

# **NORTHAM**

P L A T I N U M L I M I T E D

This is the Memorandum of Incorporation tabled and adopted by way of a special resolution in accordance with section 16(1)(c) of the Companies Act, No. 71 of 2008 at the annual general meeting of the company held on Wednesday, 7 November 2012, initialled by the Chairman for purposes of identification.

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Chairman

## **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**

### **REPUBLIC OF SOUTH AFRICA**

### **MEMORANDUM OF INCORPORATION**

**of**

### **NORTHAM PLATINUM LIMITED**

(Registration number 1977/003282/06)

being a profit company which is classified as a public company

**("the company")**

The company has adopted this unique form of Memorandum of Incorporation and, accordingly, the long standard form of Memorandum of Incorporation for Profit Companies as contained in the Companies regulations shall not apply to the company.

This replaces the Memorandum of Incorporation of the company (previously known as the memorandum of association and articles of association in terms of the Companies Act of 1973) that was in existence at the time of adoption of this Memorandum of Incorporation.

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## PART A – THE MOI AND RULES

### 1 INTERPRETATION

In this MOI, article headings are used for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

- 1.1 an expression that denotes -
  - 1.1.1 any gender, includes the other genders;
  - 1.1.2 a natural person, includes an artificial or juristic person and *vice versa*;
  - 1.1.3 the singular, includes the plural and *vice versa*;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings, -
  - 1.2.1 "**auditors**" - the auditors of the company appointed from time to time by the board;
  - 1.2.2 "**board**" - the board of directors of the company from time to time;
  - 1.2.3 "**business day**" - any day other than a Saturday, Sunday or public holiday in the Republic;
  - 1.2.4 "**Central Securities Depository**" – the Central Securities Depository as defined in section 1 of the Securities Services Act;
  - 1.2.5 "**certificated securities**" – securities issued by the company that are not uncertificated securities;
  - 1.2.6 "**commission**" – the Companies and Intellectual Property commission established by section 185 of the Companies Act;
  - 1.2.7 "**Companies Act**" - the Companies Act, No 71 of 2008, as amended or re-enacted and for the time being in force, including all schedules to such

Act and any regulations promulgated thereunder and for the time being in force;

- 1.2.8            "**company**" - the company defined as such on the front page of this MOI;
- 1.2.9            "**CSDP**" - a depository institution accepted by a Central Securities Depository as a "participant" in terms of the e operated by JSE Limited in the Republic;
- 1.2.10           "**director**" – a director of the company;
- 1.2.11           "**dispose**" - cede, donate, dispose of, distribute, exchange, give, make over, sell, transfer, unbundle or otherwise alienate, or any agreement, arrangement or obligation to do any of the foregoing, and "**disposal**" shall be construed accordingly;
- 1.2.12           "**electronic communication**" – an electronic communication as defined in section 1 of the electronic communications and Transactions Act, No. 25 of 2002;
- 1.2.13           "**encumbrance**" - means a mortgage, charge, pledge, loan, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of agreement having similar effect, and the words "**encumber**" and "**encumbered**" shall be construed in a like manner;
- 1.2.14           "**filing date**" - the date on which this MOI is filed with the Companies and Intellectual Property commission in accordance with section 16(7) of the Companies Act;
- 1.2.15           "**group**" - the company and all its subsidiaries for the time being and from time to time;
- 1.2.16           "**HDP**" – a person defined as a "historically disadvantaged person" in the Mineral and Petroleum Resources Development Act, No. 28 of 2002, as amended;

- 1.2.17            "**IFRS**" – International Financial Reporting Standards, as adopted from time to time by the board of the International Accounting Standards Committee, or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Companies Act;
- 1.2.18            "**JSE**" – JSE Limited (registration number 2005/022939/06), a public company duly incorporated in accordance with the laws of the Republic, licensed as an exchange under the Securities Services Act;
- 1.2.19            "**JSE listings requirements**" – all rules, regulations, requirements and rulings of the JSE, including, without limitation, the JSE listings requirements of the JSE, provided that any requirements in relation to such JSE listings requirements shall only apply for as long as the securities of the company are listed on the JSE;
- 1.2.20            "**legal representative**" - any person who has submitted proof (which is satisfactory to the board) of his appointment (and, to the extent required by the board, the continuation of that appointment) as -
- 1.2.20.1            an executor of the estate of a deceased shareholder, or a curator, guardian or trustee of a shareholder whose estate has been sequestrated or who is otherwise under any disability;
- 1.2.20.2            the liquidator of any shareholder that is a body corporate in the course of being wound-up; or
- 1.2.20.3            the business rescue practitioner of any shareholder which is a company undergoing business rescue proceedings;
- 1.2.21            "**Memorandum of Incorporation**" or "**MOI**" - the memorandum of incorporation of the company, being this document (and including any schedules hereto), as amended or replaced from time to time;
- 1.2.22            "**ordinary share**" or "**share**" - an ordinary share in the capital of the company, having the preferences, rights, limitations and other terms contemplated in article 9;

- 1.2.23            "**ordinary shareholder**" - a shareholder who holds an ordinary share;
- 1.2.24            "**own-name dematerialised shareholder**" – a person holding uncertificated shares that is registered in his/her own name as the holder of the uncertificated shares in the sub-register maintained by the relevant CSDP;
- 1.2.25            "**person**" or "**entity**" - includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- 1.2.26            "**regulations**" - the Companies Regulations of 2011 for so long as they remain of force and effect and any other regulations made in terms of the Companies Act;
- 1.2.27            "**Republic**" - the Republic of South Africa;
- 1.2.28            "**securities**" – collectively –
- 1.2.28.1            shares, debentures, notes, bonds or other instruments, irrespective of their form of title (including options on shares or debentures, notes or units, and rights thereto) issued or authorised to be issued by the company; and
- 1.2.28.2            anything falling within the meaning of "securities" as defined in section 1 of the Securities Services Act;
- 1.2.29            "**securities register**" – the register of issued securities of the company established in terms of section 50(1) of the Companies Act;
- 1.2.30            "**Securities Services Act**" – the Securities Services Act, No 36 of 2004;
- 1.2.31            "**SENS**" – the securities Exchange News Service established and operated by the JSE;



- 1.2.32        "**shareholder**" - a holder of a share who is entered as such in the securities register of the company;
- 1.2.33        "**sign**" - includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical or electronic process, and "**signature**" has the corresponding meaning;
- 1.2.34        "**sub-register**" – the record of uncertificated securities administered and maintained by a CSDP, which forms part of the securities register in terms of the Companies Act;
- 1.2.35        "**uncertificated securities**" – securities as defined in section 29 of the Securities Services Act;
- 1.2.36        "**uncertificated securities register**" – the record of uncertificated securities administered and maintained by a CSDP or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of the securities register;
- 1.2.37        "**uncertificated share**" – a share that is an uncertificated security;
- 1.3        if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.4        the use of the word "**including**", "**includes**" and "**include**", followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;
- 1.5        where any term is defined within a particular article other than this article 1, that term shall bear the meaning ascribed to it in that article wherever it is used in this MOI;
- 1.6        any word or expression which is defined in the Companies Act or in the JSE listings requirements and which is not otherwise defined in this MOI shall have

the meaning assigned thereto in the Companies Act or the JSE listings requirements, as the case may be, as in force on the date upon which this MOI was adopted by the shareholders by way of a special resolution passed in accordance with section 16(1)(c)(ii) of the Companies Act, provided that if a word or expression is defined in both the Companies Act and the JSE listings requirements and there is a conflict between such definitions, the definition contained in the Companies Act shall prevail. For the avoidance of doubt, it is recorded that any reference to "present at such meeting" or "present at the meeting" shall be construed in accordance with the definition of "present at a meeting" in the Companies Act;

- 1.7 a reference to a "**section**" refers to the corresponding section of the Companies Act;
- 1.8 this MOI shall be deemed to authorise the company to do anything which the Companies Act empowers a company to do if so authorised by its MOI, unless that authority is expressly excluded;
- 1.9 references in the left-hand margins to sections of the Companies Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only and shall not be used in the interpretation of this MOI;
- 1.10 the headings of articles in this MOI are for information purposes only and shall not be used in the interpretation of this MOI; and
- 1.11 save to the extent otherwise provided by this MOI, the provisions of the company's MOI in force immediately prior to the adoption of this MOI shall, to the exclusion of this MOI, continue to regulate any matter which, by the provisions of the Companies Act, continues to be regulated by the law relating to companies as it existed immediately prior to the coming into operation of the Companies Act.

## 2 CONFLICTS WITH THE MOI

In accordance with the Companies Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and -

- 2.1 an alterable or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Companies Act expressly allows for the company to adopt the conflicting provision;
- 2.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict.

## 3 AMENDMENT OF THE MOI

- S15(2)(b) 3.1 Every provision of this MOI is capable of amendment in accordance with  
S15(2)(c) sections 16(1)(a), 16(1)(c) and 152(6)(b) of the Companies Act, and,  
S16 accordingly, there is no provision of this MOI which may not be amended as  
S17 contemplated in section 15(2)(b) or 15(2)(c) of the Companies Act.
- 3.2 This MOI may only be altered or amended -
  - S16(1)(a) 3.2.1 in compliance with a court order on the basis set out in sections 16(1)(a) and 16(4) of the Companies Act and any other applicable provisions of the Companies Act; or
  - 3.2.2 by way of a special resolution of the shareholders passed in accordance with section 16(1)(c) of the Companies Act, read in conjunction with the remaining provisions of the Companies Act and this MOI; or
  - S16(1)(c) 3.2.3 as contemplated in sections 17 and 152(6)(b) of the Companies Act.
- 3.3 Save as specifically provided for in article 3.2, this MOI is not capable of amendment by any other method. Accordingly, the provision of section 16(1)(b) of the Companies Act shall not apply, nor shall any other alterable provisions of the Companies Act that allows for a method for the

alteration or amendment of the MOI other than those methods contemplated in article 3.2 apply.

- 3.4 Any change to the name of the company and any variation of the share capital of the company referred to in article 10.3 shall be effected by an amendment to this MOI by way of a special resolution as referred to in article 3.2.2.

#### **4 RULES**

S15(3) The board is prohibited from making, amending or appealing any rules and the authority of the board in this regard is hereby excluded.

### **PART B – STATUS AND POWERS OF THE COMPANY**

#### **5 STATUS AS PUBLIC COMPANY**

- 5.1 The company was incorporated in terms of the Companies Act, 1973, on 7 October 1977, is a pre-existing company as defined in the Companies Act, and accordingly continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, in accordance with the provisions of item 2 of Schedule 5 to the Companies Act, and this MOI replaces and supersedes the memorandum and articles of association of the company applicable immediately prior to the filing date.

- 5.2 The company is incorporated in accordance with and governed by –

5.2.1 the unalterable provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with the provisions of section 15(2)(a)(iii) of the Companies Act); and

S15(2)(a)(ii) 5.2.2 the alterable provisions of the Companies Act, subject to the limitations, restrictions, qualification, extension or other alterations set out in this MOI in accordance with the provisions of the Companies Act and/or as set out in this MOI.

- 5.3 The company is entitled to offer its securities to the public, subject to compliance with this MOI and the Companies Act.

- 5.4 The company is accordingly classified as a public company in terms of section 8(2) of the Companies Act.

## **6 POWERS OF THE COMPANY**

- S19(1)(b)(ii) 6.1 The company has, subject to section 19(1)(b)(i) of the Companies Act, all of the legal powers and capacity of an individual, and the legal powers and capacity of the company are not subject to any restrictions, limitations or qualifications contemplated in section 19(1)(b)(ii) of the Companies Act.
- 6.2 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b) of the Companies Act.
- 6.3 No special resolution contemplated in section 20(2) or section 20(6) of the Companies Act to ratify any action which is contrary to the JSE listings requirements shall be proposed to the shareholders unless otherwise agreed to by the JSE.

## **7 LIMITATION OF LIABILITY**

- S19(2) 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.

## **PART C – CAPITALISATION AND SECURITIES OF THE COMPANY**

### **8 SHARE CAPITAL**

- S36(1)(a) The numbers and classes of shares which the company is authorised to issue are set out in Schedule 1 to this MOI.

### **9 RIGHTS OF THE ORDINARY SHARES**

- S36(1)(b) Each ordinary share in the issued capital of the company ranks *pari passu* with all other ordinary shares in respect of all rights, and entitles its holder to -
- 9.1 the right to be entered into the securities register of the company as the registered holder of an ordinary share;

- 9.2 exercise one vote on any matter to be decided by shareholders of the company (other than matters which are in, terms of this MOI or the Companies Act, to be decided solely by the holders of any other class/es of share(s);
- 9.3 participate equally with every other ordinary share in any distribution (excluding any payment in lieu of a capitalisation share and any consideration payable by the company for any of its own shares or for any shares of a another company within the same group as contemplated in paragraphs (ii) and (iii) of the definitions of distribution in the Companies Act) to ordinary shareholders, whether during the existence of the company or upon its dissolution.

## 10 VARIATION OF SHARE CAPITAL

- S36(3) 10.1 Notwithstanding the provisions of section 36(3) of the Companies Act, the board shall not have the power to -
- 10.1.1 increase or decrease the number of authorised shares of any class of the shares;
- 10.1.2 reclassify any classified shares that have been authorised but not issued;
- 10.1.3 classify any unclassified shares that have been authorised but not issued;  
or
- 10.1.4 determine the preferences, rights, limitations or other terms of any shares,
- which powers shall only be capable of being exercised by the shareholders by way of a special resolution of the shareholders.
- 10.2 Each share issued by the company shall entitle its holder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share.

- s36(2) 10.3 The shareholders may, by amendment to the MOI, by way of a special resolution and in accordance with the JSE listings requirements, -
- 10.3.1 increase or decrease the number of authorised shares of any class of the shares;
  - 10.3.2 reclassify any classified shares that have been authorised but not issued;
  - 10.3.3 classify any unclassified shares that have been authorised but not issued;  
or
  - 10.3.4 determine the preferences, rights, limitations or other terms of any shares;
  - 10.3.5 create any class of shares;
  - 10.3.6 convert one class of shares into one or more other classes of shares, including the conversion of par value shares into no par value shares;
  - 10.3.7 consolidate or subdivide any class of securities;
  - 10.3.8 vary any preference shares, limitations or other terms of any class of shares already in issue, but no variation shall be implemented unless –
    - 10.3.8.1 it has been approved by a special resolution adopted by the holders of that class of shares at a separate meeting; and
    - 10.3.8.2 if there is any other class/es of shares in issue, it has also been approved by a special resolution of all of the shareholders of the company entitled to vote thereon, which special resolution shall only be proposed after the special resolution referred to in article 10.3.8.1 has been passed.
  - 10.4 The preferences, rights, limitations or any other terms of any class of shares may not be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act and the powers of the board are limited accordingly.

10.5 The company may only issue shares which are freely transferable and only within the classes and to the extent that those shares have been authorised by or in terms of this MOI.

10.6 All issues of shares for cash and all issues of options and convertible securities granted or issues for cash must, in addition, be in accordance with the JSE listings requirements.

## **11 ISSUE OF SECURITIES**

S38 11.1 The company may only issue securities which are freely transferable and only within the classes and to the extent that those securities have been authorised by or in terms of this MOI.

11.2 All issues of shares for cash and all issues of options and convertible securities granted or issues for cash must also be in compliance with the JSE listings requirements.

11.3 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 Companies Act, only be issued after the company has received the consideration approved by the board for the issuance of such securities.

11.4 Subject to the provisions of article 11.5, article 11.6, the Companies Act and the JSE listings requirements, the board may only issue unissued shares if such shares have first been offered on the same terms and conditions to existing ordinary shareholders pro-rata in proportion to their existing shareholding, unless such shares are issued for the acquisition of assets by the company.

11.5 Notwithstanding the provisions of articles 10.1, 11.4 and 11.6, 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% of the voting power of all the shares of that class held by shareholders immediately before that transaction or series of integrated transactions.

- 11.6 Notwithstanding the provisions of article 11.4, the shareholders may at a general meeting authorise the directors to issue shares of the company at any time and/or grant options to subscribe for shares as the directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply/ies with the JSE listings requirements.
- 11.7 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 MOI, no shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional shares issued by the company.
- 11.8 The pre-emptive right stipulated in article 11.4 shall not apply to any issue of shares in consideration for the acquisition by the company of any securities in another company or any other property which is not money and for this purpose any claim by a shareholder against the company for the payment of any amount shall be deemed to be money.

## **12 COMMISSION**

The company shall not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company.

## **13 REGISTER AND CERTIFICATES**

- S49(2) 13.1 The securities issued by the company shall be issued in certificated or uncertificated form.
- S50(1) 13.2 The company shall establish or cause to be established, and shall maintain, a securities register in accordance with the Companies Act and the regulations and, to the extent that the form of and the manner of maintaining the

securities register is not prescribed, the board shall determine the form and manner thereof.

S51(5)  
S51(6) 13.3 The company shall enter into its securities register the transfer of any certificated securities which is effected in accordance with article 15 and shall include in such entry the information required by section 51(5) of the Companies Act.

S51(1) 13.4 The certificates evidencing any certificated securities of the company shall comply with the requirements set out in section 51(1) of the Companies Act and shall otherwise be in such form as may be determined by the board.

13.5 If any certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, and on such terms as the board may determine.

#### **14 UNCERTIFICATED SECURITIES**

S52

14.1 Subject to article 14.2, the company shall not issue certificates evidencing or purporting to evidence, title to uncertificated securities of the company.

14.2 Any person who wishes to withdraw his/her uncertificated securities held by a CSDP and to obtain a certificate in respect of all or part of those securities, shall notify the CSDP thereof, in which case -

14.2.1 the CSDP shall notify the company to provide such a certificate and shall remove the details of the uncertificated security so withdrawn from the sub-register maintained by the CSDP;

14.2.2 the company shall, immediately on receipt of such notice from a CSDP, enter the relevant person's name and details in respect of his/her or its holding in the company's register of members and indicate on such register that the securities so withdrawn are no longer held in uncertificated form;

14.2.3 the company shall, within fourteen days of receipt of the notice referred to in article 14.2.1, prepare and deliver to the relevant person a certificate in respect of the securities so withdrawn, and notify the Central

Securities Depository that the securities are no longer held in uncertificated form; and

14.2.4 transfer of ownership or acquisition of membership in respect of securities so withdrawn shall not be capable of being effected through a Central Securities Depository while they remain in certificated form.

14.3 The company shall enter in its register of members, in respect of every class of securities, the total number of securities held in uncertificated form.

## **15 TRANSFER OF SECURITIES**

15.1 No shareholder may transfer the registered or beneficial ownership of any shares in the company to any other party without first complying with the requirements for transfer as set out in this MOI.

15.2 Subject to the requirements of the Companies Act, the instrument of transfer of a share shall be in the usual form or such other form as the directors may approve and shall be signed by the transferor and the transferee (to the extent required by law).

15.3 Transfer of ownership in any uncertificated securities shall be effected in accordance with the provisions of the Companies Act, and -

15.3.1 shall be effected upon the debiting and crediting, respectively, of both the account in the uncertificated securities register from which the transfer is effected and the account in the uncertificated securities register to which transfer is to be made, in accordance with the rules of a Central Securities Depository; and

15.3.2 a transfer shall, upon the entering of his, her or its name in a uncertificated securities register, become a member of and be recognised as a member of the company in respect of the uncertificated securities registered in his, her or its name.

15.4 Only a CSDP may effect transfer of uncertificated securities in an uncertificated securities register maintained by it. A CSDP shall transfer uncertificated

securities in an uncertificated securities register administered and maintained by it only on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or by order of court.

15.5 The company shall not enter into its securities register the transfer of any certificated securities, unless -

15.5.1 the transfer is evidenced by a proper instrument of transfer signed by the transferor and transferee, the form of which shall be determined by the board from time to time, which has been delivered to the company at its registered office together with –

15.5.1.1 such proof as the board may require of the authority of the signatory/ies to that instrument of transfer; and

15.5.1.2 the certificate in respect of securities being transferred; or

15.5.2 the transfer was effected by operation of law.

15.6 Subject to the provisions of this MOI, every instrument of transfer of a share shall be left at the transfer office accompanied by the certificate of the shares to be transferred and/or such other evidence as the company may require to prove the title of the transferor or his right to transfer the shares. Any authority to sign transfer deeds granted by a member for the purpose of transferring shares which may be lodged, produced or exhibited with or to the company at the transfer office shall be deemed to remain in full force, and the company may allow the same to be acted upon, until written notice of revocation thereof is lodged at the transfer office. Even after the lodging of such notice, the company may give effect to any instrument signed under the authority to sign and certified by any officer of the company as being in order before the lodging of such notice.

15.7 Fully paid securities shall not be subject to any lien in favour of the company and shall be freely transferable.

## 16 CAPITALISATION SHARES

- S47(1) 16.1 The board shall not, save to the extent specifically authorised by the shareholders by means of an ordinary resolution authorising the specific transaction contemplated, have the power or the authority to -
- 16.1.1 approve the issuing of any authorised shares as capitalisation shares; or
  - 16.1.2 issue shares of one class as capitalisation shares in respect of the shares of another class; or
  - 16.1.3 resolve to permit the shareholders to elect to receive a cash payment in lieu of a capitalisation share,
- provided that such transaction(s) has/have been approved by the JSE and provided that the JSE listings requirements have been complied with. The authority of the board to issue capitalisation shares in accordance with section 47(1) of the Companies Act is accordingly limited and restricted by this MOI.
- S47(2) 16.2 The board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in section 47(2) of the Companies Act, unless the board –
- 16.2.1 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
  - 16.2.2 is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.
- 16.3 If, on any capitalisation issue, shareholders would, but for the provisions of this article 16, become entitled to fractions of shares, the board shall, subject to any contrary provisions in the resolution authorising the capitalisation issue, be entitled to round off the number of capitalisation shares to be received by a shareholder up or down to the nearest whole number (ie capitalisation shares will be rounded down to the nearest whole number if they are less than 0,5

and will be rounded up to the nearest whole number if they are equal to or greater than 0,5 resulting in allocations of whole securities and no fractional entitlements).

## **17 ACQUISITION OF SHARES ISSUED BY THE COMPANY**

S48

Subject to the provisions of the Companies Act and the JSE listings requirements, the company may acquire any shares issued by the company on the basis that –

- 17.1 all or a portion of the price payable on such acquisition may be paid out of the funds of or available to the company whether or not such payment results in a reduction of the share capital, stated capital, reserves, any capital redemption reserve fund and/or any other account of the company; and
- 17.2 the shares so acquired shall be restored to the status of unissued shares and the authorised share capital of the company shall remain unaltered.

## **18 DEBT INSTRUMENTS**

S43(2)

S43(3)

The board may authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Companies Act, provided that the board shall not be entitled to issue any debt instruments that grants the holder thereof any rights regarding -

- 18.1 attending and voting at general meetings and the appointment of directors; and
- 18.2 the receipt by the holder thereof of anything other than repayment of the capital amount thereof and payment of interest thereon, all in cash, without the approval of the shareholders by way of a special resolution. Without limiting the foregoing, it is recorded that a debt instrument may not confer on its holder any right to receive any shares or other securities of the company or any other entity or any other property (whether on conversion or redemption or repurchase of the debt instrument or otherwise) without the approval of a special resolution.

The authority of the board to authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2), is accordingly limited or restricted by this MOI.

## **19 BENEFICIAL INTERESTS**

S56(1)

Securities issued by the company may be held by, and registered in the name of, one person for the beneficial interest of another person, but no person other than the registered holder of a security shall (save to the extent expressly provided for in this MOI) be entitled to exercise any of the rights associated with that security and the company shall not recognise any person other than the registered holder of a security as the holder (whether beneficial or otherwise) of that security. The holding of the company's securities by a registered holder for the beneficial interest of another person is accordingly limited and restricted by this MOI.

## **20 JOINT HOLDERS OF SECURITIES**

Where two or more persons are registered as the holders of any security, they shall be deemed to hold that security jointly, and -

- 20.1 notwithstanding anything to the contrary contained anywhere else in this MOI, on the death, sequestration, liquidation or legal disability of any one of those joint holders who is not represented by a legal representative as referred to in article 21, the remaining joint holders may be recognised, at the discretion of the board, as the only persons having title to that security;
- 20.2 any one of those joint holders may give effective receipts for any distributions or other payments or accruals payable to those joint holders;
- 20.3 only the joint holder whose name stands first in the securities register shall be entitled to delivery of the certificate relating to that security, or to receive notices or payments from the company (and any notice or payment given to that joint holder shall be deemed to be notice or payment, as the case may be to all of the joint holders);
- 20.4 any one of the joint holders of any security conferring a right to vote on any matter may vote either personally or by proxy at any meeting in respect of that security as if he were solely entitled to exercise that vote, and, if more

than one of those joint holders is present at any meeting of shareholders, either personally or by proxy, the joint holder who tenders a vote (including an abstention) and whose name stands in the securities register before the other joint holders who are present, in person or by proxy, shall be the joint holder who is entitled to vote in respect of that security.

## 21 LEGAL REPRESENTATIVES

21.1 A legal representative of the holder of any security issued by the company ("**security holder**") shall –

21.1.1 be the only person recognised by the company as having any rights in respect of or title to a security registered in the name of the security holder whom he represents, provided that if a security holder or his legal representative is a joint holder of that security, then this article 21.1 shall not detract from article 20 and this article 21.1 shall be read together with article 20; and

21.1.2 if so required by that legal representative or by the board, be entered into the securities register of the company *nomine officio* in the place and on behalf of that security holder,

provided that if the legal representative so entered into the securities register ceases to be the legal representative of that security holder, the board shall, pending transfer of that security holder or another legal representative of that security holder or any other person who is entitled to become the holder of that security, be entitled to suspend the rights of the holder of that security to vote and shall be entitled to withhold (and retain until such transfer has occurred) all distributions payable to the holder of that security.

21.2 A legal representative (not being one of several joint holders) shall be the only person recognised by the company as a member of having any title to a share registered in the name of the member whom he/she represents.

21.3 A legal representative shall be entitled to be registered as a member *nomine officii* in respect of any share registered in the name of any member whom



he/she represents or to transfer any such share to himself/herself or any other person, provided that-

- 21.3.1 the directors shall in any of such cases have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the member in whose name it is registered;
- 21.3.2 should any legal representative fail to elect either to be registered as a member or to transfer any such share to himself/herself or any other person within 90 days after the directors have given him notice requiring him to do so, then the directors shall be entitled to withhold any dividends, bonuses, return of capital or other accruals in respect of such share until compliance with the notice, provided that securities registered in the name of a deceased or insolvent estate shall not be forfeited in the event that the executor fails to register such securities in his own name or the name of the heir(s) or legatees when called upon by the board to do so; and
- 21.3.3 any member who is represented by a legal representative shall not be released by any obligation arising out of or in connection with the holding of that share.

## **PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS**

### **22 SHAREHOLDERS RIGHTS TO INFORMATION**

S26(1) Each shareholder and each person who is the registered holder of, or holds a beneficial interest in, any securities issued by the company shall have the information rights set out in section 26(1) of the Companies Act.

### **23 PROXY REPRESENTATION**

S58(1) 23.1 A shareholder may, at any time by written proxy appointment ("**proxy instrument**") which complies with this MOI and the Companies Act, appoint any individual (or two or more individuals concurrently), including an individual who is not a shareholder of the company, as a proxy to -

23.1.1 participate in, and speak and vote at, a shareholders meeting on behalf of the shareholder; or

23.1.2 give or withhold written consent on behalf of the shareholder to a decision contemplated in article 32,

and any such proxy instrument (and any invitation by the company to appoint a proxy and any forms supplied by the company for use as a proxy instrument) shall be governed by section 58 of the Companies Act and this article 23.

23.2 The board may determine a standard form of proxy instrument and make it available to shareholders on request.

23.3 Subject to the provisions of the Companies Act, a proxy -

23.3.1 need not, subject to 23.3.2, bear a handwritten signature of the member appointing the proxy and may be an instrument created by electronic or other means, including, without limitation, electronic mail or facsimile;

23.3.2 shall be in such form as is approved or accepted by the directors and shall be accompanied by such documentary or other evidence as may be required by the directors in order to establish the validity and/or authenticity thereof, including the authority of the person appointing the proxy;

23.3.3 shall be received at the transfer office not less than twenty-four hours before the time appointed for the holding of the general meeting, or resumption of an adjourned general meeting at which the person named therein proposes to vote;

23.3.4 shall not be valid after the expiry of two months after the date when it was deposited at the transfer office unless it specifically provides otherwise;

23.3.5 shall in addition to the authority conferred by the Companies Act, except insofar as it provides otherwise, be deemed to confer the power generally

to act at the general meeting in question, subject to any specific direction contained in the proxy instrument as to the manner of voting;

23.3.6 shall be valid at every resumption of an adjourned meeting to which it relates, unless the contrary is stated thereon;

23.3.7 shall not be used at the resumption of an adjourned general meeting if it could not have been used at the general meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place; and

23.3.8 may confer the power of delegation and sub-delegation on any proxy appointed in terms thereof, so that any proxy so appointed may appoint any other person as proxy in his stead.

23.4 A shareholder may not appoint more than one person concurrently as proxies, and may not appoint more than one proxy to exercise voting rights attached to different securities held by the shareholder.

S58(3)(a)

23.5 A proxy may not delegate the proxy's authority to act on behalf of the shareholder to another person, unless the right to delegate is specifically contained in the proxy instrument and the delegation occurs by way of a further proxy instrument which itself complies with the requirements of the Companies Act and this MOI for a proxy instrument.

S58(3)(b)

23.6 A proxy shall not be entitled to exercise any rights of the shareholder who appointed that proxy –

S58(3)(c)

23.6.1 until the expiry of two business days after the date on which the instrument containing; or

23.6.2 after midnight on the day on which the instrument revoking,

the appointment of that proxy was delivered to the registered office of the company (marked urgent and for the attention of the company secretary, chairperson or executive director of the company and accompanied by such proof of the identity and authority of the signatory as may reasonably be

required by the board or the chairperson of any meeting referred to in the proviso to this article 23.6) or to any other person entitled to accept the proxy instrument or revocation on behalf of the company; provided that the board, or the chairperson of any meeting at which the proxy wishes to exercise any rights of the shareholder, may agree to allow any such proxy instrument or revocation to become effective prior to the time when it would otherwise have become effective in terms of this article 23.

S58(7) 23.7 A proxy shall, as contemplated in section 58(7) of the Companies Act, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the shareholder; provided that if the instrument appointing the proxy specifically provides otherwise then the specific provisions of the proxy instrument shall prevail.

## 24 RECORD DATES

S59(1)  
S59(2) The board may, in accordance with section 59 of the Companies Act and the regulations, determine and publish a record date for the purposes of determining which shareholders are entitled to -

24.1 receive a notice of a shareholders meeting;

24.2 participate in and vote at a shareholders meeting;

24.3 decide any matter by written consent or by electronic communication;

24.4 receive a distribution; or

24.5 be allotted or exercise any other rights;

provided that –

S59(3)

24.5.1 if the board does not determine a record date for any action or event, as contemplated in this article 24, the record date shall be as determined in accordance with section 59(3) of the Companies Act; and

24.5.2 whilst the shares of the company are listed on the JSE, the record date shall be the record date determined in accordance with the JSE listings requirements.

## **25 SHAREHOLDERS MEETINGS**

S61(2)(a) 25.1 The company shall not be required to hold any meetings of shareholders other than those required by the Companies Act and/or the JSE listings requirements.

25.2 The company shall hold a shareholders meeting in the circumstances contemplated in section 61(2) of the Companies Act and/or circumstances contemplated in the JSE listings requirements.

S61(3) 25.3 The board (or any prescribed officer of the company authorised by the board) is entitled to call a shareholders' meeting at any time.

S61(9) 25.4 The board shall determine the location for any shareholders meeting of the company and the company may hold any such meeting in the Republic or any foreign country and, accordingly, the authority of the board, as contemplated in section 61(9) of the Companies Act, is not limited or restricted by this MOI.

## **26 NOTICE OF SHAREHOLDERS MEETINGS**

26.1 Not less than fifteen business days' notice shall be delivered to all shareholders of meetings called for the passing of a special resolution and/or for the passing of an ordinary resolution, calculated as of the record date of the meeting to the date on which the meeting is to begin. Simultaneously with delivery of any notice in terms of this article 26.1, the company must announce such notice through SENS.

S62(3) 26.2 The notice of a shareholders meeting shall be in writing and shall include the items set out in section 62(3) of the Companies Act.

26.3 The notice of a shareholders meeting must be delivered in accordance with the provisions of article 47.

## 27 CONDUCT OF MEETINGS

27.1 The company -

S63(2)(a) 27.1.1 may, as contemplated in section 63 of the Companies Act, provide for a shareholders meeting to be conducted in whole or in part by electronic communication; and

S63(2)(b) 27.1.2 must always make provision for any shareholder, or proxy for a shareholder, to participate by electronic communication in every shareholders meeting that is being held in person at any place other than the registered office of the company,

S61(2) and any electronic communication facility so employed must ordinarily enable all persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the company shall be limited and restricted accordingly.

S63(3)(b)

27.2 Subject to article 27.1, the responsibility for the expense of gaining access to the medium or means of electronic communication employed for any shareholders meeting shall be that of the shareholder or proxy. If a provision has been made for a shareholders meeting to be conducted by electronic communication or for participation in a shareholders meeting by electronic communication and the medium or means of such electronic communication is available and functioning, then the shareholders meeting shall be entitled to proceed even if a shareholder or proxy is not able to gain access to the medium or means of electronic communication so employed.

S63(3)(a) 27.3 The company shall ensure that 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 that form of participation and shall provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication.

27.4 A resolution passed at any meeting that employs electronic communication shall, notwithstanding that the shareholders are not present together in one

place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of articles 27 to 32 shall apply to these meetings.

- S63(4) 27.5 At a meeting of shareholders, a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (on or before the declaration of the result of a show of hands) by –
- 27.5.1 the chairperson of the meeting; or
  - 27.5.2 not less than five security holders present at the meeting having the right to vote on that resolution; or
  - 27.5.3 a security holder or holders present at the meeting having the right to exercise at least 10% of the total voting rights of all security holders having the right to vote on that resolution.

## **28 SHAREHOLDER MEETING QUORUM AND ADJOURNMENT**

- S64(1) 28.1 The quorum requirements for meetings of shareholders shall, subject to article 28.5, be that –
- 28.1.1 at least three shareholders entitled to vote, present in person or represented by an authorised representative, are present at such meeting;
  - 28.1.2 such a meeting shall not begin until sufficient persons are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Companies Act) to exercise, in aggregate, at least 25% of all voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
  - 28.1.3 the consideration of a matter to be decided at the meeting shall not begin unless sufficient persons are present at such meeting at the time when that matter is called for consideration to exercise, in aggregate, at least 25% of all voting rights that are entitled to be exercised on that matter.

- S64(4) 28.2 Notwithstanding the provisions of section 64(4) of the Companies Act and article 28.1, if, within thirty minutes after the appointed time for a meeting, -
- 28.2.1 the quorum requirements for a meeting to begin have not been satisfied, the meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a business day, the next business day) in the next week;
- 28.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -
- 28.2.2.1 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 motion or vote; or
- 28.2.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, to the same day (or if that day is a public holiday, the next business day) in the next week.
- 28.3 The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- S64(5) 28.4 The chairperson of the meeting shall be entitled to extend the thirty minute limit referred to in article 28.2 in the circumstances contemplated in section 64(5) of the Companies Act.
- S64(8) 28.5 If, at the time appointed in terms of this article 28 for an adjourned meeting to resume, or for a postponed meeting to begin, the quorum requirements have not been satisfied, the shareholders present in person or by proxy will be deemed to constitute a quorum.
- S64(9) 28.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.



S64(10)  
S64(11)  
S64(12)

28.7 A shareholders meeting, or the consideration of any matter being debated at a shareholders meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Companies Act, it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.

28.8 The board may, at any time after notice of a shareholders meeting (other than a shareholders meeting required to be held in terms of article 25.3) has been given but prior to the commencement of that meeting, postpone that meeting to such later date as may be determined by the board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the board at a later stage; provided that the board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Companies Act or this MOI to be held.

S64(7)(a)  
S64(7)(b)

28.9 If a shareholders' meeting is postponed or adjourned, whether in terms of article 28.2 or otherwise, the company must, by announcement on SENS, give notice to all shareholders who were entitled to receive notice of the meeting of the postponement or adjournment and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and any other information which the board may decide to include therein.

28.10 Even if he is not a shareholder –

28.10.1 any director; or

28.10.2 the company's attorney (or where the company's attorneys are a firm, any partner or director thereof) or other person admitted by the chairman of the meeting,

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

## **29 SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

29.1 The company may conduct a shareholders' meeting entirely by electronic communication or provide for participation in a meeting by electronic

communication, as set out in section 63 of the Companies Act, and the power of the company to do so is not limited or restricted by this MOI. Accordingly –

- 29.1.1 any shareholders' meeting may be conducted entirely by electronic communication; or
- 29.1.2 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.

- 29.2 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.

### **30 CHAIRPERSON OF SHAREHOLDERS' MEETING**

- 30.1 The chairperson of the board or, failing him, the deputy chairperson of the board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each shareholders meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the shareholders present shall elect one of the directors or, if no director is present and willing to act, a shareholder, to be the chairperson of that shareholders meeting.
- 30.2 The chairperson of a shareholders' meeting shall, subject to the Companies Act and this MOI, determine the procedure to be followed at that meeting but shall not have a second or casting vote at any shareholders' meeting.

### 31 SHAREHOLDERS RESOLUTIONS

- S63(6)
- 31.1 At any meeting of shareholders, any person who is present at the meeting, whether as a shareholder or as a proxy for a shareholder, shall be entitled –
- 31.1.1 to exercise the number of voting rights associated with the securities held by such shareholder, which voting rights shall be determined in accordance with the preferences, rights, limitations and other terms of the shares, as set out in this MOI;
- 31.1.2 to one vote on a show of hands, irrespective of the number of voting rights that ordinary shareholder would otherwise be entitled to exercise;
- 31.1.3 on a poll to such number of votes determined in accordance with the voting rights associated with the ordinary shares held by that ordinary shareholders; and
- 31.1.4 the holders of securities other than ordinary shares shall not be entitled to vote on any resolution at a meeting of shareholders, except as provided for in article 31.3.
- 31.2 If any resolution is proposed as contemplated in article 10.2, the holders of such shares ("**participating shareholders**") shall be entitled to vote at the meeting of ordinary shareholders as contemplated in article 31.1, provided that the votes of the shares of that class held by the participating shareholders ("**subject shares**") shall not carry any special rights or privileges and the participating shareholder shall be entitled to 1 (one) vote for every subject share held, provided that the total voting rights of the participating shareholders in respect of the subject shares shall not be more than 24.99% of the total votes (including the votes of the ordinary shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any subject shares held by a participating shareholder rounded down to the nearest whole number).

- S65(7) 31.3 In order for -
- 31.3.1 an ordinary resolution to be approved, it must be supported by a majority of the voting rights exercised on the ordinary resolution, as contemplated in section 65(7); or
- S65(10) 31.3.2 a special resolution to be approved, it must be supported by 75% of the voting rights exercised on the special resolution, as provided in section 65(9),
- at a quorate meeting of shareholders which is quorate in relation to that resolution; provided that this article 31.3 shall not detract from the shareholders' ability to adopt resolutions by written vote as referred to in article 32.
- 31.4 If any shareholder abstains from voting in respect of any resolution, that 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 of that resolution.
- 31.5 Without limiting the power of the board to authorise or declare distributions any shareholders' meeting of the company shall be entitled to sanction or declare distributions.
- S65(11) 31.6 Except for those matters which require the approval or authority of a special resolution in terms of section 65(11), any other section of the Companies Act, any provision of the regulations, this MOI or the JSE listings requirements, no other matters which the company may undertake require the approval or authority a special resolution of the shareholders.

## **32 WRITTEN RESOLUTIONS BY SHAREHOLDERS**

- S60(1) 32.1 A resolution that could be voted on at a shareholders meeting may instead be adopted by written vote of the shareholders, as contemplated in section 60 of the Companies Act, if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting.

32.2 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the company received the written vote of the shareholder or the proxy of the shareholder whose vote resulted in the resolution by being supported by sufficient votes for its adoption.

32.3 The provisions of this article 32 shall not apply to any shareholders' meetings that are called for in terms of the JSE listings requirements or the passing of any resolution in terms of article 34.2.

## **PART E – DIRECTORS POWERS AND PROCEEDINGS**

### **33 AUTHORITY OF THE BOARD OF DIRECTORS**

S66(1) 33.1 The business and affairs of the company shall be managed by or under the direction of the board, which shall have the authority to exercise all of the powers and perform all of the functions of the company, except to the extent that the Companies Act or this MOI provides otherwise.

33.2 The board may delegate to any one or more persons all such powers and delegate to any one or more persons the doing of all such acts (including the right to sub-delegate).

33.3 If the company has only one director -

33.3.1 that director may exercise any power or perform any function of the board at any time, without notice or compliance with any other internal formalities;

S71(3)-(7) 33.3.2 sections 71(3) to (7) of the Companies Act shall not apply to the governance of the company; and

S34  
S35 33.3.3 the provisions of articles 38 and 39 shall not apply to the governance of the company.

### 34 APPOINTMENT OF DIRECTORS

- 34.1 The board shall comprise not less than six nor more than fifteen directors of whom not less than 50% shall be HDPs.
- S66(4)(a)(i)  
S66(4)(a)(ii) 34.2 All of the directors shall be elected by an ordinary resolution of the shareholders at a general meeting of the company. There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(i) of the Companies Act, and no person shall have the right to effect the direct appointment or removal of one or more directors as contemplated in section 66(4)(a)(ii) of the Companies Act.
- S68(2) 34.3 The provisions of section 68(2) of the Companies Act shall apply to the election of directors, provided that any shareholder will have the right to nominate directors and provided further that a director may not be elected by written vote in accordance with article 32.
- S68(3) 34.4 The board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election in terms of 34.2, and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company. The authority of the board in this regard shall not be limited or restricted by this MOI.
- S68(1) 34.5 The directors shall retire from office in accordance with the following provisions of this article 34.5 –
- 34.5.1 at each annual general meeting directors comprising one third of the aggregate number of directors (excluding the CEO and any director referred to in article 34.5.4) or, if their number is not three or a multiple thereof, then the number nearest to but not less than one third of the aggregate number of directors (excluding the CEO and any director referred to in article 40) shall retire from office;
- 34.5.2 the directors to retire in terms of article 34.5.1 shall exclude any CEO and any director referred to in article 40 and shall be those who have been

longest in office since their last election, provided that if more than one of them were elected directors on the same day, those to retire shall be determined by lot unless those directors agree otherwise between themselves;

34.5.3 if, after the retirement of directors in terms of article 34.5.1, there would remain in office any director (excluding the CEO) who would have held office for three years since his last election, he shall also retire, in addition to the directors retiring in terms of article 34.5.1, at such annual general meeting;

34.5.4 any director appointed as such by the directors after the conclusion of the company's preceding annual general meeting shall, in addition to the directors retiring in terms of article 34.5.1 and article 34.5.3, retire from office at the conclusion of the annual general meeting held immediately after his appointment;

34.5.5 a retiring director shall be eligible for re-election and, if re-elected, shall be deemed for all purposes other than articles 34.5.1 to 34.5.4 not to have vacated his office;

34.5.6 the annual general meeting at which a director retires may elect another person to fill the vacated office, and if it is not so filled, the retiring director shall, if he has offered himself for re-election, be deemed to have been re-elected unless the annual general meeting expressly resolves not to fill such vacated office or not to re-elect such retiring director and provided that the company shall not be entitled to fill the vacancy in accordance with article 32;

34.5.7 no person other than a retiring director shall be eligible for election as a director at any annual general meeting unless the directors recommend otherwise, or unless during the period of thirty days following the end of the financial year of the company which immediately precedes such annual general meeting a member who will be entitled to attend and vote at such annual general meeting shall have lodged at the office written notice proposing such person as a director, together with the consent of that person to be elected as a director;

- 34.5.8 a retiring director shall continue to act as director throughout the general meeting at which he retires and his retirement shall become effective only at the end of such meeting.
- 34.6 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 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 the Republic.
- S69(3) 34.7 The company may not permit a person to serve as director if that person is ineligible or disqualified in terms of the Companies Act.
- S69(6) 34.8 In addition to the grounds of ineligibility and disqualification of directors as contained in section 69 of the Companies Act, a director shall cease to be eligible to continue to act as a director if he absents himself from three consecutive meetings of the board without the leave of the board, and the board resolves that his office shall be vacated; provided that this article 34.8 shall not apply to a director who is represented by an alternate director who does not so absent himself.
- 34.9 This MOI does not impose any minimum shareholding or other qualifications to be met by the directors of the company in addition to the ineligibility and disqualification provisions of the Companies Act and article 34.8.
- S70 34.10 Section 70 of the Companies Act shall apply to any vacancy on the board which may arise from time to time.
- 34.11 If the number of directors falls below the minimum number fixed in accordance with this MOI, 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 article 34.4 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 directors while their number is below the minimum number fixed in accordance with this MOI.

34.12 The directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the three month period contemplated in article 34.11, their number remains reduced below the minimum number fixed in accordance with this MOI, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) of the Companies Act or of summoning general meetings of the company, but not for any other purpose.

34.13 A director may hold any other office or place of profit under the company (except that of auditor) or any subsidiary of the company in conjunction with the office of director, and in this event, his appointment for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise must be determined by a disinterested quorum of the directors.

34.14 A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.

### **35 ALTERNATE DIRECTOR**

35.1 Each director may, by notice to the company at any time -

S66(4)(iii) 35.1.1 nominate any one or more than one person in the alternative (including any of his co-directors) to be his alternate director;

35.1.2 terminate any such appointment.

35.2 The appointment of an alternate director shall terminate when the director to whom he is an alternate director -

35.2.1 ceases to be a director; or

35.2.2 terminates his appointment.

35.3 An alternate director shall subject to this MOI -

35.3.1 act as a director and generally exercise all the rights of the director to whom he is an alternate director, but only during in the absence or incapacity of that director; and

35.3.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the director to whom he is an alternate director, but shall not have any claim of any nature whatsoever against the company for any remuneration of any nature whatsoever.

## **36 BOARD COMMITTEES**

S72(1) 36.1 The board may -

36.1.1 appoint any number of committees of directors; and

36.1.2 delegate to any committee any of the authority of the board (including the authority to sub-delegate);

36.1.3 include any person who is not a director of the company in such committees,

and, accordingly, the authority of the board in this regard is not limited or restricted by this MOI.

S72(2) 36.2 The authority and power of any committees established by the board, as contemplated in section 72(2) of the Companies Act, is not limited or

restricted by this MOI, but may be restricted by the board when establishing one committee or by subsequent resolution.

### **37 CHAIRPERSON OF THE BOARD**

37.1 The board shall be entitled, from time to time, to appoint a director to act as the chairperson of the board and to remove that chairperson from his post, with or without nominating a replacement.

37.2 The chairperson of the board or, failing him, the deputy chairperson of the board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the board; provided that, if no chairperson or deputy chairperson is present and willing to act, the board present shall elect one of the directors to be the chairperson of that meeting of the board.

37.3 The chairperson shall, subject to the Companies Act and this MOI and any decision of the board, determine the procedure to be followed at all meetings of the board and of the shareholders.

37.4 Notwithstanding the provisions of section 73(5)(e) of the Companies Act, the chairman shall not have a second or casting vote in addition to his deliberative vote (if any).

### **38 DIRECTORS MEETINGS**

38.1 The board may -

S73(1)(b)  
S73(2)

38.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2) of the Companies Act, any director shall be entitled to convene or direct the person so authorised by the board to convene a meeting of the board;

S73(4) 38.1.2 determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Companies Act; provided that -

38.1.2.1 no meeting may be convened without notice to all of the directors; and

38.1.2.2 any such prior determination may be varied, depending on the circumstances and reasons for the board meeting in question,

and the authority of the board in this regard is not limited or restricted by this MOI.

S73(5)(a) 38.2 If all of the directors of the company -

38.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

38.2.2 are present at a meeting; or

38.2.3 waive notice of the meeting,

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

S73(3) 38.3 The board -

38.3.1 may provide for a meeting of the board may be conducted in whole or in part by electronic communication; and

38.3.2 must always make provision for any director to participate by electronic communication in every board meeting that his held in person at any place other than the registered office of the company,

and any electronic communication facility so employed must ordinarily enable all persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in

the meeting, with or without an intermediary. The authority of the board in this regard is not limited or restricted by this MOI.

38.4 As set out in section 73(5)(b) of the Companies Act, the quorum for meetings of the board shall be a majority in number of the directors then in office; provided that unless the board decides otherwise -

S73(5)(b)-(e)

38.4.1 if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a business day, the next business day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed;

38.4.2 if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Companies Act, the directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.

38.5 If a meeting of the board is postponed or adjourned, whether in terms of article 38.4 or otherwise, the company must, within forty-eight hours thereafter, send notice of the postponement or adjournment to all directors who are entitled to receive notice of the meeting (excluding those of the directors who have agreed not to receive such notice of postponement or adjournment or agreed that the meeting may proceed without them) and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and the business to be dealt with thereat. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh notice has been given in accordance with this MOI.

S73(5)

- S73(5) 38.6 At any meeting of the board, -
- 38.6.1 an alternate director shall not be entitled to attend, speak or vote unless the director to whom he is an alternate director is absent from that meeting;
- 38.6.2 each director has one vote on every matter to be decided by the board; and
- 38.6.3 a resolution of the board shall be passed by a majority of the votes cast in the manner set out in article 38.6.2 at a quorate meeting of the board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This article 38.6.3 shall not detract from the board's ability to adopt resolutions as set out in article 39.
- S73(6) 38.7 The company shall keep minutes of the meetings of the board, and any of its committees, and include in those minutes -
- 38.7.1 any declaration given by notice or made by a director, as required by section 75 of the Companies Act; and
- 38.7.2 every resolution adopted by the board.
- S73(7) 38.8 Resolutions adopted by the board -
- 38.8.1 must be dated and sequentially numbered; and
- 38.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- S73(8) 38.9 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

### **39 WRITTEN RESOLUTIONS BY DIRECTORS**

S74

- 39.1 A decision that could be voted on at a meeting of the board may instead be adopted by a written resolution that has been submitted to all of the directors and signed by at least a majority of the directors (or their alternates).
- 39.2 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of directors and shall be inserted in the company's minute book for meetings and resolutions of directors.
- 39.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by or on behalf of the director (or alternate director) who signed it last.
- 39.4 The resolution may consist of one or more counterpart documents, each signed by one or more directors (or their alternates).
- 39.5 An alternate director shall only be entitled to sign such a written resolution if the director to whom he is an alternate director is, at the time of the alternate director's signature, absent from the Republic, or is incapacitated.

### **40 EXECUTIVE DIRECTORS**

- 40.1 The board may appoint, from time to time, one or more of the directors as executive directors, who shall be employees of the company, on such terms and conditions of employment as to remuneration and otherwise as may be determined from time to time by the board.
- 40.2 The appointment of an executive director as an employee of the company shall, without prejudice to any claim of any nature whatever which any such director may have against the company, cease if for any reason he ceases to be a director.

### **41 PAYMENTS TO DIRECTOR'S**

- S66(8) 41.1 The company may pay remuneration to its directors for those services as such  
S66(9) and, without detracting from the foregoing, may pay any additional remuneration referred to in article 41.3; provided that such remuneration

must be approved by a special resolution passed by the shareholders within the two previous years and the authority of the board in this regard is not restricted or limited by this MOI. For the avoidance of doubt it is recorded that this article does not apply to remuneration paid to executive directors for their services as employees of the company which is governed by article 40.1.

41.2 Each director shall be paid all travelling, subsistence and other expenses properly incurred by him in the execution of his duties as a director; provided that such expenses shall first have been authorised or ratified by the directors.

41.3 Any director who –

41.3.1 serves on any executive or other committee; or

41.3.2 devotes special attention to the business of the company; or

41.3.3 goes or resides outside South Africa for the purpose of the company; or

41.3.4 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.

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

41.4.1 the business of the company; and

41.4.2 attending meetings of the directors or of committees of the directors of the company.



## 42 BORROWING POWERS

The -

- 42.1 borrowing powers of the company; and
- 42.2 powers of the company to mortgage or encumber its undertaking and property or any part thereof and to issue debentures or debenture stock (whether secured or unsecured), whether outright or as security for any debt, liability or obligation of the company or of any third party,

shall be unlimited and shall be exercised by the directors.

## 43 INDEMNIFICATION AND INSURANCE FOR DIRECTORS

43.1 For the purposes of this 43, a director includes -

S78(1)

- 43.1.1 a former director and an alternate director;
- 43.1.2 a prescribed officer; and
- 43.1.3 a person who is a member of a committee of the board,

irrespective of whether or not the person is also a member of the board.

43.2 The board may, on behalf of the company, as contemplated in sections 78(4), 78(5) and 78(7) of the Companies Act, -

S78(4)

S78(5)

S78(7)

- 43.2.1 advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the company; and
- 43.2.2 directly or indirectly indemnify a director for expenses contemplated in 43.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -
  - 43.2.2.1 are abandoned or exculpate that director; or

43.2.2.2 arise in respect of any liability for which the company may indemnify the director, in terms of 43.2.3;

43.2.3 indemnify a director against any liability arising from the conduct of that director, other than a liability set out in section 78(6) of the Companies Act;

43.2.4 purchase insurance to protect -

43.2.4.1 a director against any liability or expense for which the company is permitted to indemnify the director in accordance with 43.2.3;

43.2.4.2 the company against any contingency, including -

43.2.4.2.1 any expenses -

43.2.4.2.1.1 that the company is permitted to advance in accordance with 43.2.1; or

43.2.4.2.1.2 for which the company is permitted to indemnify a director in accordance with 43.2.2; or

43.2.4.2.2 any liability for which the company is permitted to indemnify a director in accordance with 43.2.3,

and the authority of the board in this regard is not limited or restricted by this MOI.

43.3 The company shall and is hereby obliged to indemnify each director against (and pay to each director, on demand by that director, the amount of) any loss, liability, damage, cost (including all legal costs reasonably incurred by the director in dealing with or defending any claim) or expense ("**loss**") which that director may suffer as a result of any act or omission of that director in his capacity as a director; provided that –

- 43.3.1 this indemnity shall not extend to any loss –
- 43.3.1.1 against which the company is not permitted to indemnify a director by section 78(6) of the Companies Act; or
- 43.3.1.2 any loss arising from any gross negligence or recklessness on the part of that director, or
- 43.3.1.3 any loss of or damage to reputation;
- 43.3.1.4 in the event and to the extent that the director has recovered or is entitled and able to recover the amount of that loss in terms of any insurance policy (whether taken out or paid for by the company or otherwise);

and directors shall not be entitled to recover the losses referred to in this article 43.3.1 from the company. All losses other than those referred to in this 43.3.1 are referred to herein as "**indemnified losses**";

- 43.3.2 each director's right to be indemnified by the company in terms of this indemnity shall exist automatically upon his/her becoming a director and shall endure even after he/she ceases to be a director until he/she can no longer suffer or incur any indemnified loss;
- 43.3.3 then –
- 43.3.3.1 if any claim is made against a director in respect of any indemnified loss, the director shall not admit any liability in respect thereof and the director shall notify the company of any such claim within a reasonable time after the director becomes aware of such claim, in order to enable the company to contest such claim. Notwithstanding the foregoing provisions of this 43.3.3, the company's liability in terms of this indemnity shall not be affected by any failure of the director to comply with this 43.3.3, save in the event and to the extent that the company proves that such failure has resulted in the indemnified loss being greater than it would have been had the director complied with this article 43.3.3;

- 43.3.3.2 the company shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that -
- 43.3.3.2.1 the director shall (at the expense of the company and, if the director so requires, with the involvement of the director's own legal advisers) render to the company such assistance as the company may reasonably require of the director in order to contest such claim;
- 43.3.3.2.2 the company shall regularly, and in any event on demand by the director, inform the director fully of the status of the contested claim and furnish the director with all documents and information relating thereto which may reasonably be requested by the director;
- 43.3.3.2.3 the company shall consult with the director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;
- 43.3.4 to the extent that any loss consists of or arises from a claim or potential claim that the company might otherwise have had against the director, then the effect of this indemnity shall be to prevent the company from making such claim against the director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;
- 43.3.5 if this article 43 is amended at any time, no such amendment shall detract from the rights of the directors in terms of this article in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the shareholders;

43.3.6 all provisions of this article 43.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this article 43.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall remain of full force and effect;

43.3.7 this indemnity shall not detract from any separate indemnity that the company may sign in favour of the director.

## **PART F – GENERAL PROVISIONS**

### **44 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION**

S29  
S30

44.1 The company shall –

44.1.1 prepare annual financial statements in accordance with the Companies Act and the regulations and shall, only to the extent required by the Companies Act or the regulations, have those annual financial statements audited or reviewed; and

44.1.2 ensure that all subsidiaries of the company prepare annual financial statements in accordance with the Companies Act and the regulations, and shall, only to the extent required by the Companies Act, the regulations or the JSE listings requirements, have those annual financial statements audited.

S30

44.2 A copy of the annual financial statements of the company shall be delivered to all shareholders in accordance with article 47 as soon as possible after those annual financial statements have been approved by the board.

S26(3)

44.3 A copy of the annual financial statements of the company shall be delivered to all shareholders in accordance with article 47 as soon as possible after those annual financial statements have been approved by the board but in any event at least fifteen business days before the date of the annual general meeting of the company at which such annual financial statements will be considered.

## 45 FINANCIAL ASSISTANCE

### 45.1 Financial assistance for subscription for or purchase of securities

S44

The board may, as contemplated in section 44 of the Companies Act and subject to the requirements of that section, authorise the company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise, to any person for the purpose of, or in connection with, the subscription for any option, or any securities, issued or to be issued by the company or a related or inter-related company, or for the purchase of any such securities. The authority of the board in this regard is accordingly, not limited or restricted by this MOI.

### 45.2 Financial assistance to directors, prescribed officers and related and inter-related companies

S45

The board may, as contemplated in section 45 of Act and subject to the requirements of that section, authorise the company to provide direct or indirect financial assistance to a director or prescribed officer of the company, or of a related or inter-related company or corporation, or to a related or inter-related company, or to a member of a related or inter-related company, or to a person related to any such company, corporation, director, prescribed officer or member. The authority of the board in this regard is, accordingly, not limited or restricted by this MOI.

## 46 DISTRIBUTIONS

S46

46.1 Subject to the provisions of the Companies Act and this MOI, the board may declare any distribution and a shareholders' meeting may declare any distribution which is authorised by resolution of the board. All distributions shall comply with the JSE listings requirements.

46.2 Distributions (in the form of a dividend or otherwise) are to be declared by the board in accordance with the Companies Act.

46.3 The company may transmit any distribution or amount payable in respect of a share by -

46.3.1 ordinary post to the postal address of the shareholder thereof (or, where two or more persons are registered as the joint shareholders of any share, to the address of the joint holder whose name stands first in the securities register) recorded in the securities register or such other address as the holder thereof may previously have notified to the company in writing for this purpose; or

46.3.2 electronic bank transfer to such bank account as the holder thereof may have notified to the company in writing for this purpose,

and the company shall not be responsible for any loss in transmission.

46.4 Any distribution or other money payable on or in respect of a share, -

46.4.1 which is unclaimed, may be retained by the company and held in trust indefinitely until lawfully claimed by such shareholder/s or until the shareholder's claim therefor prescribes in terms of article 46.4.3;

46.4.2 which is unclaimed for a period of three years from the date on which they were declared may be declared forfeited by the board for the benefit of the company. The directors shall be entitled at any time to annul such forfeiture upon such conditions (if any) as the board deems fit;

46.4.3 which is retained and unclaimed for three years, should the company be wound-up or deregistered, after the payment date of the distribution or money in question, shall be forfeited and revert to the company or its assigns and may be dealt with by the directors or such assigns as they deem fit;

46.5 shall not bear interest against the company,

and the board shall, for the purpose of facilitating the winding-up or deregistration of the company before the date of any such forfeit, be entitled to delegate to any bank, registered as such in accordance with the laws of the

Republic, the liability for payment of any such distribution or other money, payment of which has not been forfeited in terms of the foregoing.

- 46.6 Distributions (in the form of a dividend or otherwise) shall be paid to shareholders registered as at a record date subsequent to the date of declaration or, if applicable, date of confirmation of the distribution, whichever is the later date.

## **47 NOTICES**

- 47.1 Any notice that is required to be given to shareholders or directors may be given in any manner prescribed in the Table CR3 to the regulations and that notice shall be deemed to have been delivered as provided for in the regulations as a result of the relevant method of delivery.

- 47.2 All notices shall be given by the company to each shareholder of the company and the Issuer Regulation Division of the JSE, shall be given in writing in any manner ascribed in Tables CR T3 to the regulations and the manner authorised by the JSE listings requirements. All notices shall, in addition, be released through SENS.

- 47.3 Each shareholder and director shall -

- 47.3.1 notify the company in writing of a postal address, which address shall be his registered address for the purposes of receiving written notices from the company by post; and

- 47.3.2 be entitled to notify in writing to the company an e-mail address and facsimile number, which address shall be his address for the purposes of receiving notices by way of electronic communication,

and if he has not notified to the company any such postal or e-mail address, then he shall not be entitled to receive notices from the company until such a postal or e-mail address is provided.

- 47.4 The postal address by any shareholder to the company in terms of article 47.3.1 may be a postal address within or outside the Republic.



## **SCHEDULE 1 – SHARE CAPITAL**

S36(1)(a) The numbers and classes of shares which the company is authorised to issue are set out below.

1 545 000 000 ordinary shares having the rights and limitations set out in the MOI.