Should the Holders deliver or tender delivery of the share certificates to the Company in respect of the "C" Preference Shares and should the Company fail to pay the Redemption Amount on the redemption date, then interest at the

Prime Rate shall accrue on the Redemption Amount from the redemption date to the day prior to the actual date of payment of the Redemption Amount.

- 21 Payment in respect of "C" Preference Dividends on the Dividend Dates and/or redemption monies on the redemption date shall be made by electronic transfer for credit to an account nominated in writing by such Holder.
- 22 The Company shall not be entitled at any time after the date of issue of the "C" Preference Shares to create and/or issue any further share (whether of the same class as the "C" Preference Shares or not) ranking in priority to the "C" Preference Shares without the consent in writing of 75% (seventy five per centum) of the Holders or the sanction of a resolution of the Holders, passed at a separate general meeting of Holders, at which the Holders, holding in aggregate not less than  $\frac{1}{4}$  (one quarter) of the total votes of all the Holders entitled to vote at that meeting are present in person or by proxy, and the resolution has been passed by not less than  $\frac{3}{4}$  (three quarters) of the total votes to which the Holders present in person or by proxy are entitled, provided that the Company shall be entitled to create and/or issue further preference shares (whether of the same class as the "C" Preference Shares or not), ranking *pari passu* with the "C" Preference Shares, provided further that preference shares of a different class shall not rank ahead of the "C" Preference Shares merely due to the rights attaching to those preference shares differing from the rights attaching to the "C" Preference Shares (including without limiting the generality of the foregoing rights different as to the coupon rate applicable to the dividend, the date of payment of dividends, any adjustment in accordance with clause 14 of this Schedule 4, the redemption of the preference shares, the redemption amount payable on redemption, the conversion of the preference shares and whether the preference shares are cumulative or non-cumulative).
- 23 The Company may apply its share premium account in providing for the premium payable, in respect of the "C" Preference Shares, on the redemption date of the "C" Preference Shares.
- 24 The Holders shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue or in respect of the "C" Preference Shares,

unless anyone or more of the following circumstances prevail at the date of the meeting -

- 24.1 the "C" Preference Dividend or any part thereof remains in arrear and unpaid after seven days from the due date thereof;
  - 24.2 any redemption payment remains in arrear and unpaid after seven days from the due date thereof;
  - 24.3 a resolution of the Company is proposed which affects the rights attached to the "C" Preference Shares or the interest of the Holders including, but not limited to, a resolution for the winding-up of the Company or reduction of capital or share premium account; or
  - 24.4 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole of the greater part of the assets of the Company.
- 25 At every general meeting or adjourned general meeting of the Company at which holders of the ordinary Shares and the Holders are present and entitled to vote, upon a poll, a Holder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the "C" Preference Shares held by it bears to the aggregate amount of the nominal value paid on all shares issued by the Company at the relevant time.

**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH  
THE "D" PREFERENCE SHARES**

- 1 The "D" Preference Shares shall confer on the holder thereof ("**Holder**") the right, on a winding-up of the Company, to the repayment, out of the surplus assets of the Company, of the capital and any premium paid up thereon, together with payment of all arrear and accrued dividends (whether earned, declared or not) calculated to the date of repayment of capital, in priority to the ordinary Shares and any other class of Shares not ranking in priority to or *pari passu* with the "D" Preference Shares but shall have no further right to participate in the profits or assets of the Company.
- 2 The "D" Preference Shares shall be issued in such number and at such times as the Directors in their sole discretion may determine.
- 3 Subject to the provisions of clause 1 of this Schedule 5, in respect of each issue of "D" Preference Shares, the "D" Preference Shares shall be designated as a separate class of preference share having such special rights and privileges, whether as to dividend entitlement, redemption, conversion, voting rights or otherwise as the Directors may in their sole discretion, prior to or upon each issue.
- 4 Subject to the provisions of the Companies Act, the "D" Preference Shares shall be liable to be redeemed at the discretion of the Directors on such basis as may be determined by the Directors in respect of each allotment of the "D" Preference Shares.
- 5 Subject to the provisions of the Companies Act, the conditions of issue of any "D" Preference Shares may, with the sanction of a special resolution, provide or may be varied so that they are, or at the option of the Company are to be liable, to be redeemed on such terms and in such manner as the Company may by such or subsequent special resolution determine.
- 6 The Company may apply its share premium account in providing for the premium payable, in respect of the "D" Preference Shares, on the redemption date of the "D" Preference Shares.
- 7 Subject to clause 3 of this Schedule 5, the Holders shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue or in respect of the "D" Preference Shares, unless anyone or more of the following circumstances prevail at the date of the meeting -

- 7.1 the preference dividend or any part thereof whether declared or not, remains in arrear and unpaid after seven days from the due date thereof;
- 7.2 any redemption payment remains in arrear and unpaid after seven days from the due date thereof;
- 7.3 a resolution of the Company is proposed which affects the rights attached to the "D" Preference Shares or the interest of the Holders thereof including, but not limited to, a resolution for the winding-up of the Company or reduction of capital or share premium account; or
- 7.4 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole of the greater part of the assets of the Company.
- 8 At every general meeting or adjourned general meeting of the Company at which holders of the ordinary Shares and the Holders are present and entitled to vote, upon a poll, a Holder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the "D" Preference Shares held by it bears to the aggregate amount of the nominal value paid on all Shares issued by the Company at the relevant time.
- 9 No further securities ranking in priority to the "D" Preference Shares, shall be created or issued without the consent in writing of 75% (seventy five per centum) of the Holders or the sanction of a resolution of the Holders, passed at a separate general meeting of Holders, at which the Holders holding in aggregate not less than  $\frac{1}{4}$  (one quarter) of the total votes of all the Holders entitled to vote at that meeting are present in person or by proxy, and the resolution has been passed by not less than  $\frac{3}{4}$  (three quarters) of the total votes to which the Holders present in person or by proxy, are entitled; provided that the Company shall be entitled to create and/or issue further preference shares (whether of the same class as the "D" Preference Shares or not), ranking *pari passu* with the "D" Preference Shares; provided further that preference shares of a different class shall not rank ahead of the "D" Preference Shares merely due to the rights attaching to those preference shares differing from the rights attaching to the "D" Preference Shares (including without limiting the generality of the foregoing rights differing as to the coupon rate applicable to the dividend, the date of payment of dividends, the redemption of the preference shares, the redemption amount payable on redemption, the conversion of the preference shares and whether the preference shares are cumulative or non-cumulative).