
MEMORANDUM OF INCORPORATION

OF

ABAGOLD LIMITED

A PUBLIC COMPANY

(Registration Number: 1995/070041/06)

Registration Date: 20 March 1995

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- A. Unless inconsistent with the context, the following words and expressions bear the following meanings and cognate expressions bear corresponding meanings:
- a) “**Act**” means the Companies Act, 2008, as amended, together with any regulations promulgated thereunder and includes all schedules to such Act;
 - b) “**board**” means the board of directors of the Company from time to time;
 - c) “**Company**” means the company named on the first page of this MOI, duly incorporated under the registration number endorsed thereon;
 - d) “**director**” means a member of the board and the alternate directors thereof;
 - e) “**MOI**” means this Memorandum of Incorporation, as amended from time to time;
 - f) “**Republic**” means the Republic of South Africa;
 - g) “**securities**” means any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued, by the Company;
 - h) “**shareholder**” means the holder of a share issued by the Company and who is registered as such in the Company’s securities register, established pursuant to section 50(1) and, for purposes of 3, includes a person who is entitled to exercise any voting rights in relation to the Company, irrespective of the form, title or nature of the securities to which those voting rights are attached; and
 - i) “**share**” means one of the units into which the proprietary interests of the Company is divided.
- B. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, then notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this MOI.
- C. Unless inconsistent with the context, an expression which denotes:
- a) any gender includes the other genders;
 - b) a natural person includes a juristic person (including a trust) and *vice versa*; and
 - c) the singular includes the plural and *vice versa*.
- D. The schedules to this MOI, if any, form an integral part of this MOI and words and expressions defined in this MOI, unless the context otherwise requires, bear the same meaning in such schedules.
- E. When, in this MOI, a particular number of business days is provided for, between the happening of one event and another, the number of days must be calculated by:
- a) excluding the day on which the first such event occurs;

- b) including the day on or by which the second event is to occur; and
 - c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in (a) and (b), respectively.
- F. Where any term is defined within the context of any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has application limited to only the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that such term has not been defined in this interpretation clause.
- G. In this MOI, unless the context clearly indicates otherwise:
- a) words that are defined in the Act bear the same meanings as in the Act;
 - b) headings to clauses are for reference purposes only and in no way govern or affect the interpretation of nor modify or amplify this MOI or any clause hereof; and
 - c) any reference to a section by number, refers to the corresponding section of the Act.

1 CLAUSE 1 - INCORPORATION AND NATURE OF THE COMPANY

1.1 Juristic Personality

- 1.1.1 The Company is a pre-existing public company as contemplated in section 8(2)(d) of the Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this MOI replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 1.1.2 The Company is incorporated in accordance with and governed by:
- 1.1.2.1 the unalterable provisions of the Act;
 - 1.1.2.2 the provisions in this MOI dealing with any matter the Act does not address;
 - 1.1.2.3 the provisions in this MOI altering the effect of any alterable provision of the Act;
 - 1.1.2.4 the provisions in this MOI imposing on the Company a higher standard, greater restriction, longer period of time or any similarly more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Act;
 - 1.1.2.5 the provisions in this MOI which contain restrictive conditions applicable to the Company and any requirement for the amendment of any such condition;
 - 1.1.2.6 the alterable provisions of the Act, subject to 1.1.2.3; and
 - 1.1.2.7 the remaining provisions of this MOI.

1.2 Powers of the Company

1.2.1 The Company is a juristic person which exists continuously until its name is removed from the companies register in accordance with the Act.

1.2.2 This MOI does not:

1.2.2.1 contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in 1.3, for the amendment of any such conditions; and

1.2.2.2 prohibit the amendment of any particular provision hereof.

1.2.3 The Company has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or this MOI provides otherwise.

1.2.4 If on incorporation or at any time thereafter, the Company's name includes the element "RF" as contemplated in section 11(3)(b) of the Act, a person dealing with the Company must be regarded as having notice and knowledge of the contents of this MOI and more particularly of:

1.2.4.1 any restrictive condition applicable to the Company and any requirement for the amendment of any such condition in addition to the requirements set out in section 16 of the Act; and

1.2.4.2 any prohibition against the amendment of any particular provision of the MOI.

1.3 MOI and Company rules

1.3.1 This MOI of the Company may be altered or amended only:

1.3.1.1 in compliance with a court order to be effected by a resolution of the board, without the need for a special resolution;

1.3.1.2 by the board in respect of:

1.3.1.2.1 an increase or decrease in the number of authorised securities of any class;

1.3.1.2.2 the reclassification of any classified securities that have been authorised but not issued;

1.3.1.2.3 the classification of any unclassified securities that have been authorised but are not issued pursuant to section 36(1)(c) of the Act, or

1.3.1.2.4 determining the preferences, rights, limitations or other terms of a class of authorised but unissued shares without specified preferences, rights, limitations or terms,

provided that any such amendment may only be effected with the prior approval of an ordinary resolution of the shareholders, and a Notice of Amendment being filed with the Commission; or

- 1.3.1.3 by a special resolution of the shareholders adopted at a shareholders' meeting or in accordance with section 60 of the Act, having been proposed by i) the board, or ii) shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.
- 1.3.2 An amendment contemplated in 1.3.1.3 may take the form of:
 - 1.3.2.1 a new MOI in substitution for the existing MOI; or
 - 1.3.2.2 one or more alterations to the existing MOI by:
 - 1.3.2.2.1 changing the name of the Company;
 - 1.3.2.2.2 deleting, altering or replacing any of its provisions;
 - 1.3.2.2.3 inserting any new provisions; or
 - 1.3.2.2.4 making any combination of such alterations.
- 1.3.3 After amending its MOI, the Company shall file a Notice of Amendment with the Commission in accordance with the requirements of section 16(7) and (8) and section 36(4) of the Act.
- 1.3.4 An amendment to this MOI shall take effect:
 - 1.3.4.1 in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or
 - 1.3.4.2 in any other case, on the later of:
 - 1.3.4.2.1 the date on, and time at, which the Notice of Amendment is filed; or
 - 1.3.4.2.2 the date, if any, set out in the Notice of Amendment.
- 1.3.5 The board shall have authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in this MOI or the Act, by:
 - 1.3.5.1 delivering a copy of those rules, or any amendment or repeal thereof, to every shareholder by hand, by ordinary mail (at such shareholder's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the shareholder has given the Company an email address for the purposes of receiving communications; and
 - 1.3.5.1.1 filing a copy of those rules, or any amendment or repeal thereof, with the Commission.

1.3.6 Any necessary or incidental rules made, amended or repealed as contemplated in 1.3.5 shall:

1.3.6.1 take effect on the later of:

1.3.6.1.1 10 business days after the rule is filed with the Commission; or

1.3.6.1.2 the date, if any, specified in the rule; and

1.3.6.2 be binding:

1.3.6.2.1 on an interim basis from the time it takes effect until it is put to a vote at the next general shareholders meeting of the company; and

1.3.6.2.2 on a permanent basis, from the date on which it took effect pursuant to 1.3.6.1, only if it has been ratified by an ordinary resolution at the meeting contemplated in 1.3.6.2.1.

1.4 **Alterations of MOI and Company rules, translations and consolidations of MOI**

1.4.1 The board, or an individual authorised by the board, may alter the Company's rules, or its MOI, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:

1.4.1.1 publishing a notice of the alteration in the manner contemplated in 1.3.5.1; and

1.4.1.2 filing a notice of the alteration with the Commission.

1.4.2 At any time after having filed its MOI with the Commission, the Company may file one or more translations thereof, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the MOI, as so translated.

1.4.3 At any time after having filed its MOI with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its MOI, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of 1.4.3 must be accompanied by:

1.4.3.1 a sworn statement by a director; or

1.4.3.2 a statement by an attorney or notary public,

stating that it is a true, accurate and complete representation of the Company's MOI, as so altered or amended.

1.4.4 To the extent necessary to implement an adopted business rescue plan and provided that the business rescue plan was approved by the shareholders, as contemplated in section 152(3)(c) of the Act, the business rescue practitioner may

amend this MOI to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of this MOI or of sections 16, 36 or 37, to the contrary, in accordance with section 152(6)(b) of the Act.

1.5 **Application of optional provisions of the Act**

1.5.1 The Company, being a public company, is required to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act.

1.5.2 The Company, being a public company, is required to be and have its securities subject to Parts B and C of Chapter 5 of the Act and the Takeover Regulations under the Act.

1.6 **Limitation of Liability**

No person shall, subject to the provisions of section 77 of the Act, solely by reason of being an incorporator, shareholder or director of the Company, be liable for any liabilities or obligations of the Company.

2 **CLAUSE 2 - SECURITIES OF THE COMPANY**

2.1 **Issue of shares and variation of rights**

2.1.1 The Company is authorised to issue 200 000 000 no par value ordinary shares, in accordance with the provisions of this 2.1, which ordinary shares, when issued, entitles the holder to the rights set out in 2.1.2 below.

2.1.2 Each of the 200 000 000 (two hundred million) authorised ordinary no par value shares when issued entitles the holder to the rights attaching to the particular class of ordinary shares set out in this 2.1.2, namely to:

2.1.2.1 vote on any matter to be decided by a vote of the ordinary shareholders on the basis contemplated in 3.3.1;

2.1.2.2 participate in any distribution by the Company to the ordinary shareholders; and

2.1.2.3 participate in the distribution of the residual value of the Company upon its dissolution.

2.1.3 Subject always to the prior approval of the shareholders by ordinary resolution, the board is authorised to issue shares at any time, but only within the classes, and only to the extent that the shares have been authorised by or in terms of this MOI. Any such approval may be in the form of a general authority to the directors, whether conditional or unconditional, to allot or issue any shares in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of shares. If any such approval is given in the form of a general authority to the directors, it shall be valid only until the next annual general meeting but, provided it has not been implemented, it may be varied or revoked

by any general meeting of the Company prior to the holding of the next annual general meeting.

- 2.1.4 The authority of the board to increase or decrease the number of authorised shares of any class, to reclassify any classified shares that have been authorised but not issued, to classify any unclassified shares that have been authorised but not issued, or to determine the preferences, rights, limitations or other terms of any class of authorised but unissued shares, is restricted or varied in the manner contemplated in 1.3.1.2.
- 2.1.5 The authority of the board to authorise the Company to provide financial assistance by way of a 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 securities of the Company or a related or inter-related company, subject to the provisions of section 44(3)(a) and (b), is not restricted or varied by this MOI.
- 2.1.6 Subject to 2.1.3 and the provisions of section 47 of the Act, the board may approve the issuing of any authorised shares of the Company as capitalisation shares on a *pro rata* basis, or, after the shares have been reclassified pursuant to 1.3.1.2.2, the issuing of shares of one class as capitalisation shares in respect of shares of another class, and subject to section 47(2) of the Act, may permit shareholders to elect to receive a cash payment in lieu of a capitalisation share.
- 2.1.7 Should there be any issued preference shares in the share capital of the Company, the issue of further shares ranking in priority to, or *pari passu* with those preference shares, shall be deemed to be a variation of the rights attached to those preference shares, which will adversely affect those rights and no further shares of any class ranking in priority to, or *pari passu* with, existing preference shares, shall be created without a special resolution passed at a separate general meeting of such holders.

2.2 **Certificated and uncertificated securities**

- 2.2.1 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 Act, the rights and obligations of shareholders shall not be different solely on the basis of their shares being certificated shares or uncertificated shares and each provision of this MOI applies with respect to any uncertificated shares in the same manner as it applies to certificated shares (and *vice versa*) unless otherwise stated or indicated by the context.
- 2.2.2 Any certificated securities may cease to be evidenced by certificates, and thereafter become uncertificated securities.
- 2.2.3 Any uncertificated securities may be withdrawn from the uncertificated securities register/s to be maintained by or on behalf of the Company as contemplated in 2.3.3 (“**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 such withdrawn securities, may so notify the

Company's central securities depository contemplated in 2.3.3 ("**central securities depository**") as required by the rules of the central securities depository.

2.2.4 After receiving notice from a central securities depository that the holder of uncertificated securities wishes to withdraw all or part of the uncertificated securities held by it an uncertificated securities register, and obtain a certificate in respect thereof, the Company shall:

2.2.4.1 immediately enter the relevant shareholder's name and details of its holding of securities in the Company's securities register contemplated in 2.3.1 ("**securities register**") and indicate on the securities register that the securities so withdrawn are no longer held in uncertificated form; and

2.2.4.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a shareholder who is not resident within the Republic) prepare and deliver to the relevant person a certificate in respect of such securities and notify the central securities depository that the securities are no longer held in uncertificated form.

2.2.5 The Company may charge a shareholder a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

2.3 **Securities register**

2.3.1 The Company must establish or cause to be established a securities register in the form prescribed by the Act and maintain the securities register in accordance with the prescribed standard.

2.3.2 As soon as practicable after issuing any securities the Company must enter or caused to be entered in the securities register, in respect of every class of securities it has issued:

2.3.2.1 the total number of uncertificated securities;

2.3.2.2 with respect to certificated securities:

2.3.2.2.1 the names and addresses of the persons to whom the certificated securities have been issued;

2.3.2.2.2 the number of certificated securities issued to each of them;

2.3.2.2.3 in respect of securities other than shares (as contemplated in section 43 of the 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

2.3.2.3 any other prescribed information.

2.3.3 If the Company has issued uncertificated securities, or has issued securities that have ceased to be certificated securities as contemplated in clause 2.2.2, a record must be administered and maintained by a central securities depository, in the prescribed form, as the Company's uncertificated securities register, which:

- 2.3.3.1 forms part of the Company's securities register; and
 - 2.3.3.2 must contain, with respect to all uncertificated securities contemplated in this clause 2, any details referred to in clause 2.3.2.2.1, read with the changes required by the context or as determined by the relevant rules of the central securities depository.
 - 2.3.4 The Company's securities register or uncertificated securities register maintained in accordance with the Act shall be sufficient proof of the facts recorded therein, in the absence of evidence to the contrary.
 - 2.3.5 Unless all of the Company's 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.
 - 2.3.6 A certificate evidencing any certificated securities of the Company:
 - 2.3.6.1 must state on its face:
 - 2.3.6.1.1 the name of the Company;
 - 2.3.6.1.2 the name of the person to whom the securities were issued;
 - 2.3.6.1.3 the number and class of shares and the designation of the series, if any, evidenced by that certificate;
 - 2.3.6.1.4 a number distinctive for that certificate; and
 - 2.3.6.1.5 any restriction on the transfer of the securities evidenced by that certificate,

provided that any share certificate issued by a pre-existing company shall not be invalidated solely by reason of it failing to comply with the aforesaid specifications;
 - 2.3.6.2 must be signed by two persons authorised by the board, which signatures may be affixed to or placed on the certificate by autographic, mechanical or electronic means; and
 - 2.3.6.3 is proof that the named security holder owns the securities, in the absence of proof to the contrary.
- 2.3.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 2.3.8 If a securities certificate is defaced, lost or destroyed, it may be replaced on payment of any duty payable on the new certificate and 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 board may think fit and, in the case of defacement, on delivery of the old certificate to the Company.

2.3.9 The Company shall not be bound to register more than one person as the holder of any security.

2.4 Transfer of securities

2.4.1 Subject to 2.4.2.2, the Company must enter in its securities register every issue and transfer of certificated securities, including in the entry:

2.4.1.1 the name and address of the transferee;

2.4.1.2 the description of the securities or interest transferred;

2.4.1.3 the date of the transfer; and

2.4.1.4 the value of any consideration still to be received by the Company on each security or interest, in the case of an issue and/or transfer of securities contemplated in section 40(5) and (6) of the Act.

2.4.2 The Company may make an entry contemplated in 2.4.1 only if the transfer:

2.4.2.1 is evidenced by an instrument of transfer in a form and substance satisfactory to the board that has been delivered to the Company; or

2.4.2.2 was effected by operation of law,

and provided always that the directors shall have the discretion to refuse to effect the transfer of shares if they have reason to believe that such transfer is, or may be, in breach of any contractual restrictions applicable to the shares forming the subject matter of such intended transfer.

2.4.3 The transfer of uncertificated securities may be effected only:

2.4.3.1 by the Company's appointed central securities depository/ies;

2.4.3.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of the central securities depository or an order of Court; and

2.4.3.3 in accordance with section 53 of the Act and the rules of the central securities depository.

2.4.4 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.

All legal costs, including securities transfer tax, payable in respect of any transfer of any securities pursuant to this MOI will be paid by the Company to the extent that the Company is liable therefore in law, but shall, to that extent, be recoverable from the person acquiring such securities.

2.5 **Debt Instruments**

2.5.1 The authority of the board to authorise the Company to issue secured or unsecured debt instruments at any time, is not restricted or varied by this MOI other than as set out in 2.5.2.

2.5.2 The board may grant special privileges associated with any debt instruments to be issued by the Company regarding:

2.5.2.1 attending and voting at general meetings;

2.5.2.2 the appointment of directors;

2.5.2.3 allotment of securities that have been authorised;

2.5.2.4 redemption of debt instruments by the Company; or

2.5.2.5 substitution of the debt instrument for shares of the Company,

provided that any such authority may only be exercised with the prior approval of an ordinary resolution of the shareholders and subject to the special resolution matters in clause 4.9.

2.6 **Beneficial Interests in Securities**

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

2.7 **No Lien**

It is recorded that, subject to any contractual arrangements between the Company and a shareholder and any provisions of this MOI to the contrary, fully paid securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

3 **CLAUSE 3 - SHAREHOLDERS**

For purposes of this clause 3, "shareholder" has the meaning in section 1 of the Act, but also includes a person who is entitled to exercise any voting rights in relation to the Company, irrespective of the form, title or nature of the securities to which those voting rights are attached.

3.1 **Shareholders' right to information**

Other than the rights to access information set out in section 26 of the Act, a shareholder has no further rights to information pertaining to the Company.

3.2 **Shareholders' authority to act**

3.2.1 If the Company at any time has only one shareholder, the ability of that shareholder to exercise any or all of the voting rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this MOI.

- 3.2.2 If, at any time, every shareholder is also a director, the authority of the shareholders to act on any matter that is required to be referred by the board to the shareholders for decision at any time after being referred by the board, without notice or compliance with any other internal formalities, is not restricted or varied by this MOI, provided that the requirements set out in section 57(4)(a)(i) to (iii) and section 57(4)(b) of the Act are met.
- 3.2.3 In accordance with section 60 of the Act:
- 3.2.3.1 a resolution which could be voted on at a shareholders' meeting may instead be adopted by written consent of shareholders entitled to exercise sufficient voting rights for it to be adopted as an ordinary or special resolution (as the case may be) at a properly constituted shareholders meeting, given in person or by electronic communication, provided that the resolution was submitted for consideration to the shareholders entitled to exercise voting rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by such shareholders within 20 business days after the resolution was submitted to them;
- 3.2.3.2 an election of a director that could be conducted at a shareholders' meeting may instead be conducted by written polling of all the shareholders entitled to exercise voting rights in relation to the election of that director;
- 3.2.3.3 within 10 business days after adopting a resolution or conducting a written poll to elect a director, in terms of 3.2.3 or 3.2.3.2, 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, or vote in the election of the director, as the case may be; and
- 3.2.3.4 the aforementioned shall not apply in respect of resolutions which are required, whether in terms of the Act or this MOI, to be adopted at an annual general meeting of the Company.

3.3 **Votes of shareholders**

- 3.3.1 Subject to the Act and subject to any special terms as to voting upon which any share may be issued or may for the time being be held, if voting on a particular matter is:
- 3.3.1.1 by a *show of hands*, any person present at the meeting whether as a shareholder or as proxy for a shareholder and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and
- 3.3.1.2 by *polling*, any person who is present at the meeting, whether as a shareholder or as proxy for a shareholder and is entitled to exercise voting rights, has the number of votes determined in accordance with the voting rights associated with the securities held by that shareholder.
- 3.3.2 A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:

- 3.3.2.1 at least five persons having the right to vote on that matter, either as a shareholder or a proxy; or
- 3.3.2.2 a person who is, or persons who together are, entitled, as a shareholder or proxy, to exercise at least 10% of the voting rights entitled to be voted on that matter.
- 3.3.3 Any entity holding shares conferring the right to vote may, by resolution of the directors or other governing body of that entity, authorise one person to act as its representative at any shareholders' meeting. The representative shall be entitled to exercise the same powers as that entity could have exercised if it were an individual shareholder. The board may, but shall not be obliged to, require proof to its satisfaction of the appointment or authority of a representative to act.

3.4 Proxies and voting under power of attorney

- 3.4.1 A shareholder may, at any time, appoint any individual, including an individual who is not a shareholder, as a proxy to:
 - 3.4.1.1 participate in and speak and vote at, a shareholders' meeting on behalf of the shareholder; or
 - 3.4.1.2 give or withhold written consent on behalf of the shareholder to a decision contemplated in section 60 of the Act.
- 3.4.2 A proxy appointment shall:
 - 3.4.2.1 be in writing, dated and signed by the shareholder; and
 - 3.4.2.2 remain valid for one year after the date on which it was signed, unless expressly stated otherwise or revoked in the manner contemplated in section 58(4)(c) of the Act.
- 3.4.3 The holder of a power of attorney from a shareholder may, if so authorised by the power of attorney, vote for and represent such shareholder at any meeting of the Company.
- 3.4.4 Every instrument of proxy, whether for a specified meeting or otherwise, shall comply with section 58 of the Act and subject thereto be in the following format, or in such other form as the board may approve, and the board may, if they think fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting:

“I/We

 of

being a shareholder/shareholders of the Company in respect of [] ordinary shares, do hereby appoint

.....of or failing him/herof or failing him/her the chair of the Company or failing him the chair of the meeting as my / our proxy to:

[participate in, and speak and vote for me / us at a shareholders' meeting of the Company to be held at on 20..... at (time appointed) and at any adjournment thereof.] /

[give or withhold written consent on my / our behalf to the written resolutions to which this form of proxy is attached, as contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any shareholders meeting held by the Company, or give or withhold written consent on my / our behalf in respect of any decision contemplated in section 60 of the Act, between the date of this proxy instrument and 20.....]*

Dated on 20.....

Name (in full)

Address

.....

signature

* **Delete as applicable**

I / We desire to vote as follows:

	For	Against	Abstain
Resolution No. 1			
Resolution No. 2			

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block."

3.4.5 Unless otherwise directed, the proxy will vote or abstain as he thinks fit in respect of the shareholder's total holding.

3.5 Representation by concurrent proxies

The right of a shareholder to appoint two or more persons concurrently as proxies, and to appoint more than one proxy to exercise voting rights attached to different securities held by the shareholder is not restricted or varied by this MOI.

3.6 Authority of proxy to delegate

The authority of a shareholder's proxy to delegate that proxy's authority to act on behalf of the shareholder, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this MOI.

3.7 Requirement to deliver proxy instrument to the Company

The instrument of proxy or power of attorney appointing a proxy for any particular meeting shall be delivered to the Company at its registered address not less than twenty-four hours (or such lesser period as the directors may determine in relation to any particular meeting) before such meeting is due to take place, disregarding Saturdays, Sundays and public holidays in the RSA, failing which the instrument of proxy or power of attorney shall not be treated as valid.

3.8 Deliberative authority of proxy

The authority of a shareholder's proxy to decide without direction from the shareholder whether to exercise, or abstain from exercising, any voting right of the shareholder, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this MOI.

3.9 Validity of appointment

3.9.1 The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing and delivery of a copy of the revocation instrument to the proxy and to the Company, or by the making of a later inconsistent appointment of another proxy.

3.9.2 The appointment of a proxy is suspended at any time and to the extent that the shareholder chooses to act directly and in person in the exercise of any rights as a shareholder.

3.9.3 A vote given in accordance with the terms of an instrument of proxy 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 of the transfer of the securities 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 not less than twenty-four hours (or such lesser period as the board may determine in relation to any particular meeting) before the time appointed for holding the meeting, disregarding Saturdays, Sundays and public holidays in the RSA.

3.10 **Record date for exercise of shareholder rights**

If, at any time, the board fails to determine a record date for any action or event, the record date for the relevant matter is:

- 3.10.1 in the case of a shareholders' meeting, the latest date by which the Company is required to give shareholders notice of that meeting; or
- 3.10.2 in any other case, the date of the action or event.

4 **CLAUSE 4 - SHAREHOLDERS' MEETINGS**

4.1 **Requirement to hold meetings**

The Company is not required to hold any shareholders' meetings other than those specifically required by section 61 of the Act and this 4, but may do so.

4.2 **Shareholders' right to requisition a meeting**

- 4.2.1 The right of shareholders to requisition the board to call a shareholders' meeting may be exercised if, in aggregate, written and signed demands for substantially the same purpose are made by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.
- 4.2.2 In addition, a shareholders' meeting may be called by the board.

4.3 **Location of shareholders' meetings**

The authority of the board to determine the location of any shareholders' meeting and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this MOI.

4.4 **Calling a shareholders' meeting**

If the Company is unable to convene a shareholders' meeting because it has no directors or because all of its directors are incapacitated, any shareholder may convene a shareholders' meeting.

4.5 **Notice of shareholders' meetings**

- 4.5.1 The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders is 10 business days before the meeting is to begin, or any shorter period provided that in the latter case such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting.
- 4.5.2 A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3) of the Act.

4.6 **Electronic participation in shareholders' meeting**

The authority of the Company to conduct a shareholders' meeting entirely by electronic communication, or to provide for one or more shareholders, or proxies for shareholders, to participate in a shareholders' meeting by electronic communication, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this MOI.

4.7 **Quorum for shareholders' meetings**

- 4.7.1 Subject to the provisions of 4.7.2 to 4.7.6 (both inclusive), the quorum requirement for:
- 4.7.1.1 a shareholders' meeting to begin is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
 - 4.7.1.2 a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- 4.7.2 Notwithstanding 4.7.1, where the Company has more than two shareholders, a meeting may not begin, or a matter may not begin to be considered, unless at least three shareholders are present at the meeting and the requirements of 4.7.1 are satisfied.
- 4.7.3 If, within 30 minutes after the appointed time for a meeting to begin, the requirements of 4.7.1, or 4.7.2 if applicable:
- 4.7.3.1 for that meeting to begin, have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week at the same time of the day and the same venue as the meeting so postponed; and
 - 4.7.3.2 for consideration of a particular matter to begin have not been satisfied:
 - 4.7.3.3 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 motion or vote; or
 - 4.7.3.4 if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, at the same time of the day and the same venue as the meeting so postponed, without motion or vote.
- 4.7.4 The person intended to preside at a meeting, where the quorum requirements in 4.7.1, or 4.7.2 if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:

- 4.7.4.1 exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of shareholders to be present at the meeting; or
- 4.7.4.2 one or more delayed shareholders have communicated an intention to attend the meeting, and those shareholders, together with others in attendance, would satisfy the quorum requirements.
- 4.7.5 After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least one shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- 4.7.6 If the quorum requirements in 4.7.1, or 4.7.2 if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the shareholders present in person or by proxy shall constitute a quorum.

4.8 **Adjournment of shareholders' meetings**

- 4.8.1 Subject to 4.7, 4.8.2 and 4.8.3, a shareholders' meeting or the consideration of any matter at the shareholders' meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- 4.8.2 An adjournment of a meeting, or the consideration of a matter at the meeting, in terms of 4.8.1, may be either to a fixed time and place or until further notice, as agreed at the meeting.
- 4.8.3 A meeting may not be adjourned beyond the earlier of:
 - 4.8.3.1 90 business days after the record date determined in accordance with 3.9.3; or
 - 4.8.3.2 60 business days after the date on which the adjournment occurred.

4.9 **Shareholders' resolutions**

- 4.9.1 For an *ordinary resolution* to be approved by shareholders, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.
- 4.9.2 For a *special resolution* to be approved by shareholders, it must be supported by the holders of at least 75% of the voting rights exercised on that resolution.
- 4.9.3 In addition to the matters requiring approval by way of a Special Resolution in terms of section 65(11) of the Act the following additional matters shall also require approval by way of a Special Resolution:
 - 4.9.3.1 Any variation of any of the preferences, rights, limitations or other terms attaching to any shares or class of shares of the Company;

- 4.9.3.2 The allotment or issue by the Company of any options, warrants or similar rights in respect of Securities, whether or not pursuant to a rights issue and including capitalisation shares, bonus shares, share options, share warrants and debentures which allotment or issue exceeds an amount equal to 10% of the current issued share capital.
- 4.9.3.3 The conclusion of any profit sharing arrangement with, or share incentive or other incentive scheme for, employees of the Company where such arrangement contemplates shares in excess of 10% of the current issued share capital being utilised;
- 4.9.3.4 The conclusion of any contract, plan or arrangement which provides for any participation by a party other than a Shareholder in the net income after tax and/or dividends of the Company;
- 4.9.3.5 Any transaction of any nature whatever between the Company and any of the Shareholders, officers or directors of the Company, or between the Company and any person or entity which is a family trust, family member, Affiliate or a Shareholder or any entity in which any Shareholder may have a direct or indirect interest, other than bona fida transactions done on an arm's length basis and which transaction is considered reasonable by the board
- 4.9.3.6 Any matter relating to the financing or capital or borrowings of the Company which would have the effect of directly or indirectly reducing the proportionate shareholding of any shareholder.

4.10 **Annual General Meeting**

- 4.10.1 The Company shall be required to hold an annual general meeting once in every calendar year, but no more than 15 months after the date of the previous annual general meeting or within an extended time allowed by the Companies Tribunal.
- 4.10.2 In addition to the requirements of 4.5, the notice calling an annual general meeting shall include:
- 4.10.2.1 the audited or reviewed annual financial statements for the immediately preceding financial year to be presented, or a summarised form thereof; and
 - 4.10.2.2 directions for obtaining a copy of the complete annual financial statements for the immediately preceding financial year.
- 4.10.3 The agenda at an annual general meeting shall include but shall not be limited to:
- 4.10.3.1 presentation of the directors' report and annual financial statements for the immediately preceding financial year; and
 - 4.10.3.2 election of directors, to the extent required by the Act or this MOI;
 - 4.10.3.3 any matters raised by shareholders, with or without advance notice to the Company;
 - 4.10.3.4 the remuneration to be paid to directors for the following financial year for approval by shareholders, to the extent then required, of such remuneration by special resolution in terms of section 66(9) of the Act; and
 - 4.10.3.5 the appointment of the Company's auditors in terms of section 90(1) of the Act.

5 **CLAUSE 5 - DIRECTORS AND OFFICERS**

5.1 **Composition of the board**

- 5.1.1 The board shall comprise not less than three directors and not more than 12 directors, at least 50% of which directors must be non-executive directors.. The shareholders shall be entitled, by ordinary resolution, to vary the maximum number of directors as they may from time to time consider appropriate.
- 5.1.2 In any election of directors, 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.
- 5.1.3 The board has the power to:
- 5.1.3.1 fill any vacancy on the board on a temporary basis, as set out in section 68(3), provided that such appointment must be confirmed by the shareholders, in accordance with 5.1.1, at the next annual general meeting of the Company as required in terms of section 70(3)(b)(i) of the Act; and

- 5.1.3.2 exercise all of the powers and perform any of the functions of the Company as set out in section 66(1) of the Act.
- 5.1.4 There are no *ex officio* directors in addition to the elected directors.
- 5.1.5 To become or to continue to act as a director or a prescribed officer of the Company, a person must not be:
 - 5.1.5.1 a juristic person;
 - 5.1.5.2 an unemancipated minor, or a person under a similar legal disability;
 - 5.1.5.3 a person who has been declared a delinquent or placed under probation by a court in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984, except to the extent permitted by the order of probation;
 - 5.1.5.4 an unrehabilitated insolvent;
 - 5.1.5.5 prohibited in terms of any public regulation to be a director;
 - 5.1.5.6 removed from an office of trust, on the grounds of misconduct involving dishonesty;
 - 5.1.5.7 a person who has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or any offence:
 - 5.1.5.7.1 involving fraud, misrepresentation or dishonesty;
 - 5.1.5.7.2 in connection with the promotion, formation or management of a company, or in connection with having been appointed or elected as a director or acting as a director or consenting to be appointed or elected as a director whilst being ineligible or disqualified to be a director, or in connection with serving as director having been placed under probation by a court in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (except to the extent permitted by the order of probation); or
 - 5.1.5.7.3 under the Act, the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, 1998, the Financial Intelligence Centre Act, 2001, the Securities Services Act, 2004, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.
- 5.1.6 A person need not satisfy any further eligibility requirements or qualifications.
- 5.1.7 At each annual general meeting of the Company, with effect from the annual general meeting of the Company and subject to the provisions relating to the disqualification of directors, each non-executive director then holding office for 3 or more years, shall retire.

5.1.8 A retiring director shall be eligible for re-election and, if re-elected, he shall be deemed not to have vacated his office, provided that the 3 year period contemplated in 5.1.7 shall commence afresh as at the date of such re-election.

5.1.9 The nomination for appointment of a director, other than a director contemplated in 5.1.8, must be in writing and lodged at the registered office of the Company at least 60 days prior to the General Meeting at which such director is to be elected, together with the consent of the nominee unless the latter is also the proposer.

5.2 **Alternate directors**

5.2.1 Each director may appoint and remove any person, including another director, to act as an alternate director in such director's place and during such director's absence, provided that such person has been approved for that purpose by an ordinary resolution of the shareholders to the extent required in terms of 5.1.1. Any appointment or removal of an alternate director shall be effected by a written notice to the Company signed by the person appointing or removing that alternate.

5.2.2 An alternate director shall, except as regards the power to appoint an alternate and to receive remuneration, be subject in all respects to the terms and conditions applicable to the other directors, and each alternate director shall be entitled:

5.2.2.1 to receive notice of all meetings of the directors or of any committee of the directors of which the alternate's appointor is a member;

5.2.2.2 to attend and vote at any such meetings at which the alternate's appointor is not personally present;

5.2.2.3 to furnish written consent to adopt a decision which could be voted on at a board meeting;

5.2.2.4 to be appointed as an alternate to more than one director and shall have a vote for each director for whom such alternate acts, at each meeting and for so long as such director is not present in addition to their own vote, if any; and

5.2.2.5 generally, to exercise and discharge all the functions, powers and duties of the alternate's appointor in such appointor's absence as if such alternate were a director.

5.2.3 An alternate director shall cease to be an alternate director if the alternate's appointor ceases for any reason to be a director, provided that if any director retires but is re-elected at the same meeting, any appointment made by such director shall remain in force as though the director had not retired.

5.3 **Authority of the board**

5.3.1 The business and affairs of the Company must be managed by or under the direction of the board. The authority of the board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this MOI.

5.3.2 If, at any time, the Company has only one director, the authority of that director to act without notice or compliance with any other internal formalities, is not restricted or varied by this MOI.

5.4 **Directors' meetings**

5.4.1 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.

5.4.2 In addition to the provisions of section 73(1) of the Act, any director may call a meeting of directors if such director considers there is good reason to do so.

5.4.3 The authority of the board to conduct a meeting entirely by electronic communication, or to provide for one or more directors to participate in a meeting by electronic communication is not restricted or varied by this MOI, provided that the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

5.4.4 The authority of the board to adopt a decision, which could be voted on at a board meeting, by way of 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, is restricted and varied by this MOI in that the written consent of all of the directors are required, save for those directors who are not in the RSA at the date and time on which the notice is given (whose consent shall not be so required). Any decision made in the manner contemplated in this 5.4.4 has the same effect as if it had been approved by voting at a meeting.

5.4.5 The board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this MOI or the Company's rules, provided that no meeting of the board shall be convened without notice to all of the directors subject, however, to the provisions of 5.4.6.

5.4.6 The authority of the board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this MOI.

5.4.7 The quorum requirement for a meeting is a majority of directors.

5.4.8 Resolutions of the board shall, save as otherwise provided herein, in order to be effective be passed by a majority of the votes of the directors present at a duly constituted meeting of the board on the basis that each director shall have one vote.

5.4.9 In the case of a tied vote or deadlock the chair shall not have a second or casting vote as to whether the resolution should be adopted or not, in this instance the tied vote or deadlocked matter shall automatically be referred to the shareholders to vote and decide upon in terms of 4.1.

5.5 Directors' power to affect borrowing

5.5.1 The board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

5.5.2 For the purposes of this clause 5.5, the borrowing powers of the Company shall be unlimited.

5.6 Directors' remuneration and financial assistance to directors

5.6.1 The authority of the Company to pay remuneration to the directors in the form of directors' fees, in accordance with a special resolution approved by the shareholders within the previous two years, is not restricted or varied by this MOI. Should an alternate director be appointed, the remuneration payable to such alternate director shall be paid out of the fees of the director appointing him/her and such director appointing him/her shall not be entitled to that portion of the fees so paid to the alternate for so long as the appointment of the alternate director remains in place.

5.6.2 The authority of the board to authorise the Company to provide direct or indirect financial assistance to a director or prescribed officer of the Company or 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 company or corporation, or to a person related to any such person or entity, subject to the provisions of section 45(3) of the Act, is not restricted and varied by this MOI.

5.6.3 "Financial assistance" for purposes of 5.6.2:

5.6.3.1 includes lending money, guaranteeing a loan or other obligation and securing any debt or obligation;

5.6.3.2 but does not include:

5.6.3.3 lending money in the ordinary course of business of the Company if its primary business is the lending of money;

5.6.3.4 an accountable advance to meet legal expenses in relation to a matter concerning the Company or anticipated expenses to be incurred by the person on behalf of the Company; or

5.6.3.5 an amount to defray a person's expenses for removal at the Company's request.

5.7 Indemnification of Directors

5.7.1 For purposes of this 5.7, "director" includes a former director, an alternate director, a prescribed officer or a person who is a member of a committee of a board, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the board.

5.7.2 The authority of the Company to advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the Company and to directly or indirectly indemnify a director in respect of such expenses if those proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director, is not restricted or varied by this MOI.

5.7.3 Subject to the section 78(6) of the Act, the authority of the Company to indemnify a director in respect of any liability for which the Company may indemnify a director, is not restricted or varied by this MOI, except that a director may not be relieved of:

5.7.3.1 a duty contemplated in section 75 or 76 of the Act; or

5.7.3.2 liability contemplated in section 77 of the Act; or

5.7.3.3 any legal consequences arising from an act or omission that constitutes misconduct or wilful breach of trust on the part of the director.

5.7.4 The authority of the Company to purchase insurance to protect:

5.7.4.1 a director against any expenses or liability for which the Company may indemnify a director as contemplated in 5.7.2 or 5.7.3; or

5.7.4.2 the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a director as contemplated in 5.7.2 or any liability for which the Company is permitted to indemnify a director as contemplated in 5.7.3,

is not restricted or varied by this MOI.

5.7.5 The Company shall be entitled to claim restitution from a director or a related Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this 5.7 or the Act.

5.8 **Committees of the board**

5.8.1 The authority of the board to appoint any number of committees for managing any of the affairs of the Company and to appoint any persons to be members of such committees and to delegate to any such committee or persons any authority of the board, is not restricted or varied by this MOI.

5.8.2 Subject to the powers and authorities granted by the board to any such committee, the authority of any such committee to:

5.8.2.1 include persons who are not directors, provided that such persons are not ineligible or disqualified from being a director as contemplated in 5.1.5 and that no such person shall vote on a matter to be decided by the committee;

5.8.2.2 consult with or receive advice from any other person; and

5.8.2.3 exercise the full authority of the board in respect of a matter referred to it,

is not restricted or varied by this MOI.

5.9 **Managing director**

5.9.1 The directors may from time to time appoint one or more of their body to the office of managing director for such term and at such remuneration as they may think fit (subject only to the requirements of section 66(8) and (9) of the Act) and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A director so appointed shall be subject to retirement in the same manner as the other directors except during the period of his agreement and his appointment shall terminate automatically if he ceases for any reason to be a director.

5.9.2 Subject to the provisions of any contract between himself and the Company, a managing director shall be subject to the same provisions as to disqualification and removal as the other directors of the Company.

5.9.3 The directors may from time to time entrust to and confer upon the managing director for the time being such of the powers exercisable in terms of this MOI 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.

5.10 **Authentication of documents**

5.10.1 Any director or any person appointed by the directors for this purpose shall have power to authenticate any resolutions passed by the shareholders or the directors, and any books, records, documents and accounts relating to 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 registered office, the local manager or other officer of the Company having the custody at such other place shall be deemed to be the person appointed by the directors aforesaid. The appointed company secretary of the Company shall have the power to authenticate and certify the aforementioned documents.

5.10.2 A document purporting to be a copy of a resolution of the directors or an extract from the minutes of a meeting of the directors which is certified as such in accordance with 5.10.1, shall be *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the directors.

6 CLAUSE 6 - GENERAL PROVISIONS

6.1 Distributions and Reserves

- 6.1.1 Subject to the provisions of section 46 of the Act, the board may from time to time, make a distribution in the form of a dividend to be paid to the shareholders according to their respective rights and interests in proportion to the number of shares held by them in each class in respect of which the dividend becomes payable. If any share is issued on terms providing that it shall rank for a distribution in the form of a dividend as from a particular date or for all distributions in the form of dividends declared after a particular date, such share shall rank for dividend accordingly.
- 6.1.2 A dividend may be declared out of the profits or reserves of the Company, whether realised or unrealised, whether of a revenue or a capital nature and whether designated distributions or not, and no dividend shall carry interest as against the Company, except as otherwise provided under the conditions of issue of the shares in respect of which such dividend is payable. Dividends 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.
- 6.1.3 Subject to the provisions of section 46 of the Act, the board may from time to time, pay to the shareholders such interim dividends as appear to the board to be justified by the position of the Company.
- 6.1.4 All unclaimed dividends may be invested or otherwise made use of by the board for the benefit of the Company until claimed, provided that dividends unclaimed for a period of three years from the date of declaration, may be forfeited by the relevant shareholders for the benefit of the Company; and provided further that if so resolved by the board, such unclaimed dividends may be settled by the Company upon trustees to be held in trust for the benefit of the relevant shareholders, whereupon the liability of the Company in relation thereto shall be extinguished.
- 6.1.5 Any dividend may be paid and satisfied, either wholly or in part, by the distribution of specific assets, or in shares or debt instruments of the Company or of any other company, or in cash, or in any one or more of such ways as the board may at the time of declaring the dividend determine and direct.
- 6.1.6 The board may before recommending any dividend whether preferential or otherwise, set aside out of the profits of the Company whether realised or unrealised and whether of a revenue or of a capital nature such sum as they think proper as reserves which shall, at the discretion of the board 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 board may from time to time think fit. The board may also without placing the same to reserve, carry forward any profits which they may think prudent not to declare as a dividend.
- 6.1.7 Subject to 2.1.6 and the provisions of section 47 of the Act, the board may, 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 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 made available 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 basis that the same be not paid in cash but either be applied in paying up unissued shares of the Company to be issued to such shareholders as fully paid capitalisation shares.

6.2 **Distributions to shareholders**

6.2.1 Notwithstanding the provisions of 6.1 insofar as they relate to payments of distributions to shareholders, the board may from time to time, subject to the provisions of section 46 of the Act, make distributions to shareholders. For purposes of this 6.2.1, "distribution" means any transfer by the Company of money or other property of the Company, other than its own shares, to or for the benefit of one or more holders of any of the shares of the Company or to the holder of a beneficial interest in any such shares of the Company or of another company within the same group of companies, whether -

6.2.1.1 in the form of a dividend, subject to 6.1;

6.2.1.2 as a payment in lieu of a capitalisation share, subject to section 47 of the Act;

6.2.1.3 as consideration for the acquisition by the Company of any of its shares, subject to section 48 of the Act;

6.2.1.4 otherwise in respect of any of the shares of the Company.

6.2.2 Without derogating from the provisions of 6.1 and subject to any requirements which may be imposed by the Act, the shareholders may, upon the recommendation of the directors, resolve to distribute or deal with, in any way authorised by the Act, 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 of the Company.

6.3 **Annual financial statements**

6.3.1 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:

6.3.1.1 the Act;

6.3.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and

6.3.1.3 this MOI.

6.3.2 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 section 61(7) of the Act.

- 6.3.3 The Company shall appoint an auditor 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.
- 6.3.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of sections 29 and 30 of the Act.
- 6.3.5 A copy of the annual financial statements must be sent to shareholders as least 10 (ten) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.
- 6.3.6 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
 - 6.3.6.1 satisfy, as to form and content, the financial reporting standards of the International Financial Reporting Standards (as contemplated in section 203 of the Act) (“**IFRS**”);
 - 6.3.6.2 subject to and in accordance with IFRS -
 - 6.3.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - 6.3.6.2.2 show the Company’s assets, liabilities and equity, as well as its income and expenses;
 - 6.3.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
 - 6.3.6.2.4 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.

6.4 **Winding-up**

If the Company is wound-up the liquidator may, with the sanction of a special resolution of the shareholders and provided all liabilities of the Company have been discharged, distribute among the shareholders in cash or *in specie* the whole or any part of the remaining assets of the Company in proportion to the number of ordinary shares held by the shareholders or such other proportion as the shareholders may have agreed unanimously in writing prior to such winding-up of the Company. The liquidator may for purposes of a distribution *in specie* set such value as the liquidator deems fair upon any asset. The liquidator may, after discharging all liabilities and with like sanction, vest the whole or any part of such assets upon trustees to be held in trust for the benefit of the shareholders in proportion to the number of ordinary shares held by them or such other proportion as the shareholders may have agreed unanimously in writing prior to such winding-up of the Company.

6.5 **Company secretary**

- 6.5.1 The Company must appoint a company secretary.

- 6.5.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.
- 6.5.3 The board must fill any vacancy in the office of company secretary within 60 (sixty) days after such vacancy arises by a person whom the directors consider to have the requisite knowledge and experience.
- 6.6 **Contractual pre-emptive rights in respect of securities**

Notwithstanding any of the other provisions this MOI, a transfer, or attempted transfer, of any of the Company's securities which is, or will be, in breach of any restrictions or right of pre-emption (whether in favour of the Company or any third party) contained in any agreement to which the Company is a party, shall be invalid and not be given effect to by the directors as contemplated in clause 2.4.2.

Adoption of MOI

This MOI will be presented to shareholders for adoption by special resolution at the meeting to be held on 10 December 2016.



Signed by the Chairman for identification purposes
HR van der Merwe