

**The Companies Act, No. 71 of 2008  
(as amended)**

**Memorandum of Incorporation**

**Gemgrow Properties Limited**

**A public company**

**Registration No. 2007/032604/06**

## 1. Interpretation

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

- 1.1.1. “**Act**” means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to such Act and the regulations;
- 1.1.2. “**A ordinary share**” means an A ordinary share of no par value in the share capital of the company having the rights and restrictions set out, *inter alia*, in clauses 7.2, 34 and 40;
- 1.1.3. “**A ordinary share distribution(s)**” means a distribution declared in respect of an A ordinary share calculated with reference to clause 34.4;
- 1.1.4. “**A ordinary shareholder**” means the holder of an issued A ordinary share who is entered as such in the securities register, subject to the provisions of section 57;
- 1.1.5. “**B ordinary share**” means a B ordinary share of no par value in the share capital of the company having the rights and restrictions set out, *inter alia*, in clauses 7.2, 34 and 40;
- 1.1.6. “**B ordinary shareholder**” means the holder of an issued B ordinary share who is entered as such in the securities register, subject to the provisions of section 57 ;
- 1.1.7. “**board**” means the board of directors from time to time of the company or if there is only one director, then that director;
- 1.1.8. “**business day**” means any day excluding a Saturday, Sunday or public holiday in South Africa;
- 1.1.9. “**certificated securities**” means securities issued by the company that are not uncertificated securities;
- 1.1.10. “**Central Securities Depository**” has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.11. “**Commission**” means the Companies and Intellectual Property Commission established by section 185;
- 1.1.12. “**company**” means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;

- 1.1.13. “**CPI**” means the Consumer Price Index for all income groups for all items as published by Statistics South Africa (or its successor-in-title), provided that if the aforesaid Index is discontinued or modified it shall be replaced by such index as determined by the company’s auditors from time to time;
- 1.1.14. “**designated date**” means either the first designated date, the second designated date, the third designated date or the fourth designated date, as the case may be;
- 1.1.15. “**director**” means a member of the board of the company as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.16. “**electronic communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.17. “**file**” or “**filed**” when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.1.18. “**Financial Markets Act**” means the Financial Markets Act, 19 of 2012, including any amendment, consolidation or re-enactment thereof;
- 1.1.19. “**financial year**” means the twelve month period from 1 October to the last day of September, incorporating the first income period, the second income period, the third income period and the fourth income period;
- 1.1.20. “**first designated date**” means 31 December in each year, being the end of the first quarter of the financial year;
- 1.1.21. “**first income period**” means the 3 month period from 1 October to 31 December of each calendar year or such other period as may be determined by the board from time to time;
- 1.1.22. “**fourth designated date**” means 30 September in each year, being the end of the fourth quarter of the financial year;
- 1.1.23. “**fourth income period**” means the 3 month period from 1 July to 30 September of each calendar year or such other period as may be determined by the board from time to time;
- 1.1.24. “**IFRS**” means the International Financial Reporting Standards, as adopted from time to time by the board of the International Accounting Standards Board from time to time;

- 1.1.25. “**income period**” means the first income period, the second income period, the third income period or the fourth income period, as the case may be;
- 1.1.26. “**JSE**” means the exchange, licensed under the Financial Markets Act, operated by the JSE Limited (Registration number 2005/022939/06), a public company duly incorporated in South Africa;
- 1.1.27. “**JSE Listings Requirements**” means the Listings Requirements of the JSE applicable from time to time;
- 1.1.28. “**participant**” has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.29. “**prescribed officer**” means a person who, within the company, performs any function that has been designated by the Minister in terms of section 66(10) , as defined in the Act;
- 1.1.30. “**prime rate**” means the publicly quoted prime overdraft rate of interest of the bankers of the company (the “bank”) from time to time, nominal annual, compounded monthly as certified by any branch or more senior manager of that bank, whose appointment and designation it shall not be necessary to prove, and whose determination of the rate shall be proof of that rate until the contrary is established;
- 1.1.31. “**regulations**” means the regulations published in terms of the Act from time to time;
- 1.1.32. “**rules**” means any rules made in respect of the company from time to time as contemplated in section 15(3) to (5);
- 1.1.33. “**second designated date**” means 31 March in each year, being the end of the second quarter of the financial year;
- 1.1.34. “**second income period**” means the 3 month period from 1 January to 31 March of each calendar year or such other period as may be determined by the board of directors of the company from time to time;
- 1.1.35. “**securities**” means –
- 1.1.35.1. any share, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by a profit company for the purpose of raising capital; or
- 1.1.35.2. anything falling within the meaning of “securities” as set out in section 1 of the Financial Markets Act and includes shares held in a private company;

- 1.1.36. “**securities register**” means the register contemplated in section 50(1) and referred to in clause 7.21 hereof;
- 1.1.37. “**SENS**” means the Stock Exchange News Service established and operated by the Issuer Regulation Division of the JSE provided that, in the event that the shares or other securities of the company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Act;
- 1.1.38. “**share**” means one of the units into which the proprietary interest in the company is divided, and includes an “A” ordinary share and/or a “B” ordinary share as indicated by the context;
- 1.1.39. “**shareholder**” means the holder of a share and who is entered as such in the securities register, subject to the provisions of section 57;
- 1.1.40. “**solvency and liquidity test**” has the meaning attributed thereto in section 4;
- 1.1.41. “**South Africa**” means the Republic of South Africa;
- 1.1.42. “**sub-register**” means the record of uncertificated securities administered and maintained by a participant, which forms part of the company’s register of shareholders in terms of the Act;
- 1.1.43. “**third designated date**” means 30 June in each year, being the end of the third quarter of the financial year;
- 1.1.44. “**third income period**” means the 3 month period from 1 April to 30 June of each calendar year or such other period as may be determined by the board of directors of the company from time to time;
- 1.1.45. “**trading day**” means any day on which the JSE (or any other exchange on which the securities of the company are listed) is open and available for trading;
- 1.1.46. “**uncertificated securities**” means any “securities” defined as such in the Financial Markets Act; and
- 1.1.47. “**uncertificated securities register**” means the record of uncertificated securities administered and maintained by a participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of the company’s securities register established and maintained in terms of the Act.

1.2. In this Memorandum of Incorporation, unless the context clearly indicates otherwise –

- 1.2.1. words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2. a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the company is incorporated;
- 1.2.3. in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
  - 1.2.3.1. a provision of any shareholders agreement, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
  - 1.2.3.2. an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
  - 1.2.3.3. an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.4. clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.5. an expression which denotes -
  - 1.2.5.1. any gender includes the other genders;
  - 1.2.5.2. a natural person includes a juristic person and *vice versa*; and
  - 1.2.5.3. the singular includes the plural and *vice versa*;
- 1.2.6. any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.7. any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

- 1.3. Any reference in this Memorandum of Incorporation to –
- 1.3.1. “**days**” shall be construed as calendar days unless qualified as a “**business day**” or “**trading day**”;
  - 1.3.2. “**law**” means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
  - 1.3.3. “**person**” means any natural person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
  - 1.3.4. “**writing**” means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 1.4. The words “**include**” and “**including**” mean “**include without limitation**” and “**including without limitation**”. The use of the words “**include**” and “**including**” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day.
- 1.6. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.7. Any reference herein to “**this Memorandum of Incorporation**” shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

## 2. **Juristic personality**

- 2.1. The company is a pre-existing company and this Memorandum of Incorporation replaces and supersedes the Memorandum of Incorporation of the company applicable immediately prior to the filing hereof.
- 2.2. The company is incorporated in accordance with and governed by –
- 2.2.1. the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the company by this

Memorandum of Incorporation in relation to such unalterable provisions;  
and

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

2.2.3. the other provisions of this Memorandum of Incorporation.

### **3. Limitation of liability**

No person shall, solely by reason of being an incorporator, shareholder or director of the company, be liable for any liabilities or obligations of the company.

### **4. Powers of the company**

- 4.1. The company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 4.2. The legal powers and capacity of the company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).
- 4.3. If, notwithstanding the provisions of clause 4.2, the Memorandum of Incorporation has the effect of limiting, restricting or qualifying the purposes, powers or activities of the company, or if it limits the authority of the directors to perform an act on behalf of the company, the proposal to shareholders of any special resolution as contemplated in section 20(2) or 20(6) to ratify any action by the company or the directors that is inconsistent with any such limit, restriction or qualification, shall not be permitted.

### **5. Acquisition and cessation of rights**

A person –

- 5.1. acquires the rights associated with any particular securities of the company when that person's name is entered in the company's securities register as a person to whom those securities have been issued or transferred; and
- 5.2. ceases to have the rights associated with any particular securities of the company when the transfer to another person or the re-acquisition by the company or surrender to the company of those securities has been entered in the company's securities register.

### **6. Restrictive conditions**

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the company as contemplated in section 15(2)(b) or (c).

## 7. Issue of shares and variation of rights

7.1. Subject to any relevant provisions of this Memorandum of Incorporation and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares in the company, any shares whether in the initial or in any increased capital may be issued with such preferred, deferred, or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time determine provided however that there shall be no restriction on the transfer of shares, subject to the remaining provisions of this clause 7. Preference shares may be issued and existing shares may, subject to the provisions of clause 7.4.5, be converted into preference shares on the basis that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as shall be prescribed in this Memorandum of Incorporation or the resolution authorising or effecting such issue or conversion.

7.2. The company is authorised to issue:

7.2.1. 1 000 000 000 A ordinary shares each of which ranks *pari passu* in respect of all rights with the other A ordinary shares; and

7.2.2. [2 000 000 000] B ordinary shares, each of which ranks *pari passu* in respect of all rights with the other B ordinary shares.

7.3. Save as provided in this clause 7, clause 34 and clause 40 of this Memorandum of Incorporation, all issued shares shall rank *pari passu* in all respects.

7.4. The board shall not have the power to –

7.4.1. create any class of shares; or

7.4.2. increase or decrease the number of authorised shares of any class of the company's shares; or

7.4.3. consolidate and reduce the number of the company's issued and authorised shares of any class; or [10.5(d)(v)]

7.4.4. subdivide its shares of any class by increasing the number of its issued and authorised shares of that class without an increase of its capital; or [10.5(d)(vi)]

7.4.5. convert one class of shares into one or more other classes, save where a right of conversion attaches to the class of shares created; or

7.4.6. reclassify any classified shares that have been authorised but not issued; or [10.5(d)(vii)]

7.4.7. classify any unclassified shares that have been authorised but not issued; or

7.4.8. change the name of the company; or

- 7.4.9. vary any preferences, rights, limitations or other terms of any shares,
- and such powers shall only be capable of being exercised by the shareholders by way of a special resolution of the shareholders in general meeting, which for the avoidance of doubt shall be a combined general meeting of all shareholders, subject to the statutes, the JSE and the remaining provisions of this Memorandum of Incorporation.
- 7.5. Each share issued by the company has associated with it an irrevocable right of the shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share.
- 7.6. Subject to and without limitation to the provisions of clause 7.4, 7.8 and 7.20, the authorisation and classification of shares, the creation of any class of shares, the conversion of one class of shares into one or more other classes (unless otherwise provided by the terms of issue of the shares of that class), the consolidation of securities, the sub-division of securities, the change of the name of the company, the increase of number of shares, and the variation of any preferences, rights, limitations and other terms associated with each class of shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the shareholders at a combined general meeting and in accordance with the JSE Listings Requirements, to the extent required, save if such an amendment is ordered by a court in terms of section 16(1)(a) and 16(4). [10.5(d)] [10.5(e)] [10.9(c)] [10.5 (c) and (e)]
- 7.7. Notwithstanding anything to the contrary contained herein, the variation of any preference, rights, limitations and other terms associated with any class of shares as set out in this Memorandum of Incorporation may be enacted only by an amendment of this Memorandum of Incorporation by special resolution of the shareholders at a combined general meeting and such amendments shall not be implemented without a special resolution taken by the holders of shares in that class at a separate meeting. In such instances the holders of such shares will also be allowed to vote at the combined general meeting of shareholders, subject to clause 20.2.
- 7.8. No shares may be authorized in respect of which the preferences, rights, limitations or any other terms of any class of shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) and the powers of the board are limited accordingly. [10.5(g)]
- 7.9. The company may only issue shares which are fully paid up and freely transferable and only within the classes and to the extent that those shares have been authorised by or in terms of this Memorandum of Incorporation. [10.2(a)]
- 7.10. The board may, subject to clauses 7.11 and 7.16, resolve to issue shares of the company at any time, but only within the classes and to the extent that those shares have been authorised by or in terms of this Memorandum of Incorporation.

7.11. Subject to clauses 7.10 and 7.16, the board may not issue unissued shares unless such shares have first been offered to existing shareholders of the shares of that class in proportion to their shareholding of that class of shares (on such terms and in accordance with such procedures as the board may determine), unless the relevant issue of shares - [LR10.1]

7.11.1. is a capitalisation issue to all shareholders in accordance with the provisions of clause 13; or

7.11.2. is for the acquisition of assets, is a vendor consideration placing related to an acquisition of assets, or is an issue for the purposes of an amalgamation or merger; or

7.11.3. is an issue pursuant to options or conversion rights; or

7.11.4. is an issue in terms of an approved share incentive scheme; or

7.11.5. is an issue of shares for cash (as contemplated in the JSE Listings Requirements), which has been approved by the shareholders by ordinary resolution, either by way of a general authority (which may be either conditional or unconditional) to issue shares in its discretion or a specific authority in respect of any particular issue of shares, in accordance with the JSE Listings Requirements, provided that, if such approval is in the form of a general authority to the directors, it shall be valid only until the next annual general meeting of the company or for 15 months from the date of the passing of the ordinary resolution, whichever is the earlier, and it may be varied or revoked by any general meeting of the shareholders prior to such annual general meeting or the expiry of the aforesaid 15 month period; or

7.11.6. otherwise falls within a category in respect of which it is not, in terms of the JSE Listings Requirements, a requirement for the relevant shares to be so offered to existing shareholders of that class; or

7.11.7. is otherwise undertaken in accordance with an authority approved by ordinary shareholders in general meeting,

provided that if any fraction of a share will have to be issued pursuant to such an offer, the treatment of such fraction of a share and any associated payment to shareholders will be governed by the JSE Listings Requirements.

7.12. The directors may exclude any shareholders or category of shareholders from an offer contemplated in clause 7.11 if and to the extent that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer.

- 7.13. Alterations of share capital, authorised shares and rights attaching to a class/es of shares, all issues of shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition to the foregoing provisions, be in accordance with the JSE Listings Requirements. [10.9(a) and (c)]
- 7.14. All securities of the company for which a listing is sought on the JSE and all securities of the same class as securities of the company which are listed on the JSE must, notwithstanding the provisions of section 40(5) but unless otherwise required by the Act, only be issued after the company has received the consideration approved by the board for the issuance of such securities. [10.2(a)]
- 7.15. Subject to sections 40(5) to 40(7) , when the company has received the consideration approved by the board for the issuance of any shares – [10.1]
- 7.15.1. those shares are fully paid up; and
- 7.15.2. the company must issue those shares and cause the name of the holder to be entered onto the company’s securities register in accordance with sections 49 to 56.
- 7.16. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, any issue of shares, securities convertible into shares, or rights exercisable for shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the shareholders by special resolution if the voting power of the class of shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the shares of that class held by shareholders immediately before that transaction or series of integrated transactions.
- 7.17. Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of shares is issued or otherwise provided in this Memorandum of Incorporation, no shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional shares in the unissued share capital of the company.
- 7.18. For so long as there are both A and B ordinary shares in issue by the company, unless otherwise agreed to by ordinary resolution of the holders of A ordinary shares in general meeting, the total number of A ordinary shares in issue may never exceed the total number of B ordinary shares in issue.
- 7.19. In addition to the provisions of clause 7.7 and notwithstanding anything to the contrary contained in this Memorandum of Incorporation, no resolution of shareholders or resolution of the board of directors either converting A ordinary shares to B ordinary shares or vice versa or into any other class of shares, or in terms of which any class of shares is redeemed in whole or in part, shall be of any force or effect, unless with the consent or resolution passed in the same manner as a special resolution of both the

holders of the A ordinary shares and the B ordinary shares taken at a separate general meeting of the A ordinary shareholders and a separate general meeting of the B ordinary shareholders. The provisions of this Memorandum of Incorporation relating to a general meeting shall *mutatis mutandis* apply to any such separate general meeting except that –

- 7.19.1. the necessary quorum shall be a shareholder or shareholders of the class present in person, or represented by proxy and holding in excess of 50% of the capital paid or credited as paid on the issued shares of that class;
  - 7.19.2. if at any adjourned meeting of such holders a quorum as above defined is not present, those holders who are present shall be a quorum; and
  - 7.19.3. any holder of shares of the class present in person or represented by proxy may demand a poll and, on a poll, shall have 1 vote for each share of the class of which he is the holder.
- 7.20. Securities in each class for which a listing is applied on the JSE must rank *pari passu* in respect of all rights.
- 7.21. The A ordinary shares may be redeemed, in whole or in part, *pro rata* or otherwise, on or after 14 December 2016, by way of a resolution of the board of directors (the “**redemption resolution**”), provided that the board shall not be authorised to pass a redemption resolution without the consent of a resolution of shareholders at a combined general meeting, which resolution will require at least 75% of the combined votes exercisable by A ordinary shareholders and B ordinary shareholders present in person or by proxy or representative and entitled to vote at such combined general meeting being cast in favour thereof. If so redeemed by way of redemption resolution, the A ordinary shares shall be redeemed by the company at the volume weighted average sales price of an A ordinary share (as shown by the official price list published by the JSE) over the 60 trading days immediately preceding the date on which the redemption resolution is passed. The procedure to be followed by the company in regard to the redemption shall be determined by the company at the appropriate time and be approved by the JSE. Not less than 6 weeks’ notice of redemption shall be given to all A ordinary shareholders prior to any redemption being effected. Any redemption of the A ordinary shares shall be effected in accordance with the timetable determined in terms of the JSE Listings Requirements.

## 8. Registration of securities

- 8.1. Securities of the company are to be issued in uncertificated form or, subject to the provisions of section 33 of the Financial Markets Act, in certificated form, as shall be determined by the board from time to time. Except to the extent otherwise provided in the Act, the rights and obligations of security holders are not different solely on the basis of their securities being certificated securities or uncertificated securities and any provision of this Memorandum of Incorporation applies with respect to any

uncertificated securities in the same manner as it applies to certificated securities, unless otherwise stated or indicated by the context.

- 8.2. Any certificated securities may cease to be evidenced by certificates, and thereafter become uncertificated securities.
- 8.3. Any uncertificated securities may be withdrawn from the uncertificated securities register, and certificates issued evidencing those securities. A shareholder who wishes to withdraw all or part of the uncertificated securities held by that shareholder in an uncertificated securities register, and obtain a certificate in respect of those withdrawn securities, may so notify the relevant participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, which must within five business days notify the company to provide the requested certificate and remove the details of the uncertificated securities from the uncertificated securities register.
- 8.4. After receiving the notice in terms of clause 8.3 from a participant or Central Securities Depository, as the case may be, the company must –
  - 8.4.1. immediately enter the relevant shareholder's name and details of that shareholder's holding of securities in the company's securities register and indicate on the register that the securities so withdrawn are no longer held in uncertificated form; and
  - 8.4.2. within 10 business days, or 20 business days in the case of a holder of securities who is not resident within South Africa prepare and deliver to the relevant person a certificate in respect of the securities; and notify the Central Securities Depository that the securities are no longer held in uncertificated form.
- 8.5. The company may charge a holder of its securities a reasonable fee to cover the actual costs of issuing the certificate, as contemplated in this clause.
- 8.6. The company must establish or cause to be established a register of its issued securities in the form prescribed by the Act and the regulations and maintain such register in accordance with the prescribed standards.
- 8.7. As soon as practicable after issuing any securities the company must enter or cause to be entered in its Securities Register, in respect of every class of securities it has issued –
  - 8.7.1. the total number of uncertificated securities;
  - 8.7.2. with respect to certificated securities –
    - 8.7.2.1. the names and addresses of the persons to whom the certificated securities were issued;
    - 8.7.2.2. the number of certificated securities issued to each of them;

- 8.7.2.3. the number of, and prescribed circumstances relating to, any securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;
  - 8.7.2.4. in the case of securities other than shares as contemplated in section 43 , the number of those securities issued and outstanding, or the names and addresses of the registered owners of the securities and any holders of beneficial interests therein; and
  - 8.7.2.5. any other prescribed information.
- 8.8. If the company has issued uncertificated securities, or has issued securities that have ceased to be certificated securities as contemplated in clause 8.2, a record must be administered and maintained by a participant or Central Securities Depository in the prescribed form, as the company's uncertificated securities register, which –
- 8.8.1. forms part of that company's securities register; and
  - 8.8.2. must contain, with respect to all uncertificated securities contemplated in this clause 6, any details referred to in clause 6.7.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 8.9. The securities register or uncertificated securities register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 8.10. The shares, or each class of shares, and any other securities, must be distinguished by an appropriate numbering system.
- 8.11. A certificate evidencing any certificated securities of the company –
- 8.11.1. must state on its face –
    - 8.11.1.1. the name of the company;
    - 8.11.1.2. the name of the person to whom the securities were issued; and
    - 8.11.1.3. the number and class of shares and designation of the series, if any, evidenced by that certificate;
  - 8.11.2. must be signed by autographic, mechanical or electronic means by two persons authorised by the board;
  - 8.11.3. is proof that the named security holder owns the securities, in the absence of evidence to the contrary.

- 8.12. A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 8.13. At the request of the company, and on payment of the fee prescribed in the Act or the regulations, if any, a participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, must furnish the company with all details of the company's uncertificated securities reflected in the uncertificated securities register.
- 8.14. Unless all the shares rank equally for all purposes, the shares, or each class of shares, and any other securities, must be distinguished by an appropriate numbering system.
- 8.15. If, as contemplated in clause 8.14, all of the shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 8.15.1. each certificate issued in respect of those shares must be distinguished by a numbering system; and
  - 8.15.2. if the share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified.

## **9. Transfer of securities**

- 9.1. Securities transfer tax and other legal costs payable in respect of any transfer of securities pursuant to this Memorandum of Incorporation will be paid by the purchaser of such securities.
- 9.2. The instrument of transfer of any certificated securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such certificated securities until the name of the transferee is entered in the Securities Register. The directors may, however, in their discretion dispense with the signature of the transferee in such cases as they deem fit.
- 9.3. Subject to such restrictions as may be applicable, and particularly to the provisions of clause 9.4, any shareholder may transfer all or any of its certificated securities by instrument in writing in any usual or common form or any other form which the directors may approve.
- 9.4. Every instrument of transfer shall be delivered to the principal place of business of the company, accompanied by –
- 9.4.1. the certificate issued in respect of the certificated securities to be transferred; and/or
  - 9.4.2. such other evidence as the company may require to prove the title of the transferor, or his or her right to transfer the certificated securities.

- 9.5. All authorities to sign transfer deeds granted by shareholders for the purpose of transferring certificated securities which may be lodged, produced or exhibited with or to the company or its transfer office shall, as between the company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the company as being in order before the giving and lodging of such notice. [10.2(b)]
- 9.6. All instruments of transfer, when registered, shall either be retained by the company or disposed of in such manner as the directors shall from time to time decide. Any instrument of transfer which the directors may decline to register shall (unless the directors resolve otherwise) be returned on demand to the person who lodged it.
- 9.7. The transfer of uncertificated securities in an uncertificated securities register may be effected only –
- 9.7.1. by a participant or Central Securities Depository;
  - 9.7.2. on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a participant or Central Securities Depository or an order of a Court; and
  - 9.7.3. in accordance with section 53 and the rules of the participant or Central Securities Depository.
- 9.8. Transfer of ownership in any uncertificated securities must be effected by debiting the account in the uncertificated securities register from which the transfer is effected and crediting the account in the uncertificated securities register to which the transfer is effected, in accordance with the rules of the participant or Central Securities Depository.
- 9.9. The directors may decline to recognise any instrument of transfer unless the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the person signing as transferor to make the transfer.

## 10. Lien

For the avoidance of doubt, fully paid securities shall not be subject to any lien in favour of the company and shall be freely transferable, provided that the directors may decline to register any proposed transfer of securities if the transfer is to a minor or a person of unsound mind. [10.12]

## 11. Transmission of shares

11.1. Subject to the provisions of this Memorandum of Incorporation dealing with restrictions on the transfer of shares, the executor of the estate of a deceased sole holder of a security [10.13]

shall be the only person recognised by the company as having any title to the security. In the case of a security registered in the names of two or more holders, the survivor or survivors, or the executor of the deceased survivor shall be the only person recognised by the company as having any title to the security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased shareholder or holder of other securities (“**security holder**”) of the company, or of a security holder whose estate has been sequestrated or of a security holder who is otherwise under a disability or as the liquidator of any body corporate which is a security holder of the company, shall be entered in the register of security holders of the company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a security holder of the company.

- 11.2. If when called upon by the directors to do so the executor fails to register the deceased's securities in its name or the names of the heir or legatees, the securities shall not be capable of being forfeited, but shall continue to be registered in the names of the deceased or the executor's name *nomine officio*.

[LR10.13]

- 11.3. Subject to the provisions of clause 11.1, any person becoming entitled to any share by virtue of the death of a shareholder shall, upon producing such evidence that he has such title or rights and sustains the character under which he proposes to act under this clause as the directors think sufficient, have the right either to have such share transferred to himself or to make such other transfer of the share as such shareholder could have made, provided that in respect of a transfer other than to himself:

11.3.1. the directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such security by such security holder before his death; and

11.3.2. a person becoming entitled to any security shall not, unless and until he is himself registered as a security holder in respect of such security, be entitled to exercise any voting or other right attaching to such security or any other right relating to meetings of the company.

## 12. Debt instruments

- 12.1. The board may authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2).

[10.10]

- 12.2. The board may not grant any special privileges associated with any debt instruments to be issued by the company relating to attending and voting at general meetings and the appointment of directors, as contemplated in section 43(3)(a).

[LR10.10]

- 12.3. The directors may create and issue secured or unsecured debentures in accordance with clause 30.1, which debentures may, subject to the Act, be issued at a discount or at a premium to their nominal value.

### 13. Capitalisation shares

13.1. Provided such transaction(s) has/have been approved by the JSE, if so required under the JSE Listings Requirements (and the JSE Listings Requirements have been complied with), the board shall have the power or authority to –

13.1.1. approve the issuing of any authorised shares of the company as capitalisation shares, on a *pro rata* basis to the Shareholders of one or more classes of Shares; or

13.1.2. to issue shares of one class as capitalisation shares in respect of shares of another class; or

13.1.3. to resolve to permit shareholders to elect to receive a cash payment *in lieu* of a capitalisation share or a scrip dividend (as defined in the JSE Listings Requirements), at a value determined by the board,

and accordingly, this Memorandum of Incorporation does not limit, restrict or qualify the authority of the board to do so.

13.2. The board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation share, as contemplated in clause 13.1.3, unless the board –

[10.6]

13.2.1. has considered the solvency and liquidity test as required by section 46 , on the assumption that every such shareholder would elect to receive cash; and

13.2.2. is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.

### 14. Beneficial interests in securities

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

### 15. Financial assistance

The board may authorise the company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the company or a related or inter-related company, or for the purchase of any securities of the company or a related or inter-related company, subject to subsections 44(3) and (4). The authority of the board in this regard is not limited or restricted by this Memorandum of Incorporation.

### 16. Acquisition by the company of its own shares

16.1. Subject to the JSE Listings Requirements, the provisions of section 48 and subject to the further provisions of this clause 16 –

- 16.1.1. the board may determine that the company should acquire a number of its own shares; and
  - 16.1.2. the board of any subsidiary of the company may determine that such subsidiary should acquire shares of the company, but –
    - 16.1.2.1. not more than 10%, in aggregate, of the number of issued shares of any class may be held by, or for the benefit of, all of the subsidiaries of the company, taken together; and
    - 16.1.2.2. no voting rights attached to those shares may be exercised while the shares are held by that subsidiary and it remains a subsidiary of the company.
- 16.2. Any decision by the company to acquire its own shares must satisfy the JSE Listings Requirements and the requirements of section 46 and, accordingly, the company may not acquire its own shares unless –
- 16.2.1. for as long as it is required in terms of the JSE Listings Requirements, the acquisition has been approved by a special resolution of the shareholders, whether in respect of a particular repurchase or generally approved by shareholders and unless such acquisition otherwise complies with sections 5.67 to 5.69 of the JSE Listings Requirements (or such other sections as may be applicable from time to time); [10.9(b)]
  - 16.2.2. the acquisition –
    - 16.2.2.1. is pursuant to an existing legal obligation of the company, or a court order; or
    - 16.2.2.2. the board, by resolution, has authorised the acquisition;
  - 16.2.3. it reasonably appears that the company will satisfy the solvency and liquidity test immediately after completing the proposed acquisition; and
  - 16.2.4. the board, by resolution, has acknowledged that it has applied the solvency and liquidity test and reasonably concluded that the company will satisfy the solvency and liquidity test immediately after completing the proposed acquisition.
- 16.3. A decision of the board referred to in clause 16.1.1 –
- 16.3.1. must be approved by a special resolution of the shareholders if any shares are to be acquired by the company from a director or prescribed officer of the company, or a person related to a director or prescribed officer of the company; and

- 16.3.2. is subject to the requirements of sections 114 and 115 if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the company of more than 5% of the issued shares of any particular class of the company's shares.
- 16.4. Notwithstanding any other provision of this Memorandum of Incorporation, the company may not acquire its own shares, and no subsidiary of the company may acquire shares of the company if, as a result of that acquisition, there would no longer be any shares of the company in issue other than –
- 16.4.1. shares held by one or more subsidiaries of the company; or
- 16.4.2. convertible or redeemable shares.
- 16.5. The company may, in accordance with the JSE Listings Requirements, and subject to the necessary shareholders resolution approving the odd-lot offer by the requisite majority of Shareholders at a general meeting, make an odd-lot offer to shareholders holding less than such number of shares as the directors may determine, subject to the JSE having approved such number of shares, in terms of which the offeree shareholders are given the right to elect to retain their shareholding or sell their shares, and such odd-lot offer may provide that if any offeree shareholder fails to exercise such right of election, his shareholding will be compulsorily sold as if he had elected to sell such shareholding.

## **17. Record date for exercise of shareholder rights**

- 17.1. The board may set a record date for purposes of all transactions and determining which shareholders are entitled to –

[LR10.15]

- 17.1.1. receive notice of a shareholders meeting;
- 17.1.2. participate in and vote at a Shareholders meeting;
- 17.1.3. decide any matter by written consent or by electronic communication;
- 17.1.4. receive a distribution; or
- 17.1.5. be allotted or exercise other rights,

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

- 17.2. A record date determined by the board –

- 17.2.1. may not be earlier than the date on which the record date is determined or more than 10 (ten) business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and
- 17.2.2. must be published to the shareholders in a manner that satisfies the JSE Listings Requirements and any prescribed requirements.

## 18. Meetings of shareholders

- 18.1. The board, or any prescribed officer of the company authorised by the board, is entitled to call a meeting of shareholders at any time.
- 18.2. Without limiting the application of section 60 dealing with the passing of resolutions of shareholders otherwise than at a meeting of shareholders, save as expressly limited below, the company shall hold a meeting of shareholders –
- 18.2.1. at any time that the board is required by the Act or this Memorandum of Incorporation to refer a matter to a meeting of shareholders for decision; or [10.11(d)]
  - 18.2.2. at any time that the board is required by the JSE Listings Requirements to refer a matter to shareholders for decision and accordingly nothing in this Memorandum of Incorporation shall be construed as prohibiting or restricting the company from calling any meeting for the purposes of adhering to the JSE Listings Requirements;
  - 18.2.3. whenever required in terms of the Act to fill a vacancy on the board; or
  - 18.2.4. when required in terms of clause 18.4 or by any other provision of this Memorandum of Incorporation.
- 18.3. For clarity, meetings of shareholders that are called for in terms of the JSE Listings Requirements must be held in person and may not be held by means of a written resolution as contemplated in section 60.
- 18.4. The board shall call a meeting of shareholders if one or more written and signed demands by shareholders calling for such a meeting are delivered to the company and –
- 18.4.1. each such demand describes the specific purpose for which the meeting is proposed; and
  - 18.4.2. in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 18.5. Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the company that may be convened from time to time, the company shall convene an annual general meeting of its shareholders once in each calendar year, but no more than 15 months after the date of the previous annual general meeting.
- 18.6. Each annual general meeting of the company contemplated in clause 18.5 shall provide for at least the following business to be transacted –

- 18.6.1. the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the company and an audit committee report;
  - 18.6.2. the election of directors, to the extent required by the Act or by this Memorandum of Incorporation;
  - 18.6.3. the appointment of an auditor for the following financial year, to the extent that the annual financial statements of the company are required to be audited in terms of the Act or by this Memorandum of Incorporation; and [10.11(g)]
  - 18.6.4. any matters raised by the shareholders, with or without notice to the company.
- 18.7. Each annual general meeting of the company contemplated in clause 18.5 or any special general meeting of the Company may provide for the passing and adoption of special resolutions, contemplated in clauses 27.1 and 27.4 of this Memorandum of Incorporation, relating to the following business –
- 18.7.1. the determination of Directors' remuneration for the 2 (two) year period following the annual general meeting or special general meeting at which the resolution is approved; and
  - 18.7.2. the granting of financial assistance in terms of section 45.
- 18.8. Save as otherwise provided herein, the company is not required to hold any other shareholders' meetings other than those specifically required by the Act and the JSE Listings Requirements provided that the proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) is prohibited
- 18.9. The board may determine the location of any meeting of shareholders, and the company may hold any such meeting in South Africa or in any foreign country, and the authority of the board and the company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 18.10. Every meeting of shareholders must be reasonably accessible within South Africa for electronic participation by shareholders, irrespective of whether the meeting is held in South Africa or elsewhere.
- 18.11. Not less than 15 business days' notice shall be delivered to all shareholders registered at the date of issue of the notice of meetings called for the passing of a special resolution and not less than 15 business days' notice shall be delivered to all shareholders for the passing of an ordinary resolution, calculated as of the record date for the meeting as determined under clause 16. Notices of general or annual general meetings are to be delivered to each person entitled to vote at such meeting who has elected to receive such documents. [10.11(a)] [10.11(b)] [10.11(e)]

18.12. The quorum requirement for a meeting of shareholders to begin or for a matter to be considered are at least three shareholders present in person. In addition, the quorum requirement for a meeting of shareholders is as set out in section 64(1) and accordingly [10.11(g)]

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18.12.1. a meeting of shareholders may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

18.12.2. a matter to be decided at a meeting of shareholders may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.

18.13. The time periods allowed in section 64(4) and (5) apply to the company without variation and, accordingly, if within 1 hour after the appointed time for a meeting to begin, the requirements of clause 18.12 –

18.13.1. for that meeting to begin have not been satisfied, the meeting is postponed, without any motion, vote or further notice, for five business days, provided that in the event that the day for the meeting should fall on a day which is not a business day, the relevant day for the meeting shall be the immediately succeeding business day;

18.13.2. for consideration of a particular matter to begin have not been satisfied –

18.13.2.1. if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

18.13.2.2. if there is no other business on the agenda of the meeting, the meeting is adjourned, without any motion or vote, for one week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 18.12 may extend the one hour limit allowed in clause 18.13 for a reasonable period on the grounds that –

18.13.3. exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or

18.13.4. one or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders,

together with others in attendance, would satisfy the requirements of clause 18.12.

18.14. The accidental omission to give notice of any meeting to any particular shareholder or shareholders shall not invalidate any resolution passed at any such meeting.

18.15. The company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 18.13 unless the location for the meeting is different from –

18.15.1. the location of the postponed or adjourned meeting; or

18.15.2. the location announced at the time of adjournment, in the case of an adjourned meeting,

provided however that an announcement must be released over SENS, which announcement must include the following:

18.15.3. the reason for the postponed or adjourned meeting; and

18.15.4. the location and time of the postponed or adjourned meeting.

18.16. If at the time appointed in terms of clause 18.13 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 18.12 have not been satisfied, the shareholders present in person or by proxy will be deemed to constitute a quorum.

18.17. After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the shareholders forming part of the quorum must be present in person, by proxy or by Electronic Communication at the meeting for the matter to be considered at the meeting.

18.18. The maximum period allowable for an adjournment of a meeting of shareholders is as set out in section 64(12), without variation.

18.19. The chairperson, if any, of the board shall preside as chairperson at every meeting of shareholders.

18.20. If there is no such chairperson, or if at any meeting he or she is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the directors present shall choose one of their number to be chairperson. If no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairperson of the meeting.

18.21. The chairperson of a meeting of shareholders may –

18.21.1. appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;

18.21.2. act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

18.22. If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless –

18.22.1. it is brought to the attention of the chairperson at the meeting; and

18.22.2. in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

18.23. Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised -

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

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

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

18.24. Even if he is not a shareholder –

18.24.1. any director; or

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

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

## **19. Shareholders' meetings by electronic communication**

19.1. Subject to the provisions of the JSE Listings Requirements, the company may conduct a meeting of shareholders entirely by electronic communication or provide for participation in a meeting by electronic communication, as set out in section 63, and the power of the company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

19.1.1. any shareholders' meeting may be conducted entirely by electronic communication; or

19.1.2. one or more shareholders, or proxies for shareholders, may participate by electronic communication in all or part of any shareholders' meeting that is being held in person,

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

19.2. Any notice of any meeting of shareholders at which it will be possible for shareholders to participate by way of electronic communication shall inform shareholders of the ability to so participate and shall provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the shareholder or proxy concerned.

## 20. Votes of shareholders

20.1. Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with this Memorandum of Incorporation, at a meeting of the company –

20.1.1. every shareholder present and entitled to exercise voting rights shall be entitled to one vote on a show of hands, irrespective of the number of voting rights that shareholder would otherwise be entitled to exercise; and

20.1.2. on a poll any person who is present at the meeting, whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the shares held by that shareholder. No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive;

20.1.3. the holders of securities other than "A" and "B" ordinary shares shall not be entitled to vote on any resolution at a meeting of shareholders, except as provided in clause 20.2.

20.2. The holders of shares, other than "A" and "B" ordinary shares or any shares created for the purpose of black economic empowerment in terms of the Broad-Based Black Economic Empowerment Act, 53 of 2003 or the Broad-Based Black Economic Empowerment Codes of Good Practice, ("**affected shareholders**") shall not be entitled to vote on any resolution taken by the company other than -

- 20.2.1. during any special period, as provided for in clause 20.2.3 below, during which any dividend, any part of any dividend on such shares or any redemption payment thereon remains in arrears and unpaid; and/or
- 20.2.2. in regard to any resolution proposed for the winding-up of the company or the reduction of its capital;
- 20.2.3. the period referred to in clause 20.2.1 above shall be the period commencing on a day specified in this Memorandum of Incorporation, if any, not being more than six months after the due date of the dividend or redemption payment in question or, where no due date is specified, after the end of the financial year of the company in respect of which such dividend accrued or such redemption payment became due;

and provided that where the shares held by such affected shareholders (“**affected shares**”) are entitled to vote, they shall not carry any special rights or privileges and the affected shareholder shall be entitled to one vote for every affected share held provided that the total voting rights of the affected shareholders in respect of the affected shares shall not be more than 24,99% (twenty four comma ninety nine percent) of the total voting rights of all shareholders at such meeting.

- 20.3. Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of shareholders if a demand is made for such a vote by –
  - 20.3.1. at least five persons having the right to vote on that matter, either as shareholders or as proxies representing shareholders; or
  - 20.3.2. a shareholder who is, or shareholders who together are, entitled, as shareholders or proxies representing shareholders, to exercise at least 10% of the voting rights entitled to be voted on that matter; or
  - 20.3.3. the chairperson of the meeting.
- 20.4. At any meeting of the company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 20.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 20.5. If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each shareholder is entitled.

- 20.6. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 20.7. A poll demanded on the election of a chairperson (as contemplated in clause 18.20) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 20.8. Where there are joint registered holders of any share, any one of such persons may exercise all of the voting rights attached to that share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first on the register in respect of such share shall alone be entitled to vote in respect thereof.
- 20.9. The board of any company or the controlling body of any other entity or person that holds any securities of the company may authorise any person to act as its representative at any meeting of shareholders of the company, in which event the following provisions will apply –
- 20.9.1. the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of shares; and
- 20.9.2. the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the company before the commencement of any shareholders' meeting at which such person intends to exercise any rights of such shareholder, unless excused from doing so by the chairperson of such meeting.
- 20.10. Any person recognised in terms of clause 21 may vote at any shareholders meeting in the same manner as if he were the registered holder of the shares in question; provided that at least 48 (forty eight) hours before the holding of the meeting at which he proposes to vote, he shall have satisfied the board as to his status.
- 20.11. On a poll, votes may be given either personally or by proxy.

## **21. Proxies and representatives**

- 21.1. Any shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a shareholder, as a proxy to – [LR10.5(h)]
-

21.1.1. participate in, and speak and vote at, a meeting of shareholders on behalf of that shareholder; or

21.1.2. give or withhold written consent on behalf of that shareholder to a decision contemplated in section 60,

provided that a shareholder may appoint more than one proxy to exercise voting rights attached to different securities held by the shareholder.

21.2. A proxy appointment –

21.2.1. must be in writing, dated and signed by the shareholder; and

21.2.2. remains valid for –

21.2.2.1. one year after the date on which it was signed; or

21.2.2.2. any longer or shorter period expressly set out in the appointment,

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

21.3. The holder of a power of attorney or other written authority from a shareholder may, if so authorised thereby, represent such shareholder at any meeting of the company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the company before such holder exercises any rights of the shareholder at a shareholders' meeting.

21.4. All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –

21.4.1. a shareholder has the right to appoint two or more persons concurrently as proxies as set out in section 58(3)(a) (“**concurrent proxies**”), provided that the instrument appointing the concurrent proxies clearly states the order in which the concurrent proxies' votes are to take precedence in the event that both or all of the concurrent proxies are present, and vote, at the relevant meeting;

21.4.2. a shareholder or his proxy must deliver to the company a copy of the instrument appointing a proxy at least 48 hours or such shorter period as the board may determine in respect of any meeting before the commencement of the meeting at which the proxy intends to exercise that shareholder's rights; and

21.4.3. unless the instrument appointing a proxy provides otherwise, a shareholder's proxy may decide, without direction from the shareholder,

whether to exercise or abstain from exercising any voting right of the shareholder, as set out in section 58(7),

and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

- 21.5. The chairman of any shareholders' meeting may reject or accept any form of proxy which is completed and/or received, other than in compliance with the provisions of clause 21.4, provided that, in respect of acceptances, he is satisfied as to the manner in which the Shareholder(s) concerned wish(es) to vote.
- 21.6. Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the directors may approve from time to time –

“I/We \_\_\_\_\_  
being a shareholder of \_\_\_\_\_ Limited do hereby appoint \_\_\_\_\_  
\_\_\_\_\_

or failing him/her \_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

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

**Signed this** \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

\_\_\_\_\_  
Shareholder's signature

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

## 22. Resolutions of shareholders

- 22.1. For an ordinary resolution to be approved it must be supported by more than 50% of the voting rights of shareholders exercised on the resolution, as provided in section 65(7), unless otherwise stated in this Memorandum of Incorporation. Notwithstanding the foregoing, to the extent that the JSE Listings Requirements requires the support of a

higher percentage of voting rights to be exercised in respect of any ordinary resolution, the company shall not implement such ordinary resolution unless such ordinary resolution is supported by the higher percentage of voting rights of shareholders required to be exercised on that resolution in terms of the JSE Listings Requirements.

22.2. For a special resolution to be approved it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9) . [10.11(a)]

22.3. No matters, except

22.3.1. those matters set out in section 65(11); and

22.3.2. any other matter required by the Act or this Memorandum of Incorporation to be resolved by means of a special resolution; or

22.3.3. for so long as the company's securities are listed on the JSE, any other matter required by the JSE Listings Requirements to be resolved by means of a special resolution in terms of the JSE Listings Requirements,

require a special resolution adopted at a meeting of shareholders of the company.

22.4. In the event that any shareholder abstains from voting in respect of any resolution, such shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof (i.e. that shareholder's votes will neither be included in the aggregate number of votes cast nor in the total number of votes exercised in favour of or against that resolution).

### **23. Shareholders acting other than at a meeting**

23.1. Subject to clause 23.5, in accordance with the provisions of section 60, a resolution that could be voted on at a shareholders' meeting may instead be –

23.1.1. submitted for consideration to the shareholder entitled to exercise the voting rights in relation to the resolution; and

23.1.2. voted on in writing by such shareholder within a period of 20 business days after the resolution was submitted to them.

23.2. A resolution contemplated in clause 23.1 –

23.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted meeting of shareholders; and

23.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.

- 23.3. In addition to a resolution passed in terms of clause 23.1, a resolution in writing signed by all the shareholders entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened general meeting.
- 23.4. Within 10 days after adopting a resolution, or conducting an election of directors in terms of the provisions of this clause 23, the company shall deliver a statement describing the results of the vote or consent process to every shareholder who was entitled to vote on or consent to the resolution, as the case may be.
- 23.5. For so long as is required under the JSE Listings Requirements or unless the JSE allows otherwise, the provisions of this clause 23 shall not apply to any meetings of shareholders that are called for in terms of the JSE Listings Requirements (which for the avoidance of any doubt, must be held “in person”) or for any business of the company that is required by the Act or this Memorandum of Incorporation to be conducted at an annual general meeting of the company.

#### **24. Composition and powers of the board of directors**

- 24.1. The board must comprise at least four directors (or such greater number of directors, if any, that the company must have to satisfy any requirement in terms of the Act to appoint an audit committee and a social and ethics committee), and the shareholders shall be entitled to determine such maximum number of directors as they from time to time shall consider appropriate.
- 24.2. Subject to clauses 24.3, 24.4 and 24.5, all directors shall be elected by an ordinary resolution of the shareholders at a general or annual general meeting of the company and no appointment of a director in accordance with a resolution passed in terms of section 60 shall be valid.
- 24.3. Subject to the requirements of the Act, the chairman of the board or the chief executive officer shall be entitled, subject to the written approval of the majority of the Directors, to appoint any person as a director in terms of section 66(4)(a)(i), provided that such appointment must be approved by the shareholders at the next shareholders meeting or annual general meeting.
- 24.4. The authority of the board to fill a vacancy on the board on a temporary basis, as set out in section 68(3) is not limited or restricted by this Memorandum of Incorporation provided that any directors so appointed must resign at the next annual general meeting of the company and may make themselves available for election. [LR10.16(b)]
- 24.5. Accordingly, the board shall have the power at any time and from time to time to appoint any person as a director, either to fill a casual vacancy or as an addition to the board. [LR10.16(c)]
- 24.6. Until 1 or more directors have been so elected, each incorporator of the company shall, in terms of section 67(1), serve as a director of the company.
- 24.7. In any election of directors –

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

24.7.2. in each vote to fill a vacancy –

24.7.2.1. each vote entitled to be exercised may be exercised once; and

24.7.2.2. the vacancy is filled only if a majority of the votes exercised support the candidate,

provided only that, in the event that the company only has one shareholder, the provisions of this clause 24.7 will not apply and the election of directors shall take place in such manner as the shareholder shall determine.

24.8. The company shall only have elected directors and there shall be no appointed or *ex officio* directors as contemplated in section 66(4).

24.9. Apart from satisfying the qualification and eligibility requirements set out in section 69 of the Act, a person need not satisfy any eligibility requirements or qualifications to become or remain a director or a prescribed officer of the company.

24.10. A director shall cease to hold office as such if:

24.10.1. he becomes insolvent, or assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors;

24.10.2. he becomes of unsound mind;

24.10.3. in the case of an executive director who is an employee of the company, his employment relationship with the company is terminated for whatsoever reason, including but not limited to, resignation, retirement, misconduct or otherwise;

24.10.4. he is prohibited from being, is removed as or is disqualified from acting as a director of a company in terms of the Act;

24.10.5. he is required to do so in terms of the JSE Listings Requirements;

24.10.6. subject to section 71, he absents himself from meetings of the board for 6 (six) consecutive months without the leave of the other directors and is not represented at such meetings during such 6 (six) months by an alternate director, and the directors resolve that his office shall be vacated, provided that the directors shall have the power to grant any director leave of absence for an indefinite period;

- 24.10.7. he has given 1 (one) month's (or with the permission of the directors, a lesser period) notice in writing of his intention to resign;
- 24.10.8. he is removed under clause 24.11; or
- 24.10.9. the board resolved to remove him in accordance with section 71(3).

24.11. The company may by ordinary resolution in accordance with clause 24.10.8 and section 71(2), remove any director before the expiration of his period of office and by an ordinary resolution elect another person in his stead. The person so elected shall hold office until the next annual general meeting of the company and shall then retire and be eligible for re-election.

24.12. The directors shall rotate in accordance with the following provisions of this clause 24.12

- 24.12.1. at each annual general meeting referred to in clause 18.5,  $\frac{1}{3}$  (one third) of the directors for the time being, or if their number is not 3 or a multiple of 3, the number nearest to  $\frac{1}{3}$  (one third), but not less than  $\frac{1}{3}$  (one third), shall retire from office; [10.16(g)]
- 24.12.2. the directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 24.12.3. a retiring director shall be eligible for re-election;
- 24.12.4. a retiring director shall act as a director throughout the annual general meeting at which he retires;
- 24.12.5. the company, at the general meeting at which a director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provide that the company shall not be entitled to fill the vacancy in accordance with clause 23;
- 24.12.6. if at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 18.13 to 18.16 (inclusive) will apply mutatis mutandis to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

24.13. The board shall provide the shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring director is proposed, as to which retiring [10.16(g)]  
[10.16(h)]

directors are eligible for re-election, taking into account that director's past performance and contribution. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the director is to be proposed to allow nominations to reach the company's office from any part in South Africa. Directors may be re-elected at a general meeting provided that the meeting is not conducted in terms of section 60.

24.14. The board has the power to exercise all of the powers and perform any of the functions of the company, as set out in section 66(1), and the powers of the board in this regard are only limited and restricted as contemplated in this clause 24.

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

24.16. Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the directors shall from time to time determine.

24.17. All acts performed by the directors or by a committee of directors or by any person acting as a director or a shareholder of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or shareholder of such committee.

24.18. If the number of directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining directors must as soon as possible and in any event not later than three months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 24.12 or convene a general meeting for the purpose of filling the vacancies, and the failure by the company to have the minimum number of directors during the said three month period does not limit or negate the authority of the board of directors or invalidate anything done by the board of [10.16(d)]

directors while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation.

- 24.19. The directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the three month period contemplated in clause 24.18, their number remains reduced below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the company, but not for any other purpose. [10.16(d)]
- 24.20. A director may hold any other office or place of profit under the company (except that of auditor or company secretary) or any subsidiary of the company in conjunction with the office of director, provided that the appointment, duration and remuneration (in addition to the remuneration to which he may be entitled as a director) in respect of such other office must be determined by a disinterested quorum of directors. [10.16(e)]
- 24.21. A director of the company may be employed in any other capacity in the company or as a director or employee of a company controlled by or itself a major subsidiary of the company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors.
- 24.22. Each director and each alternate director, prescribed officer and member of any committee of the board (whether or not such latter persons are also members of the board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the board. [LR10.16(
- 24.23. A director may not vote on any resolution pertaining to any matter in which he has a personal financial interest as contemplated in section 75. However, notwithstanding his interest in any matter, such director may be counted for the purposes of determining a quorum for a board meeting.
- 24.24. The board may authorise the payment of such donations by the company to such religious, charitable, public or other bodies, clubs, funds, associations or persons as may seem desirable in the interests of the company, provided that any donations to any political parties or associations shall require prior approval of shareholders in a general or annual general meeting.

## 25. Alternate directors

- 25.1. Any director shall have the power to nominate another person approved by the board to act as alternate director in his place during his absence or inability to act as such director, provided that 50% (fifty percent) of all alternate directors shall be elected by an ordinary resolution of the shareholders at a general or annual general meeting of the company in accordance with section 66(4)(b). Upon being elected or appointed as an

alternate director, the alternate director shall, in all respects, be subject to the terms and conditions existing with reference to the other directors of the company. A person may be elected or appointed as alternate to more than one director. Where a person is alternate to more than one director or where an alternate director is a director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.

- 25.2. The alternate directors, whilst acting in the place of the directors whom they represent, shall exercise and discharge all the duties and functions of the directors they represent.
- 25.3. The appointment of an alternate director shall cease on the happening of any event which, if he was a director, would cause him to cease to hold office in terms of this Memorandum of Incorporation or if the director whom he represents ceases to be a director, or gives notice to the company secretary that the alternate director representing him shall have ceased to do so. An alternate director shall look to the director whom he represents for his remuneration.

## 26. Directors' meetings

- 26.1. Save as may be provided otherwise herein, the directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 26.2. The directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 minutes of the time appointed for holding the meeting, the directors present shall choose one of their number to be chairperson of such meeting. [10.16(i)]
- 26.3. In addition to the provisions of section 73(1), any director shall at any time be entitled to call a meeting of the directors.
- 26.4. The board has the power to –
- 26.4.1. consider any matter and/or adopt any resolution other than at a meeting contemplated in section 74 and, accordingly, any decision that could be voted on at a meeting of the board may instead be adopted by the written consent of a majority of the directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it (unless a statement to the contrary is made in that resolution); [10.16(j)]

- 26.4.2. conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), provided that, as required by such section, the electronic communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting; [10.16(j)]
- 26.4.3. determine the manner and form of providing notice of its meetings contemplated in section 73(4), provided that –
- 26.4.3.1. the notice period for the convening of any meeting of the board will be at least seven days unless the decision of the directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the board, or failing the chairperson for any reason, the decision of any two directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the directors;
- 26.4.3.2. an agenda of the matters to be discussed at the meeting shall be given to each director, together with the notice referred to in clause 26.4.3.1; and
- 26.4.3.3. no matter may be discussed at a meeting unless the particular matter has been expressly included in the agenda given in terms of clause 26.4.3.2;
- 26.4.4. proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5),

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

- 26.5. The quorum requirement for a directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clause 26.5.5, and accordingly –
- 26.5.1. if all of the directors of the company –
- 26.5.1.1. acknowledge actual receipt of the notice convening a meeting; or
- 26.5.1.2. are present at a meeting; or

- 26.5.1.3. waive notice of a meeting,  
the meeting may proceed even if the company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 26.5.2. a majority of the directors must be present at a meeting before a vote may be called at any meeting of the directors;
- 26.5.3. each director has one vote on a matter before the board;
- 26.5.4. a majority of the votes cast on a resolution is sufficient to approve that resolution;
- 26.5.5. in the case of a tied vote –
  - 26.5.5.1. the chair may not cast a deciding vote in addition to any deliberative vote; and [10.16(i)]
  - 26.5.5.2. the matter being voted on fails.
- 26.6. Resolutions adopted by the board –
  - 26.6.1. must be dated and sequentially numbered; and
  - 26.6.2. are effective as of the date of the resolution, unless any resolution states otherwise.
- 26.7. 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, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 26.8. Minutes of all board meetings, resolutions and directors' declarations shall be kept in accordance with the provisions of section 24.

## **27. Directors' compensation and financial assistance**

- 27.1. The company may pay remuneration to the directors for their services as directors in accordance with a special resolution approved by the company's shareholders within the previous two years, as set out in section 66(8) and (9), and the power of the company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 27.2. Any director who – [10.16(f)]
  - 27.2.1. serves on any executive or other committee; or
  - 27.2.2. devotes special attention to the business of the company; or
  - 27.2.3. goes or resides outside South Africa for the purpose of the company; or

27.2.4. otherwise performs or binds himself to perform services which, in the opinion of the directors, are outside the scope of the ordinary duties of a director,

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

27.3. The directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with –

27.3.1. the business of the company; and

27.3.2. attending meetings of the directors or of committees of the directors of the company. [10.16(f)]

27.4. The board may, as contemplated in section 45, authorise the company to provide financial assistance to a director, prescribed officer or other person referred to in section 45(2), and the power of the board in this regard is not limited or restricted by this Memorandum of Incorporation.

## **28. Chief executive officer**

28.1. The directors may from time to time appoint one or more of their body to the office of chief executive officer for such term and at such remuneration as they may think fit, and may revoke such appointment subject to the terms of any agreement entered into in any particular case, provided that the period of office of a chief executive officer appointed in terms of an agreement shall be for a maximum period of five years at any one time. A director so appointed shall be subject to retirement in the same manner as the other directors, and his appointment shall terminate if he ceases for any reason to be a director.

28.2. Subject to the provisions of any contract between himself and the company, a chief executive officer shall be subject to the same provisions as to disqualification and removal as the other directors of the company.

28.3. The directors may from time to time entrust to and confer upon a chief executive officer for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## **29. Indemnification of directors**

29.1. The company may –

- 29.1.1. advance expenses to a director or directly or indirectly indemnify a director in respect of the defence of legal proceedings, as set out in section 78(4);
- 29.1.2. indemnify a director in respect of liability as set out in section 78(5); and/or
- 29.1.3. purchase insurance to protect the company or a director as set out in section 78(7),

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

- 29.2. The provisions of clause 29.1 shall apply *mutatis mutandis* in respect of any former director, prescribed officer or member of any committee of the board, including any committee.

### **30. Borrowing powers**

- 30.1. Subject to the provisions of clause 30.3, all other provisions of this Memorandum of Incorporation the directors may from time to time -

- 30.1.1. borrow for the purpose of the company such sums as they think fit;
- 30.1.2. secure the payment or repayment of any such sums or any other sum, as they think fit, whether by the creation and issue of debentures, mortgage or charge upon all or any of the property or assets of the company;
- 30.1.3. make such regulations regarding the issue and transfer of debentures and all such other matters incidental to the debentures as the directors think fit,

provided that the directors shall not, without the consent of a resolution of shareholders in a combined general meeting which resolution will require at least 75% of the votes exercisable by A ordinary shareholders and B ordinary shareholders entitled to vote at such combined general meeting be cast in favour thereof, permit the company's debt gearing levels to exceed 50% of the value of its property portfolio as independently valued from time to time.

- 30.2. No special privileges as to –

- 30.2.1. allotment of shares in the company; or
- 30.2.2. the attending and voting at general meetings; or
- 30.2.3. the appointment of directors,

or otherwise, shall be given to the holders of debentures of the company except with the sanction of the shareholders in general meeting.

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

30.3.1. the company (other than by way of debentures); and

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

shall not exceed the aggregate amount at that time authorised to be borrowed or secured by the directors of the company's listed holding company (if any) in respect of that holding company.

### **31. Committees of the board**

31.1. The board may –

31.1.1. appoint committees of directors and delegate to any such committee any of the authority of the board as contemplated in section 72(1); and/or

31.1.2. include in any such committee persons who are not directors, as contemplated in section 72(2)(a),

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

31.2. The authority of a committee appointed by the board as contemplated in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

31.3. If and for as long as it is required to do so in terms of the Act or the regulations and unless the company is exempted to do so by the Tribunal in terms of section 72(5), the board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 and the regulations.

31.4. If and for as long as any of the company's securities are listed on the JSE, the board shall appoint such board committees as are required by the JSE Listings Requirements, having such functions and powers as are prescribed by or in terms of the JSE Listings Requirements.

- 31.5. If and for as long as it is required to do so in terms of the Act, the board must appoint an audit committee having the powers and functions prescribed in terms of section 94 and the Regulations.

### **32. Annual financial statements**

- 32.1. The company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the company to satisfy its obligations in terms of –

32.1.1. the Act;

32.1.2. any other law with respect to the preparation of financial statements to which the company may be subject;

32.1.3. the regulations; and

32.1.4. this Memorandum of Incorporation.

- 32.2. The company shall each year prepare annual financial statements within 6 months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) .

- 32.3. The company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the company appoints a firm as its auditor, any change in the composition of the shareholders of that firm shall not by itself create a vacancy in the office of auditor.

- 32.4. The annual financial statements of the company must –

32.4.1. be audited in accordance with the provisions of section 30 ; and

32.4.2. if they are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the company shall comply with its relevant obligations in that regard.

- 32.5. A copy of the annual financial statements must be sent to shareholders at least 15 business days before the date of the annual general meeting of the company at which such annual financial statements will be considered. [10.19]

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

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

32.6.2. subject to and in accordance with IFRS –

- 32.6.2.1. present fairly the state of affairs and business of the company and explain the transactions and financial position of the business of the company;
- 32.6.2.2. show the company's assets, liabilities and equity, as well as its income and expenses;
- 32.6.2.3. set out the date on which the statements were produced and the accounting period to which they apply; and
- 32.6.2.4. bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

### **33. Company secretary**

- 33.1. The company must appoint a company secretary.
- 33.2. The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of South Africa.
- 33.3. The board must fill any vacancy in the office of company secretary within 60 business days after such vacancy arises by a person whom the directors consider to have the requisite knowledge and experience.

### **34. Distributions**

- 34.1. If the company resolves to declare a distribution to shareholders in respect of any income period, no such distribution may be declared by the company in respect of the B ordinary shares for such income period until the A ordinary share distribution has been declared in respect of the A ordinary shares for that income period, and no such distribution shall be paid by the company in respect of the B ordinary shares for such income period unless the relevant A ordinary share distribution has been paid.
- 34.2. The A ordinary shares shall not confer on the A ordinary shareholders the right to any distributions other than the A ordinary share distributions.
- 34.3. If the company resolves to declare a distribution to shareholders in respect of any income period, such distribution shall be paid no later than 4 months after the designated date in question or such shorter period as may be prescribed in terms of the JSE Listings Requirements.
- 34.4. The A ordinary share distribution for the A ordinary shares shall be calculated as follows:
  - 34.4.1. in respect of the financial year ending 30 September 2016, a distribution of 49.68891 cents per A ordinary share;

- 34.4.2. in respect of the financial year ending 30 September 2017:
  - 34.4.2.1. for the first income period ending 31 December 2016, a distribution of 24.84445 cents per A ordinary share;
  - 34.4.2.2. for the second income period ending 31 March 2017, a distribution of 24.84445 cents per A ordinary share;
  - 34.4.2.3. for the third income period ending 30 June 2017, a distribution per A ordinary share equivalent to 105% of the distribution for the first income period ending 31 December 2016; and
  - 34.4.2.4. for the fourth income period ending 30 September 2017, a distribution per A ordinary share equivalent to 105% of the distribution for the second income period ending 31 December 2016;
- 34.4.3. in respect of the financial year ending 30 September 2018:
  - 34.4.3.1. for the first income period ending 31 December 2017, a distribution per A ordinary share equivalent to 105% of the first distribution in respect of the immediately preceding financial year;
  - 34.4.3.2. for the second income period ending 31 March 2018, a distribution per A ordinary share equivalent to 105% of the second distribution in respect of the immediately preceding financial year;
  - 34.4.3.3. for the third income period ending 30 June 2018, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the third income period, escalated by an amount equal to the lesser of 5% and the most recently available CPI figure;
  - 34.4.3.4. for the fourth income period ending 30 September 2018, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the fourth income period, escalated by an amount equal to the lesser of 5% and the most recently available CPI figure;
- 34.4.4. in respect of the financial year ending 30 September 2019 and thereafter:
  - 34.4.4.1. for the first income periods, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the first income period, escalated by an

amount equal to the lesser of 5% and the most recently available CPI figure;

34.4.4.2. for the second income periods, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the second income period, escalated by an amount equal to the lesser of 5% and the most recently available CPI figure;

34.4.4.3. for the third income periods, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the third income period, escalated by an amount equal to the lesser of 5% and the most recently available CPI figure; and

34.4.4.4. for the fourth income periods, a distribution per A ordinary share equivalent to the prior year's A ordinary share distribution for the fourth income period, escalated by an amount equal to the lesser of 5% and the most recently available CPI figure.

34.4.5. In the event that the company declares a distribution in an amount less than those amounts as determined in clauses 34.4.1, **Error! Reference source not found.**, 34.4, 34.4.3 and/or 34.4.4 then in such event that lesser amount shall be paid for that period, apportioned *pro rata* to each "A" ordinary share in issue on the relevant record date. In the event that the "A" ordinary share distribution is less than the amount provided in clauses 34.4.1, **Error! Reference source not found.**, 34.4, 34.4.3 and/or 34.4.4, as the case may be the difference in the amount paid and that which would have been payable in terms of clauses 34.4.1, **Error! Reference source not found.**, 34.4, 34.4.3 and/or 34.4.4, as applicable, shall not accrue or accumulate to the "A" ordinary shareholders and there shall be no right to claim any shortfall.

34.4.6. In determining the A ordinary share distribution with reference to any prior period's distribution, the prior period's distribution shall be the determined or calculated distribution for the equivalent period in the prior year calculated in terms of clauses 34.4.1, **Error! Reference source not found.**, 34.4, 34.4.3 and/or 34.4.4, whether or not such amount was paid having regard to the availability of funds.

34.5. The directors of the company shall for the purposes of calculation, be entitled in their discretion (subject to the statutes and the JSE Listings Requirements) to ignore or round off downward fractions of a cent in effecting payment of any A ordinary share distribution.

- 34.6. If there is any change in the financial year of the company, the company shall be and it is hereby authorised to change the dates from which A ordinary share distributions are calculated, fall due, accrue and/or become payable, provided that –
- 34.6.1. the rights of A ordinary shareholders to A ordinary share distributions on their A ordinary shares shall not be diminished or adversely affected by such changes; and
  - 34.6.2. the company shall forthwith notify A ordinary shareholders of any changes made by notice in terms of clause 37 or if the A ordinary shares are listed on the JSE or any other exchange, on SENS (if listed on the JSE) or any other news service of the relevant exchange and in such other manner prescribed by the relevant exchange.
- 34.7. Any A ordinary share distribution declared but not paid on the due date therefor, shall bear interest from such date up to the date of payment (excluding date of payment), calculated and compounded on a daily basis at the Prime Rate plus 2%.
- 34.8. Distributions shall be declared by the directors in accordance with the Act.
- 34.9. Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the company may be chargeable.
- 34.10. Subject to clause 34.7 above, no distribution shall bear interest against the company, except as otherwise provided under the conditions of issue of the shares in respect of which such distribution is payable.
- 34.11. Subject to clause 34.4, the directors may from time to time declare and pay to the shareholders such interim distributions as the directors consider to be justified by the profits of the company. [10.17(a)]
- 34.12. All unclaimed dividends will be held by or on behalf of the company in trust for the benefit of the shareholder concerned until claimed, provided that, subject to the provisions of the Prescription Act, 68 of 1969, as amended from time to time and any other applicable laws of prescription, monies unclaimed for a period of 3 (three) years from the date on which they were declared (or such longer period as may be required under the laws of prescription) may be declared forfeited by the directors for the benefit of the company. The directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. [10.17(c)]
- 34.13. Any distribution, interest or other sum payable in cash to the holder of a share may be paid by cheque or warrant sent by post and addressed to -
- 34.13.1. the holder at his registered address; or
  - 34.13.2. in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the share, at his registered address; or

- 34.13.3. such person and at such address as the holder or joint holders may in writing direct.
- 34.14. Every such cheque or warrant shall –
- 34.14.1. be made payable to the order of the person to whom it is addressed; and
- 34.14.2. be sent at the risk of the holder or joint holders.
- 34.15. The company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.
- 34.16. A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a share held by such holder or joint holders.
- 34.17. When such cheque or warrant is paid, it shall discharge the company of any further liability in respect of the amount concerned.
- 34.18. A distribution may also be paid in any other way determined by the directors, and if the directives of the directors 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.
- 34.19. Any distribution may be paid wholly or in part -
- 34.19.1. by the distribution of specific assets; or
- 34.19.2. by the issue of shares, debentures or securities of the company or of any other company; or
- 34.19.3. in cash; or
- 34.19.4. in any other way which the directors or the company in general meeting may at the time of declaring the distribution determine.
- 34.20. Subject to the remaining provisions of this clause 34, where any difficulty arises in regard to such distribution, the directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 34.21. The directors may -
- 34.21.1. determine that cash payments shall be made to any shareholder on the basis of the value so fixed in order to secure equality of distribution; and
- 34.21.2. vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the directors deem expedient.

34.22. All dividends must be made payable to shareholders registered as at a date subsequent to the date of declaration of the dividend or the date of confirmation of the dividend, whichever is the later date. [10.17(b)]

34.23. Payments to shareholders shall be made in accordance with the JSE Listings Requirements and must not provide that capital shall be repaid upon the basis that it may be called up again. [LR10.8]

### 35. Access to company records

35.1. Each person who holds or has a beneficial interest in any securities issued by the company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the company referred to in section 26(1), being –

35.1.1. this Memorandum of Incorporation, and any amendments or alterations thereof, and any rules of the company;

35.1.2. a record of the directors, including the details of any person who has served as a director, for a period of seven years after that person has ceased to serve as a director, and any information relating to such persons referred to in section 24(5);

35.1.3. all –

35.1.3.1. reports presented at an annual general meeting of the company for a period of seven years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the company is not required to, and does not, in fact, hold an annual general meeting; and

35.1.3.2. annual financial statements required by the Act for a period of seven years after the date on which each such particular statements were issued;

35.1.4. notice and minutes of all meetings of shareholders, including –

35.1.4.1. all resolutions adopted by them, for seven years after the date each such resolution was adopted; and

35.1.4.2. any document that was made available by the company to the holders of securities in relation to each such resolution;

35.1.5. any written communications sent generally by the company to all holders of any class of the company's securities, for a period of seven years after the date on which each of such communications was issued; and

- 35.1.6. the securities register of the company.
- 35.2. A person not contemplated in clause 35.1 has a right to inspect the securities register and the register of directors of the company upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.
- 35.3. A person who wishes to inspect the uncertificated securities register may do so only through the company in terms of section 26, and in accordance with the rules of the Central Securities Depository. Within five business days after the date of a request for inspection, the company must produce a record of the uncertificated securities register, which record must reflect at least the details referred to in section 50(3)(b) at the close of business on the day on which the request for inspection was made.
- 35.4. As provided for in section 26(3), this Memorandum of Incorporation does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and 26(2).

### **36. Payment of commission**

- 36.1. The company may pay a commission at a rate not exceeding 10% of the issue price of a share to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any shares of the company. [10.14]
- 36.2. Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 36.3. Such commission may be paid in cash or, if authorised by the company in general meeting, by the allotment of fully or partly paid-up shares, or partly in one way and partly in the other.
- 36.4. The company may, on any issue of shares, pay such brokerage as may be lawful.

### **37. Notices**

- 37.1. Any notice, document, record and/or statement which the company is required to give or publish to its shareholders or which the company elects to give or publish to its shareholders may be given or published in any manner authorised by the Act and, if applicable, the JSE Listings Requirements including, without limitation, by being transmitted electronically to shareholders.
- 37.2. To the extent required in terms of the JSE Listings Requirements, whilst the company's shares are listed on the JSE, all notices shall be released through SENS.
- 37.3. Any notice of general meeting shall state the place, day and hour of, and the nature of the business to be transacted at the general meeting.

- 37.4. Notices of general meetings and annual general meetings shall be delivered to all shareholders in compliance with section 62(1).
- 37.5. If a shareholder does not notify the company in writing of an address, email address or cell phone number for the purposes of receiving notices from the company, that shareholder shall be deemed to have waived his right to be so served with notices until such time as that shareholder notifies the company in writing of an address, email address or cell phone number for the purposes of receiving notices from the company.
- 37.6. Subject to meeting all minimum requirements imposed by the Act, the company is authorised to give or publish any notice, circular, document, record and/or statement (collectively a “**notification**”) to its shareholders by any method authorised by the Act including by means of electronic transmission (including, without limitation, by way of email or share message service (SMS)) and irrespective as to whether the address to which the notification is to be transmitted was notified to the company (or its authorised agent or representative) by the shareholder or otherwise sourced by the company.
- 37.7. In the case of joint holders of a security, all notices shall, unless such holders otherwise in writing request and the directors agree, be given to that shareholder whose name appears first in the securities register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 37.8. Every person who by operation of law, transfer or other means whatsoever becomes entitled to any security, shall be bound by every notice in respect of that security which was given to the person from whom he derives his title to such security prior to his name and address being entered in the securities register.
- 37.9. Any notice or document delivered in accordance with the provisions of this Memorandum of Incorporation shall, notwithstanding that such shareholder was then deceased, and whether or not the company has notice of his death, be deemed to have been duly served in respect of any securities, whether held solely or jointly with other persons by such shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such securities.

### **38. Amendment of Memorandum of Incorporation**

- 38.1. Every provision of this Memorandum of Incorporation is capable of amendment in accordance with sections 16, 17 and 152(6)(b). There is accordingly no provision of this Memorandum of Incorporation which may not be amended as contemplated in sections 15(2)(b) and (c).

- 38.2. This Memorandum of Incorporation may only be altered or amended by way of a special resolution of the shareholders in accordance with section 16(1)(c), except if such amendment is in compliance with a Court order as contemplated in section 16(1)(a) .
- 38.3. An amendment of this Memorandum of Incorporation will take effect from the later of –
- 38.3.1. the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7) ; and
- 38.3.2. the date, if any, set out in the said notice of amendment,
- save in the case of an amendment that changes the name of the company, which will take effect from the date set out in the amended registration certificate issued by the Commission.
- 38.4. In the circumstances where the Memorandum of Incorporation is proposed to be amended to remove or eliminate a specific inconsistency or contravention of the Act, which provision of this Memorandum of Incorporation is void in terms of section 15(1)(b) or could be declared void by a court of law in terms of section 218(1) the shareholders undertake not to object to that amendment on the grounds contemplated in section 164(2)(a) or demand that the company pay the shareholder fair value for all of the shares held by that person, in terms of section 164.
- 38.5. Save as set out in clause 38.2 above, this Memorandum of Incorporation is not capable of amendment by any other method. The provisions of section 16(1)(b) shall accordingly not apply to this Memorandum of Incorporation, nor shall any other alterable provisions of the Act which permit a method of altering or amending the Memorandum of Incorporation not set out in clause 38.2 above, apply to this Memorandum of Incorporation.

### **39. Company rules**

[10.4]

The board is prohibited from making any rules as contemplated in section 15(3) and the board's capacity to make such rules are hereby excluded.

### **40. Subordination of B ordinary shares and repayment waterfall on winding-up of the company**

If the company is wound up, the assets remaining after payment of debts and liabilities of the company and the costs of the liquidation shall be applied as follows:

Firstly -

- 40.1. each of the A ordinary shareholders shall be entitled to an amount equal to the volume weighted average traded sales price of an A ordinary share (as shown by the official

price list published by the JSE) over the 60 trading days immediately preceding the date of publication of any announcement detailing events relating to such winding up;

thereafter –

40.2. each of the B ordinary shareholders shall be entitled to receive any surplus of such monies available for distribution.

**41. Ratification of *ultra vires* acts**

Unless otherwise agreed with the JSE, the ratification of the Company's actions as provided for in sections 20(2) and 20(6) is prohibited to the extent that such ratification is contrary to the JSE Listings Requirements.

[LR10.3]  
[10.3]

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