

KUMBA IRON ORE LIMITED



REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION FOR A LISTED PUBLIC COMPANY

NAME OF COMPANY: **KUMBA IRON ORE LIMITED**
REGISTRATION NUMBER: 2005/015852/06

This MOI was adopted by special resolution passed on _____

in substitution for the existing MOI of the company adopted on _____

CONTENTS

	Page
PART A – INTRODUCTION	2
1. INTERPRETATION	2
2. AMENDMENTS TO THE MOI	3
PART B – STATUS AND POWERS OF THE COMPANY	3
3. PUBLIC COMPANY	3
4. POWERS AND CAPACITY OF THE COMPANY	3
5. MAKING OF RULES	3
PART C – CAPITALISATION AND SECURITIES OF THE COMPANY	3
6. AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE	3
7. AUTHORITY TO ISSUE SECURITIES	4
8. PRE-EMPTION ON ISSUE OF EQUITY SECURITIES	4
9. FRACTIONS	5
10. CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES, DEMATERIALISATION, REMATERIALISATION, JOINT SHAREHOLDING	5
11. COMMISSION	6
12. SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER AND PROHIBITION AGAINST THE COMPANY CLAIMING ANY LIEN	6
13. LISTINGS ON OTHER STOCK EXCHANGES	7
14. TRANSMISSION OF SECURITIES BY OPERATION OF LAW	7
15. TRANSFER OF SECURITIES	7
16. REGISTER AND SUB-REGISTER	8
17. REGISTER OF DISCLOSURES AND NOTIFICATION	8
18. REPURCHASE OF SECURITIES	8
19. ODD-LOT OFFERS	9
PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS	9
20. MEETINGS OF SHAREHOLDERS	9
21. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS	11
22. VOTES OF SHAREHOLDERS	12
23. PROXY REPRESENTATION	13
24. RECORD DATE	13
PART E – POWERS AND PROCEEDINGS OF DIRECTORS	14
25. ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES	14
26. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR	15
27. ROTATION OF DIRECTORS	15
28. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF COMMITTEES	16
29. MANAGING DIRECTORS AND EXECUTIVE DIRECTORS	16
30. PROCEEDINGS OF DIRECTORS	16
31. POWERS OF DIRECTORS	17
32. PRESCRIBED OFFICERS	18
33. COMMITTEES	18
34. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND RELATED AND INTER RELATED PARTIES	18
35. PERSONAL FINANCIAL INTERESTS OF DIRECTORS, PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES	19
36. INDEMNITY	20
PART F – OTHER ORGANS OF THE COMPANY	21
37. AUDIT COMMITTEE AND AUDITOR	21
38. COMPANY SECRETARY	23
39. SOCIAL AND ETHICS COMMITTEE	24
PART G – COMPANY RECORDS	25
40. COMPANY RECORDS AND AUTHENTICATION OF DOCUMENTS	25
41. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS	25
PART H – GENERAL PROVISIONS	26
42. NOTICES	26
43. DISTRIBUTIONS	26

MEMORANDUM OF INCORPORATION

PART A – INTRODUCTION

1. INTERPRETATION

- 1.1 Unless otherwise indicated, words defined in the Companies Act (which words are contained **Annexure A** for ease of reference, but which do not form part of this MOI for purposes of interpretation) shall bear the same meaning in this MOI as in the Companies Act, read, together with the Listings Requirements. For ease of reading, such terms have been capitalised in this MOI;
- 1.2 Clause headings shall not be used in the interpretation of the MOI unless the context clearly indicates a contrary intention, an expression denoting
- (a) any gender includes the other gender;
 - (b) a natural person includes a juristic person and vice versa;
 - (c) the singular includes the plural and vice versa;
- 1.3 Unless the context otherwise requires –
- (a) **“Audit Committee”** means the audit committee of the Company from time to time;
 - (b) **“Beneficial Interest Holder”** shall bear the meaning ascribed thereto in 12.1;
 - (c) **“Business Day”** means any other day other than a Saturday, Sunday or an official public holiday in the Republic;
 - (d) **“Companies Act”** or **“Act”** means the Companies Act, 71 of 2008, as amended or any legislation which replaces it;
 - (e) **“Company”** means Kumba Iron Ore Limited, a public company duly incorporated in accordance with the laws of the Republic of South Africa, under registration No. 2005/015852/06;
 - (f) **“Deliver”** means, in relation to notices or documents required to be given by the Company, the manner in which the Company is entitled to give notice or deliver documents in accordance with section 42 and the Companies Act and the Regulations;
 - (g) **“Effective Date”** means the date that this MOI was lodged with the Companies and Intellectual Properties Commission;
 - (h) **“Electronic Address”** means, in regard to Electronic Communication, any email or other electronic address furnished to the Company by the Holder;
 - (i) **“Financial Markets Act”** means the Financial Markets Act, 19 of 2012, as amended or repealed from time to time;
 - (j) **“Group Company”** means the Company, and any one or more of its subsidiaries;
 - (k) **“Holders”** means the registered holders of Securities of the Company;
 - (l) **“Ineligible or Disqualified”** as contemplated in section 69(7) and (8) of the Companies Act, as read with Regulation 39(3), as such criteria apply to Directors and Alternate Directors, Board and Audit Committees, Prescribed Officers and the Company Secretary;
 - (m) **“JSE”** means the exchange operated by the JSE Limited (Registration No. 2005/022939/06);
 - (n) **“Listings Requirements”** means the listings requirements of the JSE;
 - (o) **“MOI”** means this Memorandum of Incorporation;
 - (p) **“Ordinary Shares”** means the ordinary Shares as contemplated in clause 6.1;
 - (q) **“Participant”** means a depository institution accepted as a participant by a Central Securities Depository in terms of the Financial Markets Act;
 - (r) **“Regulations”** means regulations published pursuant to the Companies Act from time to time;
 - (s) **“Republic”** means The Republic of South Africa;
 - (t) **“Shares”** means the shares in the share capital of the Company;
 - (u) **“Uncertificated Securities”** means securities as defined in the Financial Markets Act;
 - (v) **“Writing”** includes Electronic Communication only to the extent that the relevant Holder has notified the Company of an Electronic Address;
 - (w) references in this MOI to:
 - (i) Holders represented by proxy shall include such duly appointed proxy;
 - (ii) Holders entitled to vote includes a duly authorised representative of any Holder that is a Juristic Person;
 - (x) in the case of a conflict between numerals and words, numerals shall prevail terms

- (y) defined in this MOI shall bear the same meaning in annexures hereto unless the context indicates otherwise;
- (z) where any term is defined within the context of any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI;
- (aa) reference to an enactment, is to that enactment, as at the date of filing of this MOI, as amended or re-enacted from time to time and includes any subordinate legislation made under such enactment.
- (bb) the Companies Act shall prevail in instances of inconsistency between this MOI and the Companies Act; the contra proferentum rule shall not apply to the interpretation of this MOI.

2. AMENDMENTS TO THE MOI

- 2.1 Subject to the provisions of the Companies Act and the Listings Requirements, the Board may amend the MOI, in accordance with section 16(1)(a) as read with 16(4) and section 17 of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site.
- 2.2 All other amendments of the MOI, including but not limited to –
 - (a) an increase in the number of the Company's authorised Securities of a class;
 - (b) a consolidation of the Company's Securities;
 - (c) the conversion of one class of Shares into one or more classes;
 - (d) a sub-division of the Company's Securities;
 - (e) the creation of any class of Shares;
 - (f) the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
 - (g) the change of the Company's name;
 - (h) the alteration of share capital, authorised shares and the rights attaching to the class or classes of shares, shall (i) be effected in accordance with section 16(1)(c) of the Companies Act; (ii) be approved by a Special Resolution of the Holders of the Ordinary Shares; and (iii) comply with the listings requirements of the JSE.

PART B – STATUS AND POWERS OF THE COMPANY

3. PUBLIC COMPANY

The Company is a Public Company.

4. POWERS AND CAPACITY OF THE COMPANY

- 4.1 The Company is a Public Company as defined in the Companies Act, and has the powers and capacity of an Individual and is not subject to any special conditions.
- 4.2 Unless otherwise agreed with the JSE, no action by the Company or Directors that is (i) contrary to the Listing Requirements; and/or (ii) ultra vires, may be ratified through a special resolution by the Holders.

5. MAKING OF RULES

The Board's power to make, amend or appeal rules as contemplated in section 15(3) of the Companies Act is prohibited.

PART C – CAPITALISATION AND SECURITIES OF THE COMPANY

6. AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE

- 6.1 The Company is authorised to issue 500 000 000 (five hundred million) ordinary Shares, including Ordinary Shares already issued at any time, each with a par value of R0,01 (one cent) ("Ordinary Shares").
- 6.2 Each Ordinary Share entitles the Holder thereof to Voting Rights in respect of every matter that may be decided by voting.
- 6.3 The Board shall not have the power to amend the authorisation and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.
- 6.4 To the extent that the Company immediately before the Effective Date had authorised but unissued par value Shares in a class of which there are issued par value Shares, the unissued par value Shares of that class may continue to be issued.
- 6.5 All Securities of a class shall rank pari passu in all respects.

- 6.6 No rights, privileges or conditions attached to any class of Securities of the Company ("Affected Class"), or any interests of the Affected Class, may be varied unless:
- (a) the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of the Affected Class has been obtained; or
 - (b) a Special Resolution sanctioning the variation has been passed by the Holders of the Affected Class with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the Special Resolution at a separate general meeting of the Holders of the Affected Class; or
 - (c) the terms of issue of the Securities of the Affected Class provide otherwise.
- 6.7 The Holders of the Affected Class, may vote with the Holders of Ordinary Shares, in relation to the passing of any resolution required for such variation, subject to clause 22.1.
- 6.8 The provisions of this MOI relating to Shareholders Meetings shall apply mutatis mutandis to any such separate meeting except to the extent that –
- (a) the necessary quorum shall be the Holders of the Affected Class present in Person, or represented by proxy, and entitled to Exercise at least 51% (fifty one per cent) of the Voting Rights in respect of such resolution;
 - (b) if at any adjourned meeting of such Holders, the required quorum contemplated in clause 6.8(a) is not present, those Holders entitled to vote who are Present at the Meeting shall be a quorum; and
 - (c) any Persons present at the meeting and entitled to vote, may demand a poll.
- 6.9 The Board may only authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a related or inter-related company if it has complied with section 44(3) of the Companies Act.
- 6.10 No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in section 37(6) and section 37(7).

7. AUTHORITY TO ISSUE SECURITIES

- 7.1 Except to the extent provided for in clause 7.4, the Directors shall not allot or issue –
- (a) Shares if such issue requires the prior approval of a Special Resolution as contemplated in sections 41(1) and (3) of the Companies Act, without the prior approval of such Special Resolution;
 - (b) Securities, including (i) Shares (other than as contemplated in 7.1 above); and (ii) options in respect thereof, without the prior approval of an Ordinary Resolution, and provided that such issue has been approved by the JSE and is made subject to the Listings Requirements.
- 7.2 Any approval by the Holders as contemplated in 7.1(a) and 7.1(b) above may be in the form of:
- (a) a general authority granted to the Directors, whether conditional or unconditional, to allot or issue any such Securities in their discretion; or
 - (b) a specific authority granted to the Directors in respect of any particular allotment or issue of such Securities.
- 7.3 Such authority shall endure for the period provided in the Ordinary Resolution or Special Resolution in question, but may be revoked at any time by Ordinary Resolution or Special Resolution (as the case may be).
- 7.4 The Board may issue capitalisation Shares or resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation Share in accordance with section 47 of the Companies Act.
- 7.5 No Shares of a class which is listed may be issued other than as fully paid.
- 7.6 No special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3) of the Companies Act.

8. PRE-EMPTION ON ISSUE OF EQUITY SECURITIES

- 8.1 Unissued equity Securities of a particular class in the Company which are intended to be issued for cash, shall be offered to the existing Holders of that class of equity Securities by way of a rights offer pro rata to the existing Holders' Voting Rights of that class of equity Securities immediately before the offer was made (with a reasonable time allowed to subscribe), unless –
- (a) the approvals for the issue of Securities as contemplated in clause 7.1 have been obtained;
 - (b) a capitalisation issue, an issue for an acquisition of assets (including another company) or an issue for the purposes of an Amalgamation or Merger is to be undertaken;

- (c) the equity Securities are to be issued pursuant to an approved share incentive scheme;
 - (d) such intended issue is pursuant to the approval by the Shareholders, provided that same has been approved by the JSE (where necessary); and/or
 - (e) the equity Securities are to be issued in terms of option or conversion rights.
- 8.2 After the expiration of the time within which an offer may be accepted, or in the event of such offer being declined, the Directors may, issue such equity Securities in such manner as they think most beneficial to the Company.

9. FRACTIONS

To the extent that a fractional entitlement arises, all allocations of shares and other securities will be rounded down to the nearest whole number resulting in allocations of whole Shares and or Securities and a cash payment for the fraction where the cash value is determined with reference to the method of determination as may be prescribed in the Listing Requirements from time to time and for the time being.

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

10.1 The Securities issued by the Company may either be certificated or uncertificated.

10.2 When any new Securities are to be issued by the Company, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to him shall be in certificated or uncertificated form.

10.3 Certificates

- (a) The certificates evidencing issued Securities shall:
 - (i) be issued under the authority of the Directors; and
 - (ii) comply with the requirements set out in section 51(1) of the Companies Act, ("Certificate").
- (b) Each original Certificate issued to a Holder in certificated form shall be issued without charge. If any Certificate is defaced, lost or destroyed, it may be renewed, on such terms as the Directors may think fit and, in the case of defacement, on delivery of the old Certificate to the Company.
- (c) If the Company issues Securities which are not listed on the JSE, the Certificates must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.

10.4 Uncertificated securities

The holders of uncertificated Securities in the Company shall not be entitled to Certificates, unless such holders rematerialise all or part of their uncertificated Securities pursuant to clause 10.6.

10.5 Dematerialisation

- (a) The Company shall be entitled to allow the dematerialisation of any of its Securities. Once such dematerialisation has been allowed:
 - (i) any new Securities that are issued must be issued in uncertificated form; or
 - (ii) Holders may dematerialise Securities already issued into uncertificated Securities, in such manner as may be decided by the Directors from time to time.
- (b) Securities that are dematerialised as contemplated in clause 10.5(a)(ii) shall have the same rights as attached to such Securities prior to their dematerialisation.

10.6 Rematerialisation

- (a) If a Holder wishes to rematerialise all or part of his uncertificated Securities held by the Participant and to obtain a Certificate in respect of such uncertificated Securities which are to be rematerialised, he must notify the Participant accordingly.
- (b) The Participant shall, within 7 (seven) days of receipt of the notification referred to in clause 10.6(a), notify the Company to provide a Certificate and shall remove the uncertificated Securities so rematerialised from the sub-register.
- (c) The Company shall, immediately upon receipt of the notification from the Participant, enter the necessary details of the Holder and his Securities into the Securities Register and indicate in the Securities Register that the Securities are no longer held in uncertificated form.

- (d) The Company shall, within 20 (twenty) Business Days of receipt of the notification from the Participant prepare and deliver to the relevant Holder a Certificate in respect of the Securities and notify the Central Securities Depository that those Securities are no longer held in uncertificated form. The Company may charge the Holder a reasonable fee to cover the actual costs of issuing a Certificate.

10.7 Joint shareholding

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

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

11. COMMISSION

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

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

- 12.1 The Company shall permit Securities to be held by one Person ("Securities Holder") for the Beneficial Interest of another ("Beneficial Interest Holder").
- 12.2 Notwithstanding any agreement between the Beneficial Interest Holder and the Securities Holder, and save as provided for in 12.3 below, the Company shall not permit Securities to be voted upon by the Beneficial Interest Holder (who does not hold a proxy appointment from the Securities Holder).
- 12.3 Notwithstanding the provisions of 12.2 above, a Beneficial Interest Holder may vote in a matter at a Shareholders Meeting, without a proxy only to the extent that –
 - (a) the Beneficial Interest includes the right to vote on the matter; and
 - (b) the Beneficial Interest Holder's name is on the Company's register of disclosures as the holder of a Beneficial Interest.
- 12.4 If any Securities of the Company are registered in the Securities Holder who is not the Beneficial Interest Holder in all such Securities of the Company, the Securities Holder must disclose –
 - (a) the identity of the Beneficial Interest Holder(s); and
 - (b) the number and class of Securities held for each such Beneficial Interest Holder, and the extent of each such Beneficial Interest, in accordance with the time periods as stipulated in section 56(4) of the Companies Act.

- 12.5 The Securities Holder, holding any Securities in certificated form (and thus not subject to the rules of Strate as the Central Securities Depository), in which Beneficial Interest Holder has an interest, must deliver to each such Beneficial Interest Holder –
- (a) a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and
 - (b) a proxy appointment to the extent of that Beneficial Interest, if the Beneficial Interest Holder so demands, in compliance with section 56(11) of the Companies Act.
- 12.6 The Company shall not be entitled to claim any lien over any Securities issued by it.

13. LISTINGS ON OTHER STOCK EXCHANGES

- 13.1 The Company may seek listings on such stock exchanges as the Directors may consider appropriate from time to time.
- 13.2 For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE, the Company will:
- (a) comply in full with the listings requirements of the JSE, if the listing on the JSE is the primary listing; and
 - (b) comply in full with the requirements of the jurisdiction in which the Company has a secondary listing.

14. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

- 14.1 The –
- (a) executor or administrator of a deceased Holder; or
 - (b) trustee of an insolvent Holder; or
 - (c) curator of any insane; or
 - (d) prodigal Holder or any Person duly appointed by competent authority to represent or act for any Holder shall, subject to the provisions of clause 10.7 regarding joint holders, be the only Person recognised by the Company as having any title to any Security registered in the name of such Holder.
- 14.2 Subject to the laws relating to (i) securities transfer tax upon or in respect of the estates of deceased Persons; and (ii) the administration of the estates of insolvent and deceased Persons and Persons under disability, any Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI, shall, upon production of such evidence as may be required by the Directors:
- (a) be entitled to the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the registered Holder of the Securities; or
 - (b) have the right to be registered as the Holder in respect of those Securities and authorise such transfer, subject to the Directors discretion to decline or suspend registration as provided for in 15.5.
- 14.3 No Securities which are registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the Directors to do so.

15. TRANSFER OF SECURITIES

- 15.1 There is no restriction on the transfer of Securities.
- 15.2 The transferor of any Security shall be deemed to remain the Holder of such Security until the name of the transferee is entered in the Securities Register.
- 15.3 The transfer of any Securities which are certificated shall be implemented by means of (i) delivering an instrument of transfer to the Company; and (ii) entry of the transfer in the Securities Registry.
- 15.4 Transfer of any uncertificated Securities shall be effected by entry in the central securities account or securities account of the transferor and transferee kept by the Central Securities Depository or the Participant, as the case may be.
- 15.5 The Directors may decline to register any transfer to a minor or to a person of unsound mind or to any trustee, curator, executor, administrator or other Person in any representative capacity of any Securities.
- 15.6 Every instrument of transfer and power of attorney to effect transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Securities.

- 15.7 Any authority to sign transfer deeds granted by a Holder for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall: as between the Company and the grantor of such authorities, be deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon, until express Written notice of the revocation thereof is given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company may give effect to any instrument signed under such authority to sign and be certified by any officer of the Company as being in order prior to the giving and lodging of such notice.
- 15.8 The Company must enter the information contemplated in clause 16 in its Securities Register every transfer or issue of Securities, provided that such entry may only be made only if the transfer –
- (a) is evidenced by a proper instrument of transfer that has been delivered to the Company; or
 - (b) was effected by operation of law.

16. REGISTER AND SUB-REGISTER

- 16.1 The Securities Register shall be kept up to date by recording any change of particulars of any Holder following receipt of Written notice by the Holder of such change.
- 16.2 The Company's Securities Register shall be maintained in accordance with section 50 as read with Regulation 32 of the Companies Act.
- 16.3 A Person –
- (a) acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register in respect of those Securities; and
 - (b) ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.
- 16.4 Subject to such restrictions as may be prescribed by the Directors from time to time, the Securities Register shall be available for inspection by the Holders during office hours.

17. REGISTER OF DISCLOSURES AND NOTIFICATION

The Company must –

- 17.1 establish and maintain a register of the disclosures made in terms of section 56(7) of the Companies Act;
- 17.2 file a copy of a notification in respect of the acquisition of any Beneficial Interest constituting 5% (five per cent) or a multiple thereof of the issued Securities of that class or disposal so that the Person no longer holds a multiple of 5% (five per cent) of the issued Securities of that class, with the Panel;
- 17.3 report the information to the Holders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 17.2 unless it relates to the disposal of any Beneficial Interest of less than 1% (one per cent) of the class;
- 17.4 publish in its annual Financial Statements a list of the Persons who hold Beneficial Interests equal to or in excess of 5% (five per cent) of the total number of Securities of that class issued by the Company, together with the extent of those Beneficial Interests;
- 17.5 within 48 (forty eight) hours after receiving a notification in respect of the acquisition of any Beneficial Interest publish the information on SENS.

18. REPURCHASE OF SECURITIES

The Company is authorised to repurchase Securities as provided for in the Listings Requirements.

19. ODD-LOT OFFERS

- 19.1 For the purposes of this clause 19, "odd-lot" means a total holding by a Securities holder of:
- (a) less than 100 (one hundred) Securities (or such other number as may be permitted by the JSE); or
 - (b) 100 or more Securities (or such other number as may be permitted by the JSE),
provided that it can be illustrated to the JSE that the costs associated with a Holder disposing of such number of Securities is equal to or exceeds the total value of such number of Securities.
- 19.2 Where the Company intends reducing administrative costs resulting from a large number of odd-lot Holders and the Company proposes to make an odd-lot offer, the Company shall do so in accordance with the Listings Requirements or as otherwise permitted by the JSE.
- 19.3 In such instances the Securities holders may elect to –
- (a) retain their odd-lot holding; or
 - (b) sell the odd-lot holding.
- 19.4 If any Holders do not make an election in terms of clause 19.3(a), such Holders shall be deemed to have agreed to sell their odd-lot holdings, and the Company shall be entitled to expropriate all of the odd-lots held by such Holders, provided that the odd-lot offer has been approved by Shareholders in Shareholders Meeting by Ordinary Resolution.
- 19.5 In any Distribution, award or reconstruction contemplated by the Company where the holders of Securities may receive odd-lot entitlements, the Holders of Securities so effected must, where the Company wishes instead to compensate such Holders in monetary terms, be given the opportunity to elect to receive such odd-lot entitlements.
- 19.6 When the Company proposes to make an odd-lot offer, the Board shall pass a resolution approving the odd-lot offer confirming that:
- (a) the Company and its Subsidiaries have passed the Solvency and Liquidity Test; and
 - (b) since the Solvency and Liquidity Test was performed, there have been no material changes to the financial position of the Group Company.

PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS

20. MEETINGS OF SHAREHOLDERS

- 20.1 The Company shall convene an Annual General Meeting once in each calendar year; provided that no more than 15 (fifteen) months, or such other extended time allowed by the Companies Tribunal, lapses between each Annual General Meeting.
- 20.2 The Annual General Meeting of the Company must, at a minimum, provide for the following business to be transacted –
- (a) presentation of –
 - (i) the Directors' report;
 - (ii) Audited Financial Statements for the immediately preceding financial year; and
 - (iii) an audit committee report;
 - (b) election of Directors, to the extent required by the Companies Act or the MOI;
 - (c) appointment of –
 - (i) an Auditor for the ensuing year; and
 - (ii) an audit committee; and
 - (d) any matters raised by Holders, with or without advance notice to the Company.
- 20.3 The Company shall hold a Shareholders Meeting in order to consider one or more resolutions and shall not permit resolution/s that could be voted on at a Shareholders Meeting to be dealt with by round-robin resolutions of those Persons entitled to vote.
- 20.4 All Shareholder Meetings convened in terms of the Listings Requirements must be held in person and may not be held by means of a written resolution as contemplated in section 60 of the Companies Act.
- 20.5 Unless otherwise agreed with the JSE, no resolution may be proposed to be considered by Shareholders in terms of section 20(2) and (6) of the Companies Act if such a resolution would lead to the ratification of an act that is contrary to the Listings Requirements.

- 20.6 A Company must hold a Shareholders Meeting –
- (a) at any time that the Board is required by the (i) Companies Act; (ii) the Listings Requirements; or (iii) the MOI to refer a matter to Holders entitled to vote for decision; and
 - (b) whenever required in terms of section 70(3) of the Companies Act to fill a vacancy on the Board.
- 20.7 A Shareholders Meeting may be convened by:
- (a) the Directors; or
 - (b) a Shareholder/s holding not less than 10% (ten per cent) of the Voting Rights attached to the Ordinary Shares; or
 - (c) not less than 10 (ten) of the Holders of the Ordinary Shares; or
 - (d) if the Company has no Directors, any single Holder entitled to vote, whenever such Holder thinks it fit.
- 20.8 A Shareholders Meeting must be convened if one or more Written and signed demands for such a Shareholders Meeting is/ are delivered to the Company, and –
- (a) each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
 - (b) in aggregate, demands are made for substantially the same purpose and signed by the Holders of at least 10% (ten per cent) of the Voting rights entitled to be exercised in relation to the matter, at the earliest time specified in any of those demands.
- 20.9 An Annual General Meeting and a Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice, and to the JSE. An announcement shall also be made on SENS.
- 20.10 The notice of a Shareholders Meeting shall be in writing, in plain language and shall comply with the provisions of section 62(3) of the Companies Act.
- 20.11 A copy of the annual financial statements of the Company will be distributed to Shareholders at least 15 (fifteen) business days before the date of the Annual General Meeting at which they will be considered.
- 20.12 The notice of a Shareholders Meeting shall:
- (a) include a reasonably prominent statement that participation in the Shareholders Meeting by Electronic Communication is available; and
 - (b) provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication; and
 - (c) advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 20.13 In the event that a Shareholders Meeting is called:
- (a) by shorter notice than that specified in clause 20.9, such Shareholders Meeting shall be deemed to have been duly called and proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the agenda of the Shareholders Meeting:
 - (i) is present at the Shareholders Meeting; and
 - (ii) votes to waive the required minimum notice of the meeting, as contemplated in section 62(2A); and/or
 - (b) with any other Material defect in the giving of the notice, such Shareholders Meeting shall be deemed to have been duly called and proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the agenda of the Shareholders Meeting:
 - (i) is present at the Shareholders Meeting; and
 - (ii) votes to approve the ratification of the defective notice, as contemplated in section 62(4), subject to clause 20.15.
- 20.14 A Holder entitled to vote, who is Present at a Shareholders Meeting –
- (a) is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;
 - (b) has a right to –
 - (i) allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and
 - (ii) participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and

- (c) is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 20.15 If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting –
- (a) any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - (b) the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 20.16 An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or the accidental omission or inadvertent failure to Deliver notice to any particular Holder, or the non-receipt of notice of a Shareholders Meeting by, any Person entitled to receive notice shall not invalidate the proceedings of that Shareholders Meeting.

21. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 21.1 Every Shareholders Meeting shall be held at a location determined by the Board . The authority of the Company to conduct a Shareholders Meeting by Electronic Communication, as set out in section 63(2) of the Companies Act, is not limited or restricted.
- 21.2 Business may be transacted at any Shareholders Meeting only once a quorum is, and continues to be present. The quorum shall be:
- (a) sufficient Persons present at the Shareholders Meeting to Exercise, in aggregate, at least 25% (twenty five per cent) of all of the Voting Rights that are entitled to be Exercised in respect of at least one matter to be decided at the Shareholders Meeting; and
 - (b) at least 3 (three) more Persons entitled to vote being Present.
- 21.3 If a resolution is proposed in terms of the requirements of the Listings Requirements, the Holders of Securities not listed on the JSE shall be entitled to be counted in the quorum as a matter of law. Notwithstanding the foregoing, such Holders shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained.
- 21.4 Subject to clause 21.6, if a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to begin, the Shareholders meeting shall be postponed, without motion, vote or further notice, to the same Business Day in the next week, at the same time and place. If at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 21.5 A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned by the chairman from time to time without further notice, on a motion supported by Persons entitled to Exercise, in aggregate, a majority of the Voting Rights –
- (a) held by all of the Persons who are present at the Shareholders Meeting at the time; and
 - (b) that are entitled to be Exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be,
- provided that no business shall be transacted at any adjourned meeting other than the business left unfinished at the Shareholders Meeting from which the adjournment took place.
- 21.6 When a Shareholders Meeting is adjourned and the location for the subsequent Shareholders Meeting is different from the postponed meeting or any announced location, notice of the adjourned meeting shall be given in the prescribed manner.
- 21.7 A Shareholders Meeting may not be adjourned beyond the earlier of –
- (a) the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
 - (b) the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

- 21.8 The chairperson of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall choose a Director present at the Shareholders Meeting. If no Director is present, or if all the Directors present decline to take the chair, the Persons entitled to vote which are Present shall choose one of their number to be chairperson of the Shareholders Meeting.
- 21.9 At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded:
- (a) by the chairperson; or
 - (b) by not less than 5 (five) Persons having the right to vote on the matter; or
 - (c) by a Person/s entitled to Exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter,
- 21.10 Unless a poll is demanded as provided for in 21.9, a declaration by the chairperson of the results of the vote on the resolution, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact.
- 21.11 No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to was tendered. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.
- 21.12 In the case of an equality of votes on a poll, the chairperson of the relevant Shareholders Meeting, shall not be entitled to a second or casting vote in addition to his deliberative vote.
- 21.13 The demand for a poll shall not prevent the continuation of a Shareholders Meeting.
- 21.14 The demand for a poll may be withdrawn.

22. VOTES OF SHAREHOLDERS

- 22.1 Subject to any rights or restrictions attaching to any class or classes of Securities which are not Ordinary Shares, on a show of hands a Person entitled to vote Present at the Shareholders Meeting (or his proxy) shall have only 1 (one) vote, irrespective of the number of Securities he holds or represents.
- 22.2 On a poll every Person entitled to vote who is Present at the Shareholders Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.
- 22.3 The total Voting Rights of the Holders of all Securities, other than Ordinary Shares and any special shares created for the purposes of Black Economic Empowerment, may not exceed 24,99% (twenty four comma nine nine per cent) of the total Voting Rights of all Persons entitled to vote at such a meeting.
- 22.4 If a resolution is proposed to in terms of the requirements of the Listings Requirements, the Holders of Securities not listed on the JSE shall be entitled to vote thereon as a matter of law. Notwithstanding the foregoing, such Holders shall not be taken into account for the purposes of determining whether or not the requirements of the Listings Requirements have been attained.
- 22.5 Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. Save to the extent expressly provided in respect of an particular matter contemplated in this MOI:
- (a) an Ordinary Resolution, shall be adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution; and
 - (b) a Special Resolution shall be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution.
- 22.6 For so long as the Company is listed on the JSE, if any of the Listings Requirements require an Ordinary Resolution to be passed with a 75% (seventy five per cent) majority, the resolution shall instead be required to be passed by a Special Resolution.

23. PROXY REPRESENTATION

- 23.1 A proxy need not be a Holder.
- 23.2 The form appointing a proxy shall be in writing and signed by the Holder or of his agent duly authorised in writing. The holder of a general or special power of attorney given by a Holder shall be entitled to vote, if duly authorised. The form appointing a proxy shall be deemed to confer authority to demand a poll.
- 23.3 The form appointing a proxy and the power of attorney under which it is signed (or a notarially certified copy thereof) shall be delivered to such Person as identified in the notice of Shareholder Meeting, immediately prior to the time for holding the Shareholders Meeting (including an adjourned Shareholders Meeting).
- 23.4 No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed, unless the proxy itself provides for a longer or shorter duration.
- 23.5 The appointment is revocable unless the proxy appointment expressly states otherwise, and such proxy appointment may be revoked in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.
- 23.6 The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.
- 23.7 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the –
- (a) death or mental disorder of the principal; or
 - (b) revocation of the proxy or of the authority under which the proxy was executed; or
 - (c) the transfer of the Securities in respect of which the proxy is given,
- provided that the Company has not received any intimation in writing of any of the aforesaid circumstances before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.
- 23.8 Subject to the provisions of the Companies Act, a form appointing a proxy must be in Writing. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 23.9 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

24. RECORD DATE

- 24.1 The Board shall determine the Record Date in accordance with the applicable rules of the Central Securities Depository and the Listings Requirements.
- 24.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- (a) in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver the notice of that Shareholders Meeting to Holders entitled to vote;
 - (b) in the case of dividends, a date subsequent to the declaration date or confirmation of the dividend, whichever is the later; the date of the action or event, in any other case.
- 24.3 The Company must publish a notice of a Record Date for any matter by –
- (a) delivering a copy to each Holder; and
 - (b) posting a conspicuous copy of the notice –
 - (i) at its principal office;
 - (ii) on its web-site, if it has one;
 - (iii) on any automated system of disseminating information maintained by the JSE.

PART E – POWERS AND PROCEEDINGS OF DIRECTORS

25. ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES

- 25.1 The number of Directors shall not be less than 4 (four) and not more than 14 (fourteen). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 25.2 There are no general qualifications prescribed by the Company for an Individual to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act. The Board with the assistance of the nominations committee must make recommendations to the Holders regarding the eligibility of Individuals nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief curriculum vitae of each Individual standing for election or re-election as a Director must accompany the notice of the Shareholders' Meeting or the Annual General Meeting, as the case may be.
- 25.3 The Shareholders shall have the right to nominate any Director and Alternate Director for appointment. Each of the Directors and their respective Alternate Directors, other than a Director contemplated in clause 25.8, shall be elected in accordance with clause 25.5. No Director shall be entitled to appoint any Person as an Alternate Director to himself.
- 25.4 No Alternate Director may be appointed from the ranks of the Directors. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing him during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 25.5 In any election of Directors and Alternate Directors, the election is to be conducted as follows –
- (a) those entitled to Exercise Voting Rights regarding such election shall conduct a series of votes which, in each instance, they shall elect a single individual to fill a single vacancy, and in such manner continue until all vacancies on the Board at that time have been filled; and
 - (b) in each vote to fill a vacancy –
 - (i) each Voting Right entitled to be Exercised may be Exercised once; and
 - (ii) the vacancy is filled only if a majority of the Voting Rights Exercised support the candidate.
- 25.6 No Person shall be elected as a Director or Alternate Director, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 25.7 No election of a Person to serve as a Director shall take effect until he has delivered to the Company a Written consent to serve.
- 25.8 The Directors shall have power at any time to appoint any Individual as a Director to fill a vacancy occurring on the Board, provided that the total number of the Directors shall not at any time exceed the maximum number fixed. Any Individual appointed to fill a vacancy occurring on the Board shall:
- (a) retain office only until the first Shareholders Meeting to be held after the appointment of such Individual as a Director; and
 - (b) be eligible for election at such Shareholders Meeting.
- 25.9 The continuing Directors (or sole continuing Director) may act, notwithstanding any vacancy in their body, so long as there remain in office not less than 4 (four) Directors duly qualified to act; but if the number falls below 4 (four), the continuing Directors shall not act except for the purpose of filling such vacancy or calling Shareholders Meetings not later than 3 (three) months from the date that the number falls below the minimum. A failure by the Company to have the minimum number of Directors during the 3 (three) month period does not limit or negate the authority of the Board of Directors or invalidate anything done by the Board of Directors or the Company.
- 25.10 If there is no Director able and willing to act, then any Holder entitled to Exercise Voting Rights in the election of a Director may convene a Shareholders' Meeting for the purpose of electing Directors.

26. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR

A Director or Alternate Director shall cease to hold office –

- 26.1 immediately when he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis (pending any application for review filed by the Director (during which period he shall be suspended));
- 26.2 if there are more than 4 (four) Directors in office and if the Board (other than the Director concerned) determines that he has become incapacitated to the extent that such Director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time;
- 26.3 when he dies;
- 26.4 if, in the case of a Director, he is absent from meetings of the Directors for 6 (six) consecutive months without leave of the other Directors and is not represented at any such meetings during such 6 (six) consecutive months by an Alternate Director and the other Directors resolve that the office be vacated. Notwithstanding the foregoing, the other Directors shall have power to grant any Director leave of absence for any period;
- 26.5 on 1 (one) month written notice of his resignation; or
- 26.6 if there are more than 4 (four) Directors in office and if he is removed from office by a resolution of the Directors (other than the Director concerned) for being negligent or derelict in performing the functions of a Director (pending any application for review filed by the Director (during which period he shall be suspended));
- 26.7 if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
- 26.8 if he is removed by Ordinary Resolution;
- 26.9 he Files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally;
- 26.10 when his term of office; or
- 26.11 he is otherwise removed in accordance with any provisions of this MOI.

27. ROTATION OF DIRECTORS

- 27.1 No lifetime directorships or directorships for an indefinite period are permitted
- 27.2 At the Annual General Meeting held in each year:
 - (a) 1/3 (one-third) of the non-executive (as this term is defined in the Listings Requirements) Directors, or the first whole number greater than 1/3 (one-third) shall retire from office, provided that if, at the date of any Annual General Meeting, any non-executive Director will have held office for a period in excess of 3 (three) years or longer since his last election or appointment, he shall retire at such Annual General Meeting.
 - (b) The non-executive Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. A retiring Director shall act as a Director throughout the Annual General Meeting at which he retires. The length of time a Director has been in office shall be calculated from the date of his last election.
 - (c) As between non-executive Directors of equal tenure, the non-executive Directors to retire shall, in the absence of agreement, be selected from among them by lot.
 - (d) Any independent non-executive (as these terms are defined in the Listings Requirements) Director holding office for an aggregate period in excess of 9 (nine) years since his first election or appointment, shall only be entitled to be re-elected as a Director of the Company if the Board has conducted a rigorous review of such Director and determined that no relationships and circumstances exist that are likely to affect, or appear to affect, such Director's judgment and independence of character.
- 27.3 Retiring Directors shall be eligible for re-election.
- 27.4 An Individual other than a Director retiring at the Annual General Meeting shall be eligible for election to the office of Director at any Annual General Meeting if –
 - (a) recommended by the Directors for election; and

(b) not less than 7 (seven) days or more than 14 (fourteen) days before the Annual General Meeting, written notice shall have been given to the company secretary from a Holder entitled to be present and vote at the Annual General Meeting, proposing such Individual for election, including a notice in Writing signed by the Individual to be proposed of his willingness to be elected.

27.5 If at any Annual General Meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled, he shall, if willing, continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, unless it shall be determined at such Annual General Meeting not to fill such vacancy.

28. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF COMMITTEES

28.1 The Directors or Alternate Directors or members of Board or statutory committees shall be entitled to such remuneration for their services in respect of such position as may be determined by Special Resolution passed within the previous 2 (two) years.

28.2 The Directors and Alternate Directors shall and members of the committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from the relevant meeting. Notwithstanding the foregoing, the expenses incurred by the members of the committees to be compensated shall be determined by a disinterested quorum of Directors.

28.3 The Board may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act to any executive Directors.

28.4 A Director may be employed in any other capacity in the Company or as a director or employee of a company within a Group Company and in such event, his appointment and remuneration in respect of such other office shall be determined as set out above.

29. MANAGING DIRECTORS AND EXECUTIVE DIRECTORS

29.1 The Directors may from time to time –

- (a) appoint one or more of their number to be managing Director or joint managing Directors of the Company, or to be the holder of any other executive office in the Company; and
- (b) subject to any contract between such Director and the Company, terminate the Director's appointment as managing director and appoint another in his place (provided always that the number of Directors so appointed as managing Director or joint managing Directors and/or the holders of any other executive office including a chairperson shall at all times be less than $\frac{1}{2}$ (one half) of the number of Directors in office).

29.2 Any appointments made by the Board in terms of this clause shall be on such terms as may be determined by the Board.

29.3 A managing Director and any Director who holds any other executive office shall not be subject to retirement by rotation and shall not be taken into account in determining the rotation of retirement of Directors, during the period of any such contract.

29.4 The managing Director shall be subject to the same provisions as to removal as the other Directors and if he ceases to hold the office of Director from any cause he shall ipso facto cease to be a managing Director, at all times regard being had to the terms of his contract.

29.5 The Directors may from time to time entrust and confer upon a managing Director or other executive officer for the time being, such of the powers and authorities vested in them for any period of time and to be exercised upon such terms as they deem fit. The Directors may revoke or vary all or any of such powers and authorities.

30. PROCEEDINGS OF DIRECTORS

30.1 A Director authorised by the Board –

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

30.2 The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice. Notice of a meeting of Directors shall be given to all Directors even those that are absent from the Republic.

- 30.3 If all of the Directors –
- (a) acknowledge actual receipt of the notice;
 - (b) are present at the Board meeting; or
 - (c) waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 30.4 The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 30.5 Until otherwise resolved by the majority of the Directors, all their meetings shall be held in the city where the Company's Registered Office is situated.
- 30.6 A meeting of the Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication as provided for in section 73(3) of the Companies Act. A meeting held by Electronic Communication shall be deemed to take place where the largest group of participating Directors is assembled or, if no such group is readily identifiable, at the place from where the chairperson of the meeting participates.
- 30.7 The quorum for a Directors' meeting is the majority of the Directors. A quorum will be deemed to be present if the conditions contemplated in clause 30.3(c) are satisfied in respect of at least the number of Directors required to form a quorum.
- 30.8 Each Director has 1 (one) vote on a matter before the Board. A majority of votes cast on a resolution is sufficient to approve that resolution and in case of an equality of votes, the matter being voted on fails. The chairperson shall not have a casting vote.
- 30.9 The Directors may elect a chairperson of their meetings and one deputy chairman to preside in the absence of the chairperson, and may determine a period, not exceeding 1 (one) year, for which they are to hold office. If no such chairperson or deputy chairperson is elected or if at any meeting neither the chairperson nor a deputy chairperson is present within 15 (fifteen) minutes after the time appointed for holding the same, the Directors present shall choose one of their number to be chairperson of such meeting. A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this MOI or the Companies Act for the time being vested in or exercisable by the Directors generally.
- 30.10 Subject to the Companies Act –
- (a) a written resolution shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director has received notice of the matter to be decided upon;
 - (b) all written resolutions shall be forwarded or otherwise delivered to the company secretary without delay, and be recorded by him in the Company's minute book and noted at the meeting of the Directors next following the receipt thereof by him.
- 30.11 Any written resolution shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last Director.
- 30.12 Resolutions adopted by the Board must be dated and sequentially numbered.
- 30.13 The Company must keep minutes of the meetings of the Board, and of each Board and statutory committee, and include in the minutes –
- (a) any declaration given by notice or made by a director as required by clause 35;
 - (b) every resolution adopted by the Board.
- 30.14 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

31. POWERS OF DIRECTORS

- 31.1 The management of the Company shall be vested in the Directors who, in addition to the powers and authorities expressly conferred upon them by this MOI, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company. It is recorded that the powers of management of the Company granted to the Directors in terms of section 66(1) of the Companies Act are not limited in any manner.
- 31.2 The Directors shall have the power to delegate to any person or persons any of their powers and discretions and to give to any such person or persons the power of sub-delegation.

- 31.3 Without in any way limiting or restricting the general powers of the Directors to grant pensions, allowances, gratuities and bonuses to officers or ex-officers, employees or ex-employees of the Company or the dependants of such persons, it is hereby expressly declared that the Directors may from time to time without any further sanction or consent of the Company in general meeting (but subject to the Companies Act) –
- (a) establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
 - (b) grant pensions, gratuities or other allowances to and make payments for or towards the insurance of, any persons who are employees or former employees (including Directors or former Directors) of the Company, or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with it or any such subsidiary, and the wives, widows, families and dependants of such persons.
- 31.4 The Directors may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds or associations or Persons as may seem to them advisable or desirable in the interests of the Company.

32. PRESCRIBED OFFICERS

- 32.1 The provisions of clause 25.6 shall apply to any Person performing any function that has been designated by the Minister in terms of section 66(10) of the Companies Act mutatis mutandis.
- 32.2 A Prescribed Officer shall cease to perform any function that has been designated by the Minister in terms of section 66(10) of the Companies Act to constitute a prescribed office immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.

33. COMMITTEES

- 33.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board.
- 33.2 The Directors must appoint a remuneration committee and a nominations committee. The nominations committee shall;
- (a) have as its members only non-executive Directors, the majority of whom must be independent (as defined in the Listings Requirements); and
 - (b) be chaired by the chairperson of the Board.
- 33.3 Notwithstanding the foregoing, the members of any Board committees, (excluding the nominations committee), may include Persons who are not Directors provided that they are not Ineligible or Disqualified to be Directors. Notwithstanding the foregoing, such Persons shall not be entitled to vote. Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Directors.
- 33.4 The provisions of clause 25.6 shall apply to members of a board committee, mutatis mutandis.
- 33.5 Save as provided for above, there are no general qualifications prescribed by the Company, in addition to the requirements of the Companies Act, for a Person to serve as a member of a Board committee.
- 33.6 A member of a Board committee shall cease to hold office immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.
- 33.7 Committees of the Board may consult with or receive advice from any Person.
- 33.8 The meetings and proceedings of any such Board committee consisting of 2 (two) or more members shall be governed by the provisions of this MOI regulating the meetings and proceedings of the Directors.
- 33.9 The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company.

34. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND RELATED AND INTER RELATED PARTIES

- 34.1 The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) of the Companies Act are not limited in any manner.
- 34.2 If the Board adopts a resolution to provide direct or indirect financial assistance as contemplated in section 45(2) of the Companies Act regarding financial assistance to the Directors or Prescribed Officers and others contemplated in that section, the Company shall Deliver to all Shareholders, notice in Writing of that resolution, and to any trade union representing its employees –

- (a) within 10 (ten) Business Days after the Board adopts the resolution, if the total value of all loans, debts, obligations or assistance contemplated in that resolution, together with any previous such resolution during the financial year, exceeds 1/10th (one tenth) of 1% (one percent) of the Company's net worth at the time of the resolution; or
- (b) within 30 (thirty) Business Days after the end of the financial year, in any other case.

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

35.1 For the purposes of this clause 35 –

- (a) "Director" includes an Alternate Director, a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board; and
- (b) "Related Person" also includes any other company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is a member.

35.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering written notice to the Board setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

35.3 This clause 35 shall not apply to a Director in respect of a decision that may generally affect –

- (a) all of the Directors in their capacity as Directors. In such event all the Directors shall act in accordance with and as if section 75(3) of the Companies Act, unless the Directors are acting pursuant to an authorisation given by the Holders for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or
- (b) a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-Related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-Related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 35 to apply.

35.4 If despite the Listings Requirements, there is only 1 (one) Director in office at any time, and since the Company is listed and that Director cannot as a result hold all of the Beneficial Interests of all of the issued Securities of the Company, that Director may not –

- (a) approve or enter into any agreement in which the Director or a Related Person has a Personal Financial Interest; or
- (b) as a Director, determine any other matter in which the Director or a Related Person has a Personal Financial Interest, unless the agreement or determination is approved by an Ordinary Resolution after the Director has disclosed the nature and extent of that Personal Financial Interest to the Holders.

35.5 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person to that Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information as is necessary to enable the Director to identify such Personal Financial Interest.

35.6 If a Director (whilst the circumstances contemplated in clause 35.4 are not applicable) has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director –

- (a) must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
- (b) must disclose to the meeting any Material information relating to the matter, and Known to the Director;
- (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- (d) if Present at the Meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 35.6(b) and 35.6(c);
- (e) must not take part in the consideration of the matter, except to the extent contemplated in clauses 35.6(b) and 35.6(c);
- (f) while absent from the meeting in terms of this clause 35.6 –
 - (i) is to be regarded as being Present at the Meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
 - (ii) is not to be regarded as being Present at the Meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- (g) must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

- 35.7 If a Director acquires a Personal Financial Interest in a matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the matter has been approved by the Company, the Director must promptly disclose the nature and extent of such Personal Financial Interest to the Board, or to the Holders entitled to vote (if the circumstances contemplated in clause 35.4 prevail).
- 35.8 A decision by the Board, or by the Holders (if the circumstances contemplated in clause 35.4 prevail), or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –
- (a) it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 35; or
 - (b) despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or has been declared to be valid by a court in terms of section 75(8) of the Companies Act.

36. INDEMNITY

- 36.1 For the purposes of this clause 36, "Director" includes a former Director, an Alternate Director, a Prescribed Officer and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board and a member of the Audit Committee.
- 36.2 The Company may –
- (a) not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Group Company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability;
 - (b) advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
 - (c) directly or indirectly indemnify a Director for –
 - (i) any liability, other than in respect of –
 - (A) any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
 - (B) any fine contemplated in clause 36.2;
 - (ii) any expenses contemplated in clause 36.2, irrespective of whether it has advanced those expenses, if the proceedings –
 - (A) are abandoned or exculpate the Director; or
 - (B) arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 36.2.
- 36.3 The Company may purchase insurance to protect –
- (a) a Director against any liability or expenses for which the Company is permitted to indemnify a Director, as contemplated in clause 36.2(b) or 36.2(c); or
 - (b) the Company against any contingency including but not limited to –
 - (i) any expenses –
 - (A) that the Company is permitted to advance in accordance with clause 36.2(b); or
 - (B) for which the Company is permitted to indemnify a Director in accordance with clause 36.2(c); or
 - (ii) any liability for which the Company is permitted to indemnify a Director in accordance with clause 36.2(c)(i).
- 36.4 The Company is entitled to claim restitution from a Director or from a director of a Group Company for any money paid directly or indirectly by the Company to or on behalf of that Director or director of a Group Company in any manner inconsistent with section 78 of the Companies Act.

PART F – OTHER ORGANS OF THE COMPANY

37. AUDIT COMMITTEE AND AUDITOR

- 37.1 At each Annual General Meeting, the Company must elect an Audit Committee comprising at least 3 (three) members, unless –
- (a) the Company is a subsidiary of another company that has an Audit committee; and
 - (b) the audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.
- 37.2 Subject to clause 37.1, each member of the Audit Committee must –
- (a) be a Director, who satisfies any applicable requirements prescribed by the Minister;
 - (b) not be –
 - (i) involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
 - (ii) a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related company, or have been such an Officer or employee at any time during the previous 3 (three) financial years; or
 - (iii) a Material supplier or customer of the Company;nor be Related to any Person who falls within the criteria in clauses 37.2(b)(i) to 37.2(b)(iii).
 - (c) in relation to at least one third of the members of the Audit Committee at any particular time, have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs and/or human resource management.
- 37.3 The Board must appoint a Person to fill any vacancy on the Audit Committee within 40 (forty) Business Days after the vacancy arises.
- 37.4 The Audit Committee has the following duties –
- (a) to nominate, for appointment as Auditor, a Registered Auditor who, in the opinion of the Audit Committee, is independent of the Company;
 - (b) determine the fees to be paid to the Auditor and the Auditor's terms of engagement;
 - (c) ensure that the appointment of the Auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors;
 - (d) determine the nature and extent of any non-audit services that the Auditor may provide to the Company subject to compliance with the Companies Act;
 - (e) pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;
 - (f) prepare a report, to be included in the annual Financial Statements for that financial year –
 - (i) describing how the Audit Committee carried out its functions;
 - (ii) stating whether the Audit Committee is satisfied that the Auditor was independent of the Company; and
 - (iii) commenting on anything that the Audit Committee considers appropriate on the Financial Statements, the accounting practices and the internal financial control of the Company;
 - (g) receive and deal appropriately with any concerns or complaints, whether from within or outside the Company, or on its own initiative, relating to –
 - (i) the accounting practices and internal audit of the Company;
 - (ii) the content or auditing of the Company's Financial Statements;
 - (iii) the internal financial controls of the Company; or
 - (iv) any related matter;
 - (h) make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
 - (i) perform other oversight functions as may be determined by the Board.

- 37.5 In considering whether, for the purposes of clause 37.4, a Registered Auditor is independent of the Company, the Audit Committee must –
- (a) ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
 - (i) as Auditor; or
 - (ii) for rendering other services to the Company, to the extent permitted in terms of the Companies Act;
 - (b) consider whether the auditor's independence may have been prejudiced –
 - (i) as a result of any previous appointment as Auditor; or
 - (ii) having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the Company; and
 - (c) consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, in relation to the Company, and if the Company is a member of a Group Company, any other company within that group.
- 37.6 The Company must pay all expenses reasonably incurred by its Audit Committee, including, if the Audit Committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit Committee to assist it in the performance of its functions.
- 37.7 The provisions of article 25.6 and 26.1 shall apply in respect of members of the audit committee, mutatis mutandis.
- 37.8 There are no general qualifications prescribed by the Company for a Person to serve as a member of the Audit Committee (in addition to the requirements of the Companies Act).
- 37.9 The Company shall appoint an Auditor at its Annual General Meeting.
- 37.10 Notwithstanding the foregoing, if an Annual General Meeting does not appoint or re-appoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act, within 40 (forty) Business Days after the date of the Annual General Meeting.
- 37.11 A retiring Auditor may be automatically re appointed at an Annual General Meeting without any resolution being passed, except if –
- (a) the retiring Auditor is –
 - (i) no longer qualified for appointment;
 - (ii) no longer willing to accept the appointment, and has so notified the Company; or
 - (iii) required to cease serving as auditor in terms of section 92 of the Companies Act;
 - (b) the Audit Committee objects to the re-appointment; or
 - (c) the Company has notice of an intended resolution to appoint another Person or Persons in place of the retiring Auditor.
- 37.12 Nothing precludes the appointment by the Company at its Annual General Meeting of an Auditor other than one nominated by the Audit committee. In the event of the foregoing, such appointment will only be valid only if the Audit committee is satisfied that the proposed Auditor is independent of the Company.
- 37.13 Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that –
- (a) the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
 - (b) if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 37.14 The Auditor –
- (a) has the right of access at all times to the Accounting Records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
 - (b) has the right of access to all current and former Financial Statements of any Group Company and is entitled to require from the Directors or Prescribed Officers of the Company or Group Company any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Group Company as necessary for the performance of the Auditor's duties; and

- (c) is entitled to –
 - (i) attend any Shareholders' Meeting;
 - (ii) receive all notices of and other communications relating to any Shareholders' Meeting; and
 - (iii) be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions.
 - (d) may not perform any services for the Company –
 - (i) that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or
 - (ii) as may be prescribed by the Audit Committee.
- 37.15 If a vacancy arises in the office of Auditor, the Board –
- (a) must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor;
 - (b) may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company; and
 - (c) if the Company has appointed 2 (two) or more Persons as Auditors, the Company must manage the rotation required by section 90 of the Companies Act in such a manner that all of the joint Auditors do not relinquish office in the same year.
- 37.16 If, by comparison with the membership of a firm at the time of its latest appointment, less than ½ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.
- 37.17 Before making an appointment in terms of clause 37.15 the Board –
- (a) must propose to the Audit Committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one Registered Auditor to be considered for appointment as the new Auditor; and
 - (b) may proceed to make an appointment of a Person proposed in terms of clause 37.17(a) if, within 5 (five) Business Days after delivering the proposal, the Audit Committee does not give notice in Writing to the Board rejecting the proposed auditor.
- 37.18 The provisions of clauses 38.4 and 38.5 apply mutatis mutandis to the auditor.

38. COMPANY SECRETARY

- 38.1 The Directors of the Company must appoint a company secretary who –
- (a) is permanently resident in the Republic and remains so while serving as company secretary; and
 - (b) has the requisite knowledge of, or experience in, relevant laws to carry out the duties of a company secretary of a public company; and
 - (c) may be a Juristic Person subject to the following –
 - (i) every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
 - (ii) at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 38.1 (a) and 38.1 (b).
- 38.2 Within 60 (sixty) Business Days after a vacancy arises in the office of a company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 38.1 (c).
- 38.3 If at any time a Juristic Person or partnership holds office as company secretary of the Company –
- (a) the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 38.1 (c), and is regarded to have resigned as company secretary upon giving that notice to the Company;
 - (b) the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 38.1 (c), until the Company has become aware of such failure to satisfy the requirements in clause 38.1 (c) any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 38.1 (c) at the time of that action.

- 38.4 The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 38.5 If the company secretary is removed from office by the Board, the company secretary may require the Company to include a statement in its annual Financial Statements relating to that financial year in which the removal took place setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements. The company secretary will provide the Company with notice of the foregoing by no later than the end of the relevant financial year in which the removal took place.

39. SOCIAL AND ETHICS COMMITTEE

- 39.1 The Board shall appoint a social and ethics committee unless:
- (a) another Group Company has a social and ethics committee, and the social and ethics committee of that other Group Company will perform the functions required on behalf of the Company or
 - (b) the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.
- 39.2 The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must not be, or have been within the previous 3 (three) financial years, a Director who is involved in the day-to-day management of the Company's business.
- 39.3 The social and ethics committee has the following functions –
- (a) to monitor the Company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –
 - (i) social and economic development, including the Company's standing in terms of the goals and purposes of –
 - (A) the 10 (ten) principles set out in the United Nations Global Compact Principles; and
 - (B) the OECD recommendations regarding corruption;
 - (C) the Employment Equity Act; and
 - (D) the Broad-Based Black Economic Empowerment Act;
 - (ii) good corporate citizenship, including the Company's –
 - (A) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - (B) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - (C) record of sponsorship, donations and charitable giving;
 - (D) the environment, health and public safety, including the impact of the Company's activities and of its products or services;
 - (E) consumer relationships, including the Company's advertising, public relations and compliance with consumer protection laws; and
 - (F) labour and employment, including –
 - (1) the Company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (2) the Company's employment relationships, and its contribution toward the educational development of its employees;
 - (b) to draw matters within its mandate to the attention of the Board as occasion requires;
 - (c) to report, through one of its members, to the Shareholders at the Annual General Meeting on the matters within its mandate.
- 39.4 A social and ethics committee of the Company is entitled to –
- (a) require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;
 - (b) request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;
 - (c) attend any Shareholders' Meeting;
 - (d) receive all notices of and other communications relating to any Shareholders' Meeting; and
 - (e) be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the committee's functions.

- 39.5 The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

PART G – COMPANY RECORDS

40. COMPANY RECORDS AND AUTHENTICATION OF DOCUMENTS

- 40.1 The Directors shall –
- (a) comply with all the requirements of the Companies Act as to the keeping of Records;
 - (b) keep proper minutes of Shareholders' Meetings and Directors' Meetings.
- 40.2 Any:
- (a) Director; or
 - (b) the company secretary; or
 - (c) any Person appointed by the Directors for this purpose,
 - (d) shall have power to authenticate any documentation affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts.
- 40.3 A document purporting to be a copy of a resolution of the Directors or an extract from the minutes of a meeting of the Directors which is certified as such in accordance with the provisions of clause 40.2 shall be conclusive evidence in favour of all Persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

41. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 41.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 41.2 The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited. In addition the annual Financial Statements shall reflect the –
- (a) Beneficial Interests of the Directors;
 - (b) Beneficial Interest Holders equal to or in excess of 5% (five per cent) of the total number of Securities of that class issued by the Company, together with the extent of those Beneficial Interests; and
 - (c) status of any Securities issued by the Company which are not listed on the JSE.
- 41.3 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Holders and Beneficial Interest Holders are entitled to inspect and take copies of, being –
- (a) the MOI;
 - (b) amendments to the MOI;
 - (c) records in respect of Directors;
 - (d) Accounting Records required to be maintained by the Company;
 - (e) reports to Annual General Meetings;
 - (f) annual Financial Statements;
 - (g) notices and minutes of Shareholders' Meetings;
 - (h) communications generally to Holders; and
 - (i) the Securities Register.
- 41.4 Apart from the Holders and the Beneficial Interest Holders, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register) unless expressly authorised by the Directors or in accordance with the Promotion of Access to Information Act, No 2 of 2000, as amended.

- 41.5 The Company shall notify the Holders and the Beneficial Interest Holders of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder or the Beneficial Interest Holder demands a copy of the annual Financial Statements, the Company shall make same available to such Holder / holder of Beneficial Interests free of charge.

PART H – GENERAL PROVISIONS

42. NOTICES

- 42.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder, or if required, a Beneficial Interest Holder or by sending them prepaid through the post or by transmitting them by Electronic Communication. The Company must give notice of –
- (a) any Shareholders' Meeting to each Person entitled to vote at such Shareholders' Meeting;
 - (b) the availability of a document, record or statement to the Holder or the Beneficial Interest Holder either to his last known delivery address or last known Electronic Address.
- 42.2 Any Holder or Beneficial Interest Holder who has furnished an Electronic Address to the Company, by doing so –
- (a) authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and
 - (b) confirms that the notices, documents, records or statements contemplated in clause 42, can conveniently be printed by the Holder / the Beneficial Interest Holder within a reasonable time and at a reasonable cost.
- 42.3 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been Delivered on the date and time determined in accordance with the Companies Act (in particular, Table CR3 of the Regulations).
- 42.4 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery. Notwithstanding the foregoing, if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations.
- 42.5 The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 42.6 As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine. Failing any such specification by the Directors, the Holder shall indicate in the Electronic Communication his intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information contained therein.
- 42.7 Any notice delivered to the Shareholders shall also be (i) delivered to the JSE; and (ii) an announcement shall be made on SENS. as provided for above, mutatis mutandis.

43. DISTRIBUTIONS

- 43.1 Subject to the Companies Act (in particular, section 46), the Listings Requirements and this MOI, the Directors may –
- (a) make Distributions from time to time, provided that –
 - (i) any such Distribution –
 - (A) is pursuant to an existing legal obligation of the Company, or a court order; or
 - (B) has been authorised by the Board, by resolution;
 - (ii) it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;
 - (iii) the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution; and

- (iv) no obligation is imposed, if it is a Distribution of capital, that the Company is entitled to require it to be subscribed again;
 - (b) must before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 43.1(a), and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 43.1(a)(iii), failing which it must again comply with the foregoing.
- 43.2 The Company may transmit any Distributions or other monies to a Shareholder by electronic bank transfer to such bank account as the Shareholder may have notified to the Company in writing for this purpose. The Company shall not be responsible for any loss in transmission. A Distribution may also be paid in any other way determined by the Board, and if the directives of the Board in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 43.3 No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 43.1(a)(i), shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.
- 43.4 The Company must hold all monies due to the Shareholders in trust indefinitely, but subject to the laws of prescription.
- 43.5 The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.

ANNEXURE A – DEFINITIONS IN THE COMPANIES ACT

“**accounting records**” means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;

“**alternate director**” means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

“**amalgamation or merger**” means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in –

- (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamation or merging companies; or
- (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

“**annual general meeting**” means the meeting of a public company required by section 61(7);

“**audit**” has the meaning set out in the Auditing Profession Act, but does not include an “independent review” of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

“**Auditing Profession Act**” means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

“**auditor**” has the meaning set out in the Auditing Profession Act;

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

"beneficial interest", when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to –

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

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

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

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

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

"Commissioner" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"company" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date –

- (a) was registered in terms of the –
 - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
 - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"Competition Act", means the Competition Act, 1998 (Act No. 89 of 1998);

"consideration" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including –

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"convertible" when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including –

- (a) any non-voting securities issued by the company and which will become voting securities –
 - (i) on the happening of a designated event; or
 - (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

"director" means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

“**distribution**” means a direct or indirect –

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether –
 - (i) in the form of a dividend;
 - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
 - (iii) as consideration for the acquisition –
 - (aa) by the company of any of its shares, as contemplated in section 48; or
 - (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
 - (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
 - (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
 - (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,
- but does not include any such action taken upon the final liquidation of the company;

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

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

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

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

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

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

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

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

“**financial statement**” includes –

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

“**group of companies**” means a holding company and all of its subsidiaries;

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

"incorporator", when used –

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

"individual" means a natural person;

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

"juristic person" includes –

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

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

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

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

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

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

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

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

"person" includes a juristic person;

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

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

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

“present at a meeting” (or “present at the meeting”, depending on the context) means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

“private company” means a profit company that –

- (a) is not a public, personal liability or state-owned company; and
- (b) satisfies the criteria set out in section 8(2)(b);

“profit company” means a company incorporated for the purpose of financial gain for its shareholders;

“public company” means a profit company that is not a state-owned company, a private company or a personal liability company;

“record date” means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

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

“registered auditor” has the meaning set out in the Auditing Profession Act;

“registered office” means the office of a company, or of an external company, that is registered as required by section 23;

“related”, when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

“rules” and **“rules of a company”** means any rules made by a company as contemplated in section 15(3) to (5);

“securities” means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;

“securities register” means the register required to be established by a profit company in terms of section 50(1);

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

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

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

“solvency and liquidity test” means the test set out in section 4 (1);

“special resolution” means –

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) –
 - (i) at a shareholders meeting; or
 - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

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

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

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

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

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

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

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

ADMINISTRATION

COMPANY REGISTRATION NUMBER

2005/015852/06

JSE share code: KIO

ISIN code: ZAE000085346

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