

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

MEMORANDUM OF INCORPORATION

OF

RMB HOLDINGS LIMITED

A PUBLIC COMPANY

REGISTRATION NUMBER: 1987/005115/06
REGISTRATION DATE: 19 OCTOBER 1987

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SCHEDULES

SCHEDULE "1"	ADDITIONAL CLASSES OF SHARES
SCHEDULE "2"	PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH THE PREFERENCE SHARES
SCHEDULE "3"	PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH THE PREFERENCE SHARES
SCHEDULE "4"	GENERAL PREFERENCE SHARE TERMS AND CONDITIONS IN RESPECT OF DOMESTIC MEDIUM TERM NOTE AND PREFERENCE SHARE PROGRAMME

1 INTERPRETATION

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

- 1.1.1 "**Board**" means the board of Directors from time to time of the Company;
- 1.1.2 "**Central Securities Depository**" has the meaning set out in the Financial Markets Act;
- 1.1.3 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.4 "**Commission**" means the Companies and Intellectual Property Commission established in terms of the Companies Act;
- 1.1.5 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to, and the regulations published in terms of, such Act;
- 1.1.6 "**Company**" means RMB Holdings Limited, registration number 1987/005115/06, a limited liability public company duly incorporated in the Republic;
- 1.1.7 "**Director**" means a member of the Board as contemplated in section 66 of the Companies Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.8 "**Electronic Communication**" has the meaning set out in the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.1.9 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, including any amendment, consolidation or re-enactment thereof;
- 1.1.10 "**IFRS**" means the International Financial Reporting Standards formulated by the International Accounting Standards Board, or its successor body;
- 1.1.11 "**JSE**" means a company duly registered and incorporated with limited liability under the company laws of the Republic under registration number

2005/022939/06, licenced as an exchange under the Financial Markets Act

- 1.1.12 "**JSE Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;
- 1.1.13 "**Office**" means the registered office of the Company;
- 1.1.14 "**Participant**" has the meaning set out in the Financial Markets Act;
- 1.1.15 "**Regulations**" means the regulations published in terms of the Companies Act from time to time;
- 1.1.16 "**Republic**" means the Republic of South Africa;
- 1.1.17 "**Securities**" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.18 "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of the Companies Act;
- 1.1.19 "**SENS**" means the Stock Exchange News Service of the JSE;
- 1.1.20 "**Share**" means one of the units into which the proprietary interest in the Company is divided, which shall include the ordinary Shares referred to in clause 7.1.1 but shall exclude the further classes of shares in the Company referred to in clause 7.1.2 unless specifically otherwise provided;
- 1.1.21 "**Shareholder**" means the holder of a Share and who is entered as such in the Securities Register;
- 1.1.22 "**Solvency and Liquidity Test**" has the meaning attributed thereto in the Companies Act;
- 1.1.23 "**Sub-register**" means the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Companies Act;
- 1.1.24 "**Transfer Office**" means in respect of Certificated Securities, the Office and any office maintained for the purpose of transfer of Shares or other Securities for registration;

- 1.1.25 **"Uncertificated Securities"** means any "securities" defined as such in the Financial Markets Act; and
- 1.1.26 **"Uncertificated Securities Register"** means the record of Uncertificated Securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;
- 1.2.2 a reference to the Companies Act shall include reference to the Regulations;
- 1.2.3 a reference to a section by number refers to the corresponding section of the Companies Act notwithstanding the renumbering of such section after the date on which this Memorandum of Incorporation is adopted by the Company;
- 1.2.4 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
- 1.2.5.1 an alterable or elective provision of the Companies Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.5.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict, provided that the Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, than would otherwise apply to the Company in terms of such provision;
- 1.2.6 each provision and each sentence and each part of a sentence in this Memorandum of Incorporation is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the

Companies Act and/or the JSE Listings Requirements, or void, such may to that extent only be modified or severed from this Memorandum of Incorporation, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act and/or the JSE Listings Requirements or is not void;

1.2.7 if any provision of this Memorandum of Incorporation imposes any obligation or requirement pursuant only to the JSE Listings Requirements, then:

1.2.7.1 unless the Company is a "listed company" as such term is defined in the JSE Listings Requirements, any such provision shall be deemed not to apply to the Company; and

1.2.7.2 insofar as the JSE exempts or no longer requires compliance with such obligation or requirements, the obligation shall be deemed to have been complied with;

1.2.8 if any provision of this Memorandum of Incorporation limits, restricts or prohibits any power or authority of the Company or the Board pursuant only to the JSE Listings Requirements, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by the JSE, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required;

~~4.2.6~~1.2.9 if any provision of this Memorandum of Incorporation has been inserted to comply with a then applicable provision of the JSE Listings Requirements, which is subsequently removed or modified, the provision in question shall no longer apply as if the relevant provision has been removed or shall apply as modified in the JSE Listings Requirements;

~~4.2.7~~1.2.10 clause headings are for convenience only and are not to be used in its interpretation;

~~4.2.8~~1.2.11 an expression which denotes -

~~4.2.8.1~~1.2.11.1 _____ any gender includes the other genders;

~~4.2.8.2~~1.2.11.2 _____ a natural person includes a juristic person and *vice versa*; and

~~1.2.8~~~~31.2.11.3~~ the singular includes the plural and *vice versa*;

~~1.2.9~~~~1.2.12~~ if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;

~~1.2.10~~~~1.2.13~~ any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation; and

~~1.2.11~~~~1.2.14~~ any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and the JSE Listings Requirements.

1.3 Any reference in this Memorandum of Incorporation to –

1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;

1.3.2 "**month**" shall be construed as months of the Gregorian calendar, unless the context requires otherwise;

1.3.3 "**law**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and

1.3.4 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Companies Act.

1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**"

followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

- 1.5 Unless otherwise provided, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 **SECURITIES EXCHANGES**

- 2.1 The ordinary Shares of the Company are, as at the date on which this Memorandum of Incorporation is adopted, listed on the JSE. The Company may seek listings on such further securities exchanges as the Directors may consider appropriate from time to time.
- 2.2 For so long as the Shares of the Company are listed on any securities exchange in addition to the JSE, if the listing on the JSE is the primary listing and if the Company is obliged to obtain the approval of the JSE in regard to any matter, the Company shall, to the extent required, also obtain the consent at the same time of any other securities exchanges on which it is listed.

3 **JURISTIC PERSONALITY**

- 3.1 The Company is a pre-existing company as defined in the Companies Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in item 2 of the Fifth Schedule to the Companies Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the

Company applicable immediately prior to the filing hereof.

- 3.2 The Company is incorporated in accordance with and governed by –
- 3.2.1 the unalterable provisions of the Companies Act, provided that the Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement than such provision; and
- 3.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 3.2.3 the other provisions of this Memorandum of Incorporation.

4 LIMITATION OF LIABILITY

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

5 POWERS OF THE COMPANY

- 5.1 The Company has all of the legal powers and capacity contemplated in the Companies Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 5.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Companies Act.
- 5.3 Without derogating from the provisions of clauses 5.1 and 5.2, the main business which the Company is to carry on, is that of an investment holding company in the financial services sector and other related sectors.
- 5.4 The management and control of any business of the Company shall be vested in the Directors who in addition to the powers and authorities expressly conferred upon them by this Memorandum of Incorporation, may exercise all such powers and do all such acts and things as may be exercised or done by the Company, and are not hereby or by law expressly directed or required to be exercised or

done by the Company in general meeting, but subject nevertheless to such management and control not being inconsistent with this Memorandum of Incorporation nor with any resolution passed by the Company in general meeting; but so that no such resolution shall invalidate any prior act by the Directors which would have been valid if such resolution had not been passed. The general powers given by this clause 5.4 shall not be limited or restricted by any special authority or power given to the Directors by any other clause of this Memorandum of Incorporation.

- 5.5 The Directors may arrange that any branch of the business carried on by the Company or any other business in which the Company may be interested, shall be carried on by or through one or more subsidiaries and/or associates of the Company and they may on behalf of the Company make such arrangements as they think advisable for taking the profits or bearing the losses of any branch or business so carried on, or for financing, assisting or subsidising any such subsidiary or guaranteeing its contracts, obligations or liabilities.

6 RESTRICTIVE CONDITIONS

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

7 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 7.1 The Company is authorised to issue –

7.1.1 2,000,000,000 (two billion) ordinary Shares with a par value of R0.01 (one cent) each, of the same class, each of which ranks *pari passu* in respect of all rights and the holder shall be entitled in respect of each ordinary Share, subject to any preferential rights, limitations and other terms associated with those classes of shares in the Company referred to in clause 7.1.2, to –

- 7.1.1.1 vote (whether in person or by proxy) on any matter to be decided by the Shareholders of the Company and to 1 (one) vote in the case of a vote by means of a poll;
- 7.1.1.2 participate proportionally in any distribution made by the Company; and
- 7.1.1.3 receive proportionally the net assets of the Company upon its liquidation;

7.1.2 such number of each of such further classes of shares in the Company, if any, as are set out in Schedule 1 hereto. The shares in each such further class shall rank *pari passu* in respect of all rights and be subject to the preferences, rights, limitations and other terms associated with each such class set out in the applicable Schedule to this Memorandum of Incorporation.

7.2 The Board shall not have the power to –

7.2.1 create any class of Shares;

7.2.2 convert one class of Shares into one or more other classes;

7.2.3 increase or decrease the number of authorised Shares of any class of Shares;

7.2.4 reclassify any classified Shares that have been authorised but not issued;

7.2.5 classify any unclassified Shares that have been authorised but not issued;

7.2.6 determine the preferences, rights, limitations or other terms of any Shares;

7.2.7 consolidate or subdivide any Securities; and/or

7.2.8 change the name of the Company,

and such powers shall only be capable of being exercised by the Shareholders by amending the Memorandum of Incorporation by way of a special resolution of the Shareholders (as contemplated in clause 43) and subject to the provisions of clause 7.4.

7.3 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in clause 21.2.

7.4 The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the Shareholders and in accordance with the JSE Listings Requirements, and such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting.

7.5 No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act.

7.6 The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.

7.7 As regards the issue of Shares or Securities convertible into Shares, including options in respect thereof:

7.7.1 that require the approval of Shareholders by way of a special resolution as contemplated in sections 41(1) and/or (3) of the Companies Act or as contemplated in the JSE Listings Requirements, the Directors shall not have the power to allot or issue same without the prior approval of a special resolution of Shareholders;

7.7.2 that require the approval of Shareholders by way of an ordinary resolution in terms of the Companies Act or the JSE Listings Requirements, the Directors shall not have the power to allot or issue same, without the prior approval of an ordinary resolution of Shareholders;

7.7.3 other than as contemplated in clauses 7.7.1 and 7.7.2, the Directors shall have the power to allot and issue same, without any Shareholder approval, provided that the JSE has, to the extent required, granted the requisite consent to the listing of such Securities and such issue is made subject to, and in accordance with, the JSE Listings Requirements, where applicable (including all issues of Shares for cash and all issues of options and convertible Securities granted or issued for cash).

7.8 In the event that the Company proposes to issue any equity Securities (or options over equity Securities) other than in respect of the following instances (it being recorded that, notwithstanding any other provision to the contrary in this Memorandum of Incorporation, each of the instances set out in clauses 7.8.1 to 7.8.11 shall not require Shareholder approval, or further Shareholder approval, as applicable):

7.8.1 Shares issued for cash pursuant to a general or specific approval given by the

Shareholders in general meeting:

- 7.8.2 Shares issued in accordance with, or pursuant to, an authority approved by Shareholders;
- 7.8.3 Shares issued in terms of options or conversion rights, provided that such options or conversion rights have been previously approved, to the extent necessary;
- 7.8.4 Shares issued in terms of a rights offer to be undertaken by the Company;
- 7.8.5 Shares to be held under an employee share scheme in terms of section 97 of the Companies Act, a share incentive scheme which complies with the provisions of Schedule 14 of the JSE Listings Requirements or any other employee share option or incentive scheme, provided that such issue of shares was previously approved, to the extent required;
- 7.8.6 the issue of capitalisation Shares as contemplated in section 47 of the Companies Act;
- 7.8.7 Shares in terms of an election by Shareholders to reinvest the proceeds of a distribution (including a dividend) or pursuant to an analogous process;
- 7.8.8 Shares issued pursuant to a scrip dividend, as contemplated by the JSE Listings Requirements;
- 7.8.9 Shares issued for the acquisition of assets, as a vendor consideration placing directly or indirectly related to an acquisition of assets, or for the purposes of an amalgamation or merger;
- 7.8.10 Shares issued or to be issued as consideration for any assets, corporeal or incorporeal, or for services rendered; or
- 7.8.11 the Shares issue otherwise falls within a category in respect of which it is not, in terms of the JSE Listings Requirements, a requirement for the relevant Shares to be so offered to existing Shareholders,

each Shareholder already holding issued equity Securities in the class of equity Securities proposed to be issued has the right, before any other person who is not a holder of that class of equity Securities, to be offered, on such terms and in

compliance with such procedures as the Board may determine, to subscribe for, that number of equity Securities proposed to be issued which in relation to the total number of equity Securities proposed to be issued bears (as close as possible) the same ratio (as determined by the Board) as the number of equity Securities in that class already registered in the holder's name at the time of such offer bears to the then total number of issued equity Securities in that class, calculated at the time the offer was made, provided that if any entitlement to a fraction of an equity Security pursuant to such an offer, all allocations of Securities will be calculated in accordance with the then prevailing JSE Listings Requirements. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the equity Security so offered, the Directors may, subject to the foregoing provisions, issue such equity Security in such manner as they consider most beneficial to the Company. The Directors may exclude any Shareholders or category of Shareholders who are resident outside of the Republic from an offer contemplated in this clause 7.8 if and to the extent that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any jurisdiction and/or regulatory body of any territory, outside of the Republic, that may be applicable to the offer arising from or in connection with the participation (or potential participation) of the relevant non-resident Shareholder or category of Shareholder.

7.9 The provisions of clause 7.8 will apply *mutatis mutandis* to a class of authorised equity Securities (if applicable) which have not been issued, based on the percentage voting rights which that Shareholder has in relation to the aggregate general voting rights, calculated at the time the offer was made.

7.10 The Company may apply to the Commission to exclude from any rights offer any category of holders of the Company's Securities who are not resident within the Republic, in terms of section 99(7).

7.11 Notwithstanding clause 7.10, any *pro rata* offer of any Securities to any person shall be subject to the possible exclusion of any persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer.

~~7.7 The Board may, subject to the remaining provisions of this clause 7, resolve to issue Shares at any time, but only—~~

~~7.7.1 — within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and~~

~~7.7.2 — to the extent that such issue has been approved by the Shareholders of the applicable class of Shares in general meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any general meeting of the Shareholders prior to such annual general meeting.~~

~~7.8 — All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be in accordance with the JSE Listings Requirements.~~

7.97.12 All Securities for which a listing is sought on the JSE and all Securities of the same class as Securities which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Companies Act, but unless otherwise required by statute, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.

~~7.10 — Subject to what may be authorised by the Companies Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with clause 7.12, and subject to clause 7.11, the Board may only issue unissued ordinary Shares if such ordinary Shares have first been offered to existing Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such ordinary Shares are issued for the acquisition of assets by the Company.~~

~~7.11 — Notwithstanding the provisions of clauses 7.10 and 7.12, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of the Companies Act, require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of~~

~~integrated transactions.~~

~~7.12 Notwithstanding the provisions of clause 7.10, the Shareholders may at a general meeting authorise the Directors to issue ordinary Shares of the Company at any time and/or grant options to subscribe for ordinary Shares as the Directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements.~~

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

8 CERTIFICATED AND UNCERTIFICATED SECURITIES

8.1 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Companies Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.

8.2 Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities, if so determined by the Board.

8.3 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.

8.4 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or

part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –

- 8.4.1 immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and
 - 8.4.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.
- 8.5 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause 8.

9 SECURITIES REGISTER

- 9.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Companies Act and maintain the Securities Register in accordance with the prescribed standards.
- 9.2 As soon as practicable after issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –
 - 9.2.1 the total number of Uncertificated Securities;
 - 9.2.2 with respect to Certificated Securities –
 - 9.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;
 - 9.2.2.2 the number of Certificated Securities issued to each of them;
 - 9.2.2.3 in the case of Securities other than Shares as contemplated in section 43 of the Companies Act, the number of those Securities issued and outstanding, and the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and

- 9.2.2.4 any other prescribed information.
- 9.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 8.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –
- 9.3.1 forms part of the Securities Register; and
- 9.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 9, any details referred to in clause 9.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 9.4 The Securities Register or Uncertificated Securities Register maintained in accordance with the Companies Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 9.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 9.6 A certificate evidencing any Certificated Securities of the Company –
- 9.6.1 must state on its face –
- 9.6.1.1 the name of the Company;
- 9.6.1.2 the name of the person to whom the Securities were issued; and
- 9.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
- 9.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 9.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.

- 9.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 9.8 If, as contemplated in clause 9.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 9.8.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and
- 9.8.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified.
- 9.9 As the Company is a pre-existing company (as defined in the Companies Act), and having regard to the provisions of item 6(4) of schedule 5 to the Companies Act, the failure of any Share certificate to satisfy the provisions of clauses 9.6 to 9.8 is not a contravention of the Companies Act and does not invalidate that certificate.
- 9.10 Every person whose name is entered as a Shareholder in the Securities Register shall be entitled, without payment, to receive within 1 (one) month after allotment or 21 (twenty one) days after lodgement of transfer one certificate for all his Shares of any one class, or several certificates each for 1 (one) or more of his Shares of such class upon payment of such sum as the Directors shall from time to time determine but not exceeding any maximum amount prescribed in terms of applicable law. Every certificate of Shares shall specify the number of Shares in respect of which it is issued. Any Shareholder who has transferred a part of his holding of Shares of any class shall be entitled to receive a certificate free of charge for the balance of his holding, provided that, notwithstanding anything contained in this Memorandum of Incorporation or implied to the contrary, where Shares are registered in the names of two or more persons they shall be treated as one Shareholder for the purposes of this clause 9.10.
- 9.11 If a Share certificate is defaced, lost or destroyed, it may be replaced on such terms (if any) as to evidence, indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same, as the Directors may think fit and, in the case of defacement, on delivery of the old certificate to the Company.

- 9.12 The certificate for Shares registered in the names of 2 or more persons shall be delivered to the person 1st (first) named in the Securities Register in respect thereof, or to his authorised agent, and in case of the death of any one or more of the joint registered holders of any Shares, the survivor then 1st (first) named in the Securities Register shall be the only person recognised by the Company as being entitled to such certificate, or any new certificate which may be issued in place thereof, provided always that the Company shall not be bound to register more than 4 (four) persons as the holders of any Share.

10 TRANSFER OF SECURITIES

- 10.1 Transfer Offices shall be maintained at such place or places whether in the Republic or elsewhere, as the Directors may from time to time prescribe. The Directors may appoint local committees (to be designated "*Registrars*" or by such other title (if any) as the Directors may think fit) whether in the Republic or elsewhere consisting of two or more natural persons or of a corporate body to whom the Directors may delegate all or any of their powers, authorities and discretions with regard to the registration of transfer, the keeping of registers and other records required by the Companies Act to be kept at the Office or the Transfer Office and the issuing of certificates of title to Securities and may appoint a person to be a secretary to such local committee or authorise such local committee to appoint a person to be its secretary.
- 10.2 Subject to any statutory restrictions on transfer and to the provisions of this Memorandum of Incorporation, any Shareholder may transfer all or any of its Shares but every transfer must be in writing in the usual common form or in such other form as the Directors may approve and must be left at the Transfer Office where the register of transfers relating to the Share comprised therein is for the time being kept or at such other place as the Directors may prescribe accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to be transferred and such other evidence (if any) as the Directors or other person in charge of such register may require to prove the title or capacity of the intending transferor or transferee or the rights of the intending transferor to transfer the Shares.
- 10.3 The instrument of transfer of a Security shall be signed by the transferor and the transferee, unless the signature of the transferee is not required –

- 10.3.1 by any law from time to time in force in the Republic; or
- 10.3.2 where the Directors decide at their discretion to dispense therewith in such case or cases as they may deem fit.
- 10.4 The transferor shall be deemed to remain the holder of the Security transferred until the name of the transferee is entered in the Securities Register in respect thereof. All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide; but any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who deposited it.
- 10.5 The Directors may decline to register any transfer, unless –
- 10.5.1 the instrument of transfer is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it; and
- 10.5.2 the instrument of transfer is in respect of only one class of Share.
- 10.6 If the Directors refuse to register a transfer they shall within 30 (thirty) days after the date on which the instrument of transfer was lodged, send to the transferee notice of the refusal. 11321138v1
- 10.7 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its Office or Transfer Office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.

- 10.8 The transfer of Uncertificated Securities may be effected only –
- 10.8.1 by a Participant or Central Securities Depository;
- 10.8.2 on receipt of an instruction to transfer, sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and
- 10.8.3 in accordance with the Companies Act and the rules of the Central Securities Depository.
- 10.9 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 10.10 A transfer of ownership in accordance with this Memorandum of Incorporation and the Companies Act occurs despite any fraud, illegality or insolvency that may -
- 10.10.1 affect the relevant Uncertificated Securities; or
- 10.10.2 have resulted in the transfer being effected,
- but a transferee who was a party to or had knowledge of the fraud or illegality, as the case may be, may not rely on the provisions of this clause 10.10.

11 NO LIEN

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

12 TRANSMISSION OF SECURITIES

- 12.1 The executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholder, as determined by the Board, shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in

respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.

- 12.2 Subject to the provisions of clause 12.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself –
- 12.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 12.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

13 DEBT INSTRUMENTS

The granting of special privileges to holders of debt instruments, such as attending and voting at general meetings and the appointment of Directors, is prohibited.

14 CAPITALISATION SHARES

14.1 Subject to the JSE Listings Requirements -

- 14.1.1 ~~the Company in general meeting may upon the recommendation of the Directors at any time and from time to time resolve that it is desirable to capitalise all or any part of the amount for the time being standing to the credit of any of the Company's reserves or of any share premium account or capital redemption reserve fund or to the credit of the income statement or otherwise available for distribution and not required for the payment of dividends on any preference shares of the Company, and accordingly that such amount be set~~

~~free for distribution among the Shareholders or any class of Shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions on the footing that the same be not paid in cash but either be applied in paying up unissued Shares to be issued to such Shareholders as fully paid capitalisation Shares having a par value or be transferred to the Company's stated capital and be applied in distributing to such Shareholders Shares of no par value~~ the Board, by resolution, may approve the issue of any authorised Shares as capitalisation Shares on a *pro rata* basis to the Shareholders of one or more classes of Shares and, to this end, may resolve to capitalise all or any part of the amount for the time being standing to the credit of any of the Company's reserves or of any share premium account or capital redemption reserve fund or to the credit of the income statement or otherwise available for distribution and not required for the payment of dividends on any preference shares of the Company; and

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

14.2 The Board may not, as contemplated in section 47 of the Companies Act, resolve to offer a cash payment in lieu of awarding a capitalisation Share, as contemplated in clause 14.1.2, unless the Board –

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

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

and has otherwise complied with the provisions of clause 37.

14.3 Without derogating from the provisions of clause 37, if any difficulty arises in regard to any ~~distribution~~ issue under clause 14.1, the Directors may settle the same as they think it expedient. They may make all appropriations and applications of the undivided profits or sum resolved to be capitalised thereby, and all allotments and issues of Shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to deal with

fractional entitlements as prescribed in terms of the JSE Listings Requirements. The Directors may also appoint any person to enter, on behalf of all Shareholders entitled to the benefit of such appropriations and applications or to participate in such distribution, into any contract requisite or convenient for giving effect thereto, and such appointment and contract made under such appointment shall be effective and binding on all such Shareholders.

15 **BENEFICIAL INTERESTS IN SECURITIES**

- 15.1 The Company's issued Securities may be held by, and registered in the name of one person for the beneficial interest of another person, as set out in the Companies Act.
- 15.2 The Directors shall cause to be established and maintain a register of disclosures made to the Company of the identity of beneficial holders, as required in terms of the Companies Act.

16 **FINANCIAL ASSISTANCE**

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

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

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

17 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

- 17.1 Subject to the JSE Listings Requirements, the provisions of the Companies Act

and the further provisions of this clause 17 –

- 17.1.1 the Board may determine that the Company acquire a number of its own Shares; and
- 17.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –
 - 17.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and
 - 17.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.
- 17.2 Any decision by the Company to acquire its own Shares must satisfy the JSE Listings Requirements and the requirements of the Companies Act and, accordingly, the Company may not acquire its own ordinary Shares unless –
 - 17.2.1 for as long as it is required in terms of the JSE Listings Requirements, the acquisition has been approved by a special resolution of the Shareholders, whether in respect of a particular repurchase or generally approved by Shareholders and unless such acquisition otherwise complies with sections 5.67 to 5.69 of the JSE Listings Requirements (or such other sections as may be applicable from time to time);
 - 17.2.2 the acquisition –
 - 17.2.2.1 is pursuant to an existing legal obligation of the Company, or a court order; or
 - 17.2.2.2 the Board, by resolution, has authorised the acquisition;
 - 17.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and
 - 17.2.4 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed

acquisition.

17.3 A decision of the Board referred to in clause 17.1.1 –

17.3.1 must be approved by a special resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or prescribed officer of the Company, or a person related to a Director or prescribed officer of the Company; and

17.3.2 is subject to the requirements of sections 114 and 115 of the Companies Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% (five percent) of the issued Shares of any particular class of the Company's Shares.

17.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –

17.4.1 Shares held by one or more subsidiaries of the Company; or

17.4.2 convertible or redeemable Shares.

18 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

18.1 The record date for the purpose of determining which Shareholders are entitled to –

18.1.1 receive notice of a Shareholders' meeting;

18.1.2 participate in and vote at a Shareholders' meeting;

18.1.3 decide any matter by written consent or by Electronic Communication;

18.1.4 receive a distribution; or

18.1.5 be allotted or exercise other rights,

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

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

19 SHAREHOLDERS' MEETINGS

- 19.1 The Board, or any prescribed officer or company secretary of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.
- 19.2 Subject to the provisions of section 60 of the Companies Act dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –
- 19.2.1 at any time that the Board is required by the Companies Act, the JSE Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or
- 19.2.2 whenever required in terms of the Companies Act to fill a vacancy on the Board; or
- 19.2.3 when required in terms of clause 19.3 or by any other provision of this Memorandum of Incorporation.
- 19.3 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –
- 19.3.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 19.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 19.4 Notwithstanding any provision of the Companies Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting.

19.5 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, including this clause 19 and clauses 20 to 22, the requirements for convening and holding meetings in respect of Securities other than Shares, including location, notices, notice periods, requisition rights, quorum provisions, adjournment, proxies, voting rights and voting percentages for adoption of resolutions, shall be in accordance with the specific terms and conditions, if any, set out in the document(s) in terms of which such Securities are issued, insofar as such terms and conditions amend the relevant provisions of the Companies Act and to the extent such amendments are permissible in terms of the Companies Act.

~~19.5.1~~19.6 Subject to the provisions of the JSE Listings Requirements, any such annual general meeting –

~~19.5.1~~19.6.1 shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation; and

~~19.5.2~~19.6.2 shall not be capable of being held in accordance with the provisions of section 60 of the Companies Act set out in clause 24.

~~19.6~~19.7 Each annual general meeting of the Company contemplated in clause 19.4 shall provide for at least the following business to be transacted –

~~19.6.1~~19.7.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;

~~19.6.2~~19.7.2 the election of Directors, to the extent required by the Companies Act and by clause 25.7 of this Memorandum of Incorporation;

~~19.6.3~~19.7.3 the appointment of an auditor and an audit committee for the following financial year;

~~19.6.4~~19.7.4 any matters raised by the Shareholders, with or without advance notice to the Company.

~~19.7~~19.8 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Companies Act and the JSE Listings Requirements.

~~49.8~~19.9 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

~~49.9~~19.10 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice and in accordance with the provisions of clause 42.

~~49.10~~19.11 The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and present in person. In addition –

~~49.10.1~~19.11.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

~~49.10.2~~19.11.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.

~~49.11~~19.12 If within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of clause 19.11 –

~~49.11.1~~19.12.1 for that meeting to begin have not been satisfied, the meeting may be postponed, without any motion, vote or further notice, for not less than 7 (seven) days and not more than 21 (twenty one) days;

~~49.11.2~~19.12.2 for consideration of a particular matter to begin have not been satisfied –

~~49.11.2.1~~19.12.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

~~49.11.2.2~~19.12.2.2 if there is no other business on the agenda of the meeting, the meeting may be adjourned, without any motion or vote, for not less than

7 (seven) days and not more than 21 (twenty one) days,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 19.11 may extend the 15 (fifteen) minute limit allowed in clause 19.12 for a reasonable period on the grounds that –

~~49.11.3~~19.12.3 _____ exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or

~~49.11.4~~19.12.4 _____ one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 19.11.

~~49.12~~19.13 _____ If within 15 (fifteen) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of Shareholders in terms of clause 19.3, shall be dissolved.

~~49.13~~19.14 _____ Notwithstanding the provisions of clause 19.12, the chairperson of the meeting may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

~~49.14~~19.15 _____ An immaterial defect in the formal manner of giving notice of a Shareholders' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Shareholder to whom it was addressed, does not invalidate any action taken at the meeting.

~~49.15~~19.16 _____ Save as required in terms of the Companies Act, the Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 19.12 or clause 19.14, as the case may be, unless the location for the meeting is different from –

~~49.15.1~~19.16.1 _____ the location of the postponed or adjourned meeting; or

~~49.15.2~~19.16.2 _____ the location announced at the time of adjournment, in the case of an adjourned meeting.

~~19.16~~19.17 If at the time appointed in terms of clause 19.12 or clause 19.14, as the case may be, for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 19.11 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

~~19.17~~19.18 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.

~~19.18~~19.19 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in the Companies Act, without variation.

~~19.19~~19.20 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.

~~19.20~~19.21 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

~~19.21~~19.22 The chairperson of a Shareholders' meeting may –

~~19.21.1~~19.22.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;

~~19.21.2~~19.22.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

~~19.22~~19.23 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless -

~~19.22.1~~19.23.1 it is brought to the attention of the chairperson at the meeting; and

~~19.22.2~~19.23.2 in the opinion of the chairperson of the meeting, it is of sufficient

magnitude to vitiate the resolution.

~~19.23.1~~19.24 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised -

~~19.23.1~~19.24.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

~~19.23.2~~19.24.2 at the meeting or adjourned meeting at which the result of the poll was announced,

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

~~19.24.1~~19.25 Even if he is not a Shareholder -

~~19.24.1~~19.25.1 any Director; or

~~19.24.2~~19.25.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof),

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

20 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

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

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

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

so long as the Electronic Communication employed ordinarily enables all persons

participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

- 20.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

21 VOTES OF SHAREHOLDERS

- 21.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –
- 21.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
- 21.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder; and
- 21.1.3 the holders of Securities other than ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 21.2.
- 21.2 If any resolution is proposed as contemplated in clause 7.3, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of Shareholders as contemplated in clause 21.1, provided that the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and the Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held, provided further that the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an

Affected Shareholder rounded down to the nearest whole number).

- 21.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote by –
- 21.3.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 21.3.2 a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 21.3.3 the chairperson of the meeting.
- 21.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 21.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 21.5 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 21.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote in addition to the vote or votes to which he may be entitled as a Shareholder.
- 21.7 No poll shall be demanded on the election of the chairperson of the meeting or on any question of adjournment. A poll demanded on any other question shall be taken at such time and place and in such manner as the chairperson of the

meeting directs, and any business, other than upon which a poll has been demanded, may be proceeded with pending the taking of the poll.

21.8 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.

21.9 The board of any company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –

21.9.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Shares; and

21.9.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

22 PROXIES AND REPRESENTATIVES

22.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –

22.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or

22.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60 of the Companies Act,

provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.

22.2 A proxy appointment –

22.2.1 must be in writing, dated and signed by the Shareholder; and

22.2.2 remains valid for –

22.2.2.1 1 (one) year after the date on which it was signed; or

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

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

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

22.3.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in the Companies Act;

22.3.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in the Companies Act;

22.3.3 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in the Companies Act;

22.3.4 the instrument or power of attorney appointing a proxy which is not received by or on behalf of the Company by or through an electronic medium and the power of attorney or other authority (if any) under which the instrument or power of attorney is signed (or notarially certified copy of such power or authority) shall be deposited at the Office or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) at any time before the proxy exercises any rights of the Shareholder at the meeting ~~the time appointed for~~

~~holding the meeting.~~ In default, the instrument or power of attorney shall not be treated as valid, provided that if the Shareholder appointing a proxy is registered on a branch register kept in any foreign country any instrument or power of attorney appointing a proxy and the power of attorney or other authority (if any) under which it is signed may be deposited as aforesaid at any such branch or other office of the Company outside the Republic at which he is registered. The transfer secretary of the Company in that place shall communicate to the Company in the Republic by such means as the Directors may from time to time direct, a summary of all the votes for and against each resolution represented by valid proxies duly accepted by them, so that such communication shall be received by the Company before the time appointed for the meeting to commence;

22.3.5 the instrument or power of attorney appointing a proxy which is received by or on behalf of the Company by or through an electronic medium (where an address has been specified for that purpose in the notice of meeting or in the instrument itself), subject to any applicable law for the time being in force and to any terms and conditions decided on by the Directors from time to time, and the power of attorney or other authority (if any) under which the instrument or power of attorney is signed (or notarially certified copy of such power or authority) shall be received at that specified address, ~~not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) at any time before the proxy exercises any rights of the Shareholder at the meeting~~ before the time appointed for holding the meeting and in default the instrument or power of attorney shall not be treated as valid;

22.3.6 a vote given in accordance with the terms of an instrument or power of attorney appointing a proxy shall be valid notwithstanding the previous legal incapacity of the Shareholder or revocation of the instrument or power of attorney or the transfer of the Share in respect of which the vote is given, unless notice in writing of such legal incapacity, revocation or transfer shall have been received by or on behalf of the Company at the Office or by or through an electronic medium (where an address has been specified for the purpose of receiving instruments of proxy or powers of attorney in the notice of meeting or in the instrument itself) ~~not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular~~

~~meeting) at any time before the proxy exercises any rights of the Shareholder at the meeting before the time appointed for holding the meeting,~~

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

~~22.4 In determining any period of 48 (forty eight) hours referred to in clause 22.3, only business days shall be taken into account.~~

~~22.5~~ 22.4 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We _____

being a shareholder of _____ Limited do hereby appoint

_____ or failing him/her

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

	In favour of	Against	Abstain
Special Resolution 1
Ordinary Resolution 1

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

SIGNED this ____ day of _____ in the year of _____.

SHAREHOLDER'S SIGNATURE

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

23 SHAREHOLDERS' RESOLUTIONS

- 23.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution, as provided in the Companies Act. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, to the extent that the JSE Listings Requirements require a higher percentage in respect of any particular ordinary resolution, the Company shall not implement such ordinary resolution unless the Company has obtained the support of the applicable percentage prescribed in terms of the JSE Listings Requirements.
- 23.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised by Shareholders on the resolution, as provided in the Companies Act.
- 23.3 No matters, except those matters set out in section 65(11) of the Companies Act and any other matter required by the Companies Act, this Memorandum of Incorporation and the JSE Listings Requirements to be resolved by means of a special resolution, require a special resolution adopted at a Shareholders' meeting of the Company.
- 23.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.
- 23.5 Anything done in pursuance of any ordinary resolution or special resolution shall be done in a manner provided and subject to any conditions imposed by the Companies Act, so far as it is applicable, and so far as it is not applicable, in accordance with the terms of the applicable resolution authorising the same.

24 SHAREHOLDERS ACTING OTHER THAN AT A MEETING

- 24.1 In accordance with the provisions of section 60 of the Companies Act, but subject to clause 24.4, a resolution that could be voted on at a Shareholders' meeting may instead be –
- 24.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and

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

25 COMPOSITION OF THE BOARD OF DIRECTORS

- 25.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Companies Act to appoint an audit committee and a social and ethics committee, the Board must comprise at least 4 (four) Directors but not more than 20 (twenty) Directors.
- 25.2 All Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed in terms of section 60 of the Companies Act shall be valid, provided that any Shareholder will have the right to nominate Directors.
- 25.3 Every person holding office as a Director, prescribed officer, company secretary or auditor of the Company immediately before the effective date of the Act will, as contemplated in item 7(1) of schedule 5 to the Companies Act, continue to hold

that office.

25.4 In any election of Directors –

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

25.4.2 in each vote to fill a vacancy –

25.4.2.1 each vote entitled to be exercised may be exercised once; and

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

25.5 Subject to the provisions of clauses 28.1 and 25.11, the Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in the Companies Act.

25.6 Apart from satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, a person need not satisfy any other eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.

25.7 Subject to the provisions of clause 27.1, the Directors shall rotate in accordance with the following provisions of this clause 25.7 –

25.7.1 at each annual general meeting referred to in clause 19.4, 1/3 (one third) of the non-executive Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 1/3 (one third), but not less than 1/3 (one third), shall retire from office;

25.7.2 the non-executive Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot, provided that notwithstanding anything to the contrary contained in this Memorandum of Incorporation, if at the date of any annual general meeting any non-executive Director shall have held office for a period of 3 (three) years since his last election or appointment, he shall retire at such meeting either as one of the

non-executive Directors to retire in pursuance of the foregoing or additionally thereto;

- 25.7.3 a retiring Director shall be eligible for re-election but no person, other than a Director retiring at the meeting, shall, unless recommended by the Directors, be eligible for election to the office of a Director at any general meeting unless not more than 13 (thirteen) but at least 6 (six) clear days before the day appointed for the meeting, there shall have been left at the Office, a notice in writing by some Shareholder duly qualified to be present and vote at the meeting for which such notice is given of his intention to propose such person for election and also notice in writing signed by the person to be proposed of his willingness to be elected (so that the period of days shall not include the day on which the notices are left at the Office or the day appointed for the meeting);
- 25.7.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with clause 24;
- 25.7.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 19.12 to 19.17 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting; and
- 25.7.6 the length of time a Director has been in office shall be computed from his last election, appointment or date upon which he was deemed re-elected. A Director retiring at a meeting shall retain office until the close or adjournment of that meeting.
- 25.8 The Board shall, through its nominations committee constituted in terms of clause 33, provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past

performance and contribution.

25.9 Notwithstanding any contrary provision contained in this Memorandum of Incorporation -

25.9.1 an executive Director shall vacate his office at the close of the first annual general meeting of the Company after the Director reaches the age of 60 (sixty) years, provided that the Board shall have a discretion to extend that age on one or more occasions up to the financial year in which a Director reaches the age of 65 (sixty five); and

25.9.2 a non-executive Director shall vacate his office at the close of the first annual general meeting of the Company after the Director reaches the age of 70 (seventy) years, provided that the Board shall have a discretion to extend that age on one or more occasions for an additional one year period in each instance.

25.10 Without derogating from the provisions for retirement by rotation or otherwise contained in this Memorandum of Incorporation, the office of a Director shall be vacated if he –

25.10.1 is removed by an ordinary resolution adopted at a Shareholders meeting by the persons entitled to exercise voting rights in an election of that Director, and otherwise in accordance with any applicable provisions of the Companies Act;

25.10.2 is removed by a resolution of the Directors passed at a duly constituted meeting of the Directors convened either in the ordinary course or on not less than 48 (forty eight) hours notice specifically for this purpose;

25.10.3 resigns his office by notice in writing to the Company; or

25.10.4 is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors otherwise than on the business of the Company and is not represented at any such meetings during such 6 (six) consecutive months by an alternate Director, and the Directors resolve that his office be, by reason of such absence, vacated.

25.11 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the

number falls below such minimum, fill the vacancy/ies in accordance with clause 28.1.1 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation.

- 25.12 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 (three) month period contemplated in clause 25.11, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) of the Companies Act or of summoning general meetings of the Company, but not for any other purpose.
- 25.13 Life directorships and directorships for an indefinite period are not permissible.

26 ALTERNATE DIRECTORS

Each Director may appoint either another Director or any person approved for that purpose by a resolution of the Directors to act as alternate Director in his place and during his absence and may at his discretion remove such alternate Director. A person so appointed shall, except as regards power to appoint an alternate, and remuneration, be subject in all respects to the terms and conditions existing with reference to the other Directors, and each alternate Director, whilst so acting, shall be entitled to receive notices of all meetings of the Directors or of any committee of the Directors of which his appointer is a member, and to attend and vote at any such meeting at which his appointer is a member, and to attend and vote at any such meeting at which his appointer is not personally present and he shall generally be entitled to exercise and discharge all the functions, powers and duties of his appointer in such appointer's absence as if he were a Director. Any Director acting as alternate shall (in addition to his own vote) have a vote for each Director for whom he acts as alternate. An alternate Director shall *ipso facto* cease to be an alternate Director if his appointer ceases for any reason to be a Director, provided that if any Director retires by rotation or otherwise but is re-elected at the same meeting, any appointment made by him pursuant to this clause which was in force immediately before his retirement shall remain in force as though he had not retired.

Any appointment or removal of an alternate Director shall be effected by notice in writing delivered at the Office and signed by the appointer or remover, as the case may be. The remuneration of an alternate Director shall be payable only out of the remuneration payable to the Director appointing him and he shall have no claim against the Company for his remuneration.

27 EXECUTIVE DIRECTORS

- 27.1 The Directors may from time to time appoint 1 (one) or more of their body to the office of Chief Executive Officer, Financial Director or Executive Director (with or without specific designation) of the Company or to another executive office ("**Executive Director**") with the Company for such term and at such remuneration as they may think fit (subject only to the requirements of the Companies Act, including those pertaining to qualifications of directors), and may revoke such appointment subject to the terms of any agreement entered into in any particular case and having regard to applicable law (including the provisions of the Companies Act pertaining to the removal of directors). An Executive Director so appointed shall not be subject to retirement in the same manner as the other Directors.
- 27.2 Subject to the provisions of any contract between himself and the Company, an Executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 27.3 The Directors may from time to time entrust to and confer upon an Executive Director for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

28 POWERS OF THE BOARD OF DIRECTORS

- 28.1 The Board has the power to –
- 28.1.1 fill any vacancy on the Board on a temporary basis, as set out in the

Companies Act, provided that such appointment must be confirmed by the Shareholders, in accordance with clause 25.2, at the next annual general meeting of the Company, as required in terms of the Companies Act. Any Director so appointed shall hold office only until the next annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at such meeting; and

- 28.1.2 exercise all of the powers and perform any of the functions of the Company, as set out in the Companies Act,

and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 28.

- 28.2 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, either the chairman or the deputy chairman of the Board shall be entitled, with the written consent of the remaining Directors on the Board, to appoint any person as a Director in terms of section 66(4)(a)(i) of the Companies Act, provided that such appointment must be ratified by the Shareholders in accordance with clause 25.2, at the next general meeting.

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

- 28.4 The Directors may take all steps that may be necessary or expedient in order to enable the Shares or other Securities to be introduced into and dealt with in any

country or state and to procure the same to be recognised by and specially quoted upon any securities exchange or bourse in any country or state and may accept responsibility for and pay and discharge all taxes, duties, fees, expenses or other sums which may be payable in relation to any of the matters aforesaid and may subscribe to and comply with the laws and regulation of any such country or state and the rules or regulations of any such securities exchange or bourse.

- 28.5 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 28.6 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 28.7 A Director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.
- 28.8 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) of the Companies Act and the qualifications contained in section 75(3) of the Companies Act, comply with all of the provisions of section 75 of the Companies Act in the event that they (or to their knowledge any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.
- 28.9 All acts done by the Directors or by a committee or by any person acting as a Director or a member of a committee, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the

Directors or persons acting aforesaid, or that they or any of them were disqualified from or had vacated office, shall be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

- 28.10 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement or other benefit to any Director or ex-Director or other officer or employee of the Company, its holding Company (if any) or any subsidiary of the Company or to his widow or dependants and make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance or life assurance or other benefits.
- 28.11 The proposal of any resolutions to the Shareholders in terms of sections 20(2) and 20(6) of the Companies Act, is prohibited, in the event that such a resolution would lead to the ratification of an act that is contrary to the JSE Listings Requirements, unless otherwise agreed with the JSE.

29 DIRECTORS' MEETINGS

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

accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution);

29.5.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in the Companies Act, provided that, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting; and

29.5.3 determine the manner and form of providing notice of its meetings, provided that –

29.5.3.1 the notice period for the convening of any meeting of the Board will be at least 5 (five) days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any 2 (two) Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors; and

29.5.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 29.5.3.1,

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

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

subject only to clause 29.6.5, and accordingly –

29.6.1 if all of the Directors –

29.6.1.1 acknowledge actual receipt of the notice convening a meeting; or

29.6.1.2 are present at a meeting; or

29.6.1.3 waive notice of a meeting,

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

29.6.2 a majority of the Directors who are present in the Republic at the time of the meeting of Directors shall form a quorum;

29.6.3 each Director has 1 (one) vote on a matter before the Board;

29.6.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution; and

29.6.5 in the case of a tied vote the chairperson may cast a deciding vote in addition to any deliberative vote, provided that should the quorum be 2 (two) and should only 2 (two) Directors be present at the meeting, the chairperson shall not have a casting vote.

29.7 Resolutions adopted by the Board –

29.7.1 must be dated and sequentially numbered; and

29.7.2 are effective as of the date of the resolution, unless any resolution states otherwise.

29.8 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, by the chairperson of the next meeting of the Board, or by the company secretary, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

29.9 The Company shall keep minutes of the meetings of the Board, and of any of its committees, and include in the minutes –

29.9.1 any disclosure made by notice or made by a director as required by section 75

of the Companies Act, as contemplated in clause 28.8; and

29.9.2 every resolution adopted by the Board.

30 DIRECTORS' COMPENSATION

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

30.2 Any Director who -

30.2.1 serves on any executive or other committee; or

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

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

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

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

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

30.3.1 the business of the Company; and

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

31 INDEMNIFICATION OF DIRECTORS

31.1 The Company may –

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

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

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

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

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

32 **BORROWING POWERS**

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

32.1.1 borrow for the purposes of the Company such sums as they think fit; and

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

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

32.2.1 the Company; and

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

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

33 COMMITTEES OF THE BOARD

33.1 The Board may –

33.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board; and/or

33.1.2 include in any such committee persons who are not Directors,

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

33.2 The authority of a committee appointed by the Board as contemplated in the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

33.3 If and for as long as it is required to do so in terms of the Companies Act (unless the Company is exempted from doing so by the Tribunal in terms of the Companies Act), the JSE Listings Requirements or any other applicable law, the Board must appoint any and all such prescribed committees.

34 ANNUAL FINANCIAL STATEMENTS

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

34.1.1 the Companies Act;

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

34.1.3 this Memorandum of Incorporation.

34.2 The Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of the Companies Act.

- 34.3 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of the Companies Act and any other applicable laws.
- 34.4 A copy of the annual financial statements must be sent to Shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered. Such copy may be sent in any manner contemplated in clause 42 (including by way of Electronic Communication) or any such other manner permitted in terms of applicable law.
- 34.5 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Companies Act and shall –
- 34.5.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
 - 34.5.2 subject to and in accordance with IFRS –
 - 34.5.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - 34.5.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;
 - 34.5.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
 - 34.5.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.
- 34.6 All annual financial statements when audited and laid before an annual general meeting shall be deemed conclusively correct, and shall not be re-opened.

35 AUDITORS

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

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

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

36 COMPANY SECRETARY

36.1 The Company must, as required by the Companies Act, appoint a company secretary and such company secretary may be a juristic person or partnership as contemplated in the Companies Act.

36.2 The company secretary must, as required by the Companies Act, have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.

36.3 The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

36.4 The company secretary (who shall be permanently resident in the Republic) shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any company secretary so appointed may be removed by the Directors.

37 DISTRIBUTIONS

37.1 Subject to the provisions of the Companies Act, the Company may not make a proposed distribution unless –

37.1.1 the distribution -

37.1.1.1 is pursuant to an existing legal obligation of the Company, or a court order;
or

37.1.1.2 is authorised by resolution of the Board, in compliance with the JSE Listings Requirements; and

37.1.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity

Test immediately after completing the proposed distribution; and

37.1.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed distribution,

provided that no distribution may provide for capital to be repaid upon the basis that it may be called up again.

37.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.

37.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.

37.4 The Directors may declare and pay dividends in accordance with the Act.

37.5 Unclaimed distributions comprising dividends shall be held by the Company for the benefit of the applicable Shareholder for a period of three years after the date on which the applicable Shareholder became entitled to such distribution, provided that all other distributions shall be held by the Company indefinitely for the benefit of Shareholders. Any unclaimed monies in respect of which the claims of the relevant holders of Securities have prescribed shall be forfeited by resolution of the Directors for the benefit of the Company and may be dealt with by the Directors or their assigns as they deem fit.

37.6 Any distribution, interest or other sum payable in cash to a Shareholder may be paid by electronic transfer for credit to an account nominated in writing by the Shareholder.

37.7 The Company shall not be responsible for the loss or misdirection of any electronic transfer. The making of such electronic transfer, to whomsoever effected, shall be a good discharge to the Company.

37.8 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -

- 37.8.1 by the distribution of specific assets; or
 - 37.8.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
 - 37.8.3 in cash; or
 - 37.8.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 37.9 Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 37.10 The Directors may -
- 37.10.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and
 - 37.10.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.
- 37.11 Any distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.
- 37.12 The Directors may from time to time make such regulation as they may think fit in regard to the payment of dividends to members having registered addresses outside the Republic, and such regulations may provide for the payment of such dividends in any foreign currency and the rate of exchange at which such payment shall be made and such other matters as the Directors may think fit.
- 37.13 The Directors may before recommending any distribution whether preferential or otherwise, set aside out of the profits of the Company, whether realised or unrealised and whether of a revenue or capital nature, such sum as they think proper as reserves which shall, at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit. The Directors may also without placing the same

to reserve, carry forward any profits which they may think prudent not to declare as a distribution.

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

38 ODD-LOTS

38.1 For purposes hereof:

38.1.1 "Odd-lot" means any total holding by a Shareholder (which for the purposes of this clause 38 shall include a dematerialised Shareholder without "own-name registration") that holds the Shares through a nominee in accordance with the rules and procedures of Strate Proprietary Limited of less than 100 Shares (or such other number as may be permitted by the JSE), or any total holding of less than 100 Securities (or such other number as may be permitted by the JSE) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other rand amount as may be permitted by the JSE); and

38.1.2 "Odd-lot Offer" means an offer by the Company, or its nominee (which for the avoidance of doubt shall include any of the Company's subsidiaries from time to time) to the holders of Odd-lots in terms of which the holders of the Odd-lots may elect to retain their holdings or sell their Odd-lots, subject to the JSE Listings Requirements to the extent applicable.

38.2 The Company, or its nominee, may make and implement Odd-lot Offers on such terms and conditions as the Board may determine, in accordance with the JSE Listings Requirements or as otherwise permitted by the JSE; and if it does so and any Shareholder or holder of Securities who qualifies to participate in that Odd-lot Offer does not elect any of the election alternatives (namely to retain their Odd-lots or to sell their Odd-lots) in accordance with the terms of the Odd-lot

Offer, such holder (and any person with a beneficial interest in such Odd-lots) shall be deemed to have agreed to sell Odd-lots, and the Company or its nominee, as the case may be, shall be entitled (on implementation of the Odd-lot Offer) to cause the Odd-lots to be sold on behalf of such persons to any party (including the Company) on such terms and conditions as the Board may determine; provided that the Company shall account to the registered holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such Odd-lots.

38.3 The Company shall be obliged to hold all moneys due to Shareholders in trust indefinitely, but subject to the laws of prescription.

3839 AUTHENTICATION OF DOCUMENTS

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

3940 ACCESS TO COMPANY RECORDS

39.140.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company –

39.1.140.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;

39.1.240.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director;

39.1.340.1.3 all –

~~39.1.3.140.1.3.1~~ reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting; and

~~39.1.3.240.1.3.2~~ annual financial statements required by the Companies Act for a period of 7 (seven) years after the date on which each such particular statements were issued;

~~39.1.440.1.4~~ notice and minutes of all Shareholders' meetings, including –

~~39.1.4.140.1.4.1~~ all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and

~~39.1.4.240.1.4.2~~ any document that was made available by the Company to the holders of Securities in relation to each such resolution;

~~39.1.540.1.5~~ any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and

~~39.1.640.1.6~~ the Securities Register.

~~39.240.2~~ A person not contemplated in clause 40.1 has a right to inspect the Securities Register and the register of Directors upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

~~39.340.3~~ A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of the Companies Act, and in accordance with the rules of the Central Securities Depository. Within 5 (five) business days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details prescribed in terms of the Companies Act at the close of business on the day on which the request for inspection was made.

~~40.1~~ **PAYMENT OF COMMISSION**

~~40.141.1~~ The Company may not pay commission exceeding 10% (ten percent) of the issue price of any Security to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities.

~~40.241.2~~ The Company may, on any issue of Shares, pay such brokerage as may be lawful.

~~41.42~~ NOTICES

~~41.142.1~~ All notices shall be given by the Company to each Shareholder entitled thereto and simultaneously to the JSE, and shall be given in writing in any manner authorised by the JSE Listings Requirements and the Regulations, and particularly Table CR 3 annexed to the Regulations. All notices shall, in addition to the above, be released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Companies Act.

~~41.242.2~~ For so long as the Company maintains any listings on securities exchanges in addition to that of the JSE, the Company shall, to the extent required, comply with the listings requirements of such exchanges in addition to the JSE Listings Requirements.

~~41.342.3~~ Each Shareholder of the Company –

~~41.3.142.3.1~~ shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and

~~41.3.242.3.2~~ may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.

~~41.442.4~~ Any Shareholder whose address in the Securities Register is an address not within the Republic, shall be entitled to have notices served upon him at such address.

~~41.542.5~~ In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors (or any other person to which the Directors have delegated such power) agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.

41.642.6 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

41.742.7 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.

41.842.8 Any notice or other document delivered or sent by or through an electronic medium or by post or left at the registered address of any Shareholder or the disclosed address of any beneficial holder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder or beneficial holder be then under legal incapacity, and whether or not the Company has notice of his legal incapacity, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder or any Security in respect of which such beneficial holder has or is deemed to have a beneficial interest as a sole or joint holder unless his name shall at the time of the service of the notice or document have been removed from the relevant register as the holder of the Share or other Security; and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the Share or other Security.

41.942.9 As required in terms of the Companies Act, the Company shall provide the auditors of the Company with all notices of and other communications relating to any general Shareholders meeting.

4243 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

42.143.1 Subject to the provisions of clause 7.4, this Memorandum of Incorporation may only be altered or amended by way of a special resolution of the Shareholders in accordance with section 16(1)(c) of the Companies Act, except if such amendment is in compliance with a Court order as contemplated in section 16(1)(a) of the Companies Act.

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

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

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

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

4344 **COMPANY RULES**

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

ADOPTION

This Memorandum of Incorporation was adopted by special resolution of the Shareholders on ~~24 November 2016~~ 22 November 2017.

SCHEDULE "1"**ADDITIONAL CLASSES OF SHARES**

In addition to the Shares contemplated in clause 7.1.1 of the Memorandum of Incorporation to which this schedule is attached as Schedule 1, the Company is authorised to issue –

- 1 100,000,000 (one hundred million) redeemable cumulative preference shares with a par value of R0.01 (one cent) each in the share capital of the Company (referred to in Schedule 2 as the "**Preference Shares**"), subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 2;
- 2 100,000,000 (one hundred million) redeemable cumulative no par value preference shares in the Company (referred to in Schedule 3 as the "**Preference Shares**"), subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 3; and
- 3 100,000,000 (one hundred million) redeemable no par value preference shares in the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 4.

SCHEDULE "2"**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH THE PREFERENCE SHARES**

- 1 The Company may issue Preference Shares which are, or at the option of the Company are liable, to be redeemed.
- 1 The following rights, limitations and other terms shall attach to the Preference Shares -
 - 1.1 the Preference Shares shall confer the right to receive out of the profits of the Company available for distribution a cumulative preferential cash dividend as may be determined by the Board in respect of each allotment of the Preference Shares, such dividend to be calculated, declared and paid in such manner and on such dates as may be determined by the Board in respect of each allotment of the Preference Shares;
 - 1.2 each allotment of the Preference Shares shall be issued at such a premium as the Board may determine;
 - 1.3 in the event of a winding-up of the Company, the holders of the Preference Shares shall be entitled to receive in full out of the assets of the Company the nominal amount and the premium paid up thereon together with a sum equivalent to any arrears of, and the then current preferential dividend, whether declared or undeclared and whether or not there shall have been any profits available for the payment of such dividends, calculated down to the date of payment to the holders of the Preference Shares of the amount payable to them in terms of this clause 2.3;
 - 1.4 the Preference Shares shall not confer any further right to participate in the profits or assets of the Company;
 - 1.5 the Preference Shares shall rank, in respect of dividends and, on a winding-up, for return of capital and the premium paid up thereon (including any redemption payment in arrear at the date of such winding-up), prior to all classes of shares in the Company other than any other preference shares in the Company which are determined to rank *pari passu* with, or ahead of, the Preference Shares, so that -
 - 1.5.1 no dividends shall be paid in respect of the said shares at any time while any dividend in respect of the Preference Shares remains in arrear and

unpaid; and

- 1.5.2 no return of capital to shareholders shall be effected in any winding-up of the Company until the rights of the holders of the Preference Shares in such winding-up have been satisfied;
- 1.6 subject to the provisions of the Companies Act, the Preference Shares shall be redeemed or shall at the option of the Company be liable, to be redeemed, on such basis as may be determined by the Board in respect of each allotment of the Preference Shares. The amount payable upon such redemption shall be the nominal amount and the premium paid up on the issue of the Preference Shares being redeemed together with an amount equal to any arrears of and the then current preferential dividend calculated down to the date of such redemption. The Company shall not be liable to a holder of Preference Share for interest on any unclaimed redemption moneys. The Company shall be entitled to apply its share premium account to provide for the premium payable upon such redemption, subject to such conditions as the Board may determine in respect of each allotment of the Preference Shares;
- 1.7 a Preference Share shall entitle the holder thereof to receive notice of and to attend but not to vote at any general meeting of the Company -
- 1.7.1 unless the dividend on that Preference Share is, at the date of holding of such meeting, 6 (six) months or more in arrears; or
- 1.7.2 unless any redemption payment on the Preference Share is, at the date of holding of such meeting, 6 (six) months or more in arrear; or
- 1.7.3 save upon any resolution proposed at any such general meeting -
- 1.7.3.1 for the winding-up or reduction of capital of the Company; or
- 1.7.3.2 directly affecting the rights attached to that Preference Share or the interests of the holder thereof; or
- 1.7.3.3 which relates to any proposal to amend the preferences, rights, limitations and other terms associated with that Preference Share;
- 1.8 in the event that the holder of a Preference Share is entitled to vote at a general or annual general meeting, each holder of Preference Shares (irrespective of

class) shall be entitled to one vote per Preference Share held by that holder, provided that such number of votes shall not exceed the number of votes calculated as follows (with any fraction of a vote rounded down to the nearest whole number) -

$$MV = TMV \times \frac{HPP}{TPP}$$

where:

MV = the maximum number of votes that the Preference Shareholder will be entitled to exercise in respect of the relevant resolution;

TMV = 24.99% (twenty four point nine nine percent) of all the votes entitled to be exercised in respect of the relevant resolution;

HPP = the total issue price of all the Preference Shares of whatsoever class held by the holder that are entitled to be voted in respect of the relevant resolution; and

TPP = the total issue price of all the Preference Shares of whatsoever class entitled to be voted in respect of the relevant resolution;

- 1.9 the variation of any preferences, rights, limitations and other terms attaching to any Preference Share must be approved by a special resolution taken by the holders of such Preference Shares at a separate meeting, in addition to any resolution which is required to be passed by the holders of ordinary shares in the Company;
- 1.10 the Board may determine such additional preferences, rights, limitations and other terms in respect of the Preference Shares as the Board may deem fit, provided that such preferences, rights, limitations and other terms may not be inconsistent with the Companies Act, the JSE Listings Requirements or the provisions hereof; and
- 1.11 if the Company, in respect of different allotments of Preference Shares, issues Preference Shares having different dividend rates, whether fixed or variable, the Preference Shares with the same dividend rate shall be deemed to be a separate class of Preference Shares from the other Preference Shares having a different dividend rate, and one class of Preference Shares shall be distinguished from

another class of Preference Shares by reference to its dividend rate.

SCHEDULE "3"

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

- 1 The Company may issue Preference Shares which are, or at the option of the Company are liable, to be redeemed.
- 2 The following rights, limitations and other terms shall attach to the Preference Shares -
 - 2.1 the Preference Shares shall confer the right to receive a cumulative preferential cash dividend as may be determined by the Board in respect of each allotment of the Preference Shares, such dividend to be calculated, declared and paid in such manner and on such dates as may be determined by the Board in respect of each allotment of the Preference Shares;
 - 2.2 each allotment of the Preference Shares shall be issued at such issue price as the Board may determine;
 - 2.3 in the event of a winding-up of the Company, the holders of the Preference Shares shall be entitled to receive in full out of the assets of the Company an amount equal to the issue price of the Preference Shares together with a sum equivalent to any arrears of, and the then current preferential dividend, whether declared or undeclared, calculated down to the date of payment to the holders of the Preference Shares of the amount payable to them in terms of this clause 2.3;
 - 2.4 the Preference Shares shall not confer any further right to participate in the profits or assets of the Company;
 - 2.5 the Preference Shares shall rank, in respect of dividends and, on a winding-up, for return of capital (including any redemption payment in arrear at the date of such winding-up), prior to all other classes of shares in the Company other than any other preferences shares in the Company which are determined to rank pari passu with, or ahead of, the Preference Shares, so that -
 - 2.5.1 no dividends shall be paid in respect of the said shares at any time while any dividend in respect of the Preference Shares remains in arrear and unpaid; and
 - 2.5.2 no return of capital to shareholders shall be effected in any winding-up of the

Company until the rights of the holders of the Preference Shares in such winding-up have been satisfied;

- 2.6 subject to the provisions of the Companies Act, the Preference Shares shall be redeemed or shall at the option of the Company be liable, to be redeemed, on such basis as may be determined by the Board in respect of each allotment of the Preference Shares. The amount payable upon such redemption shall be the issue price of the Preference Shares being redeemed together with an amount equal to any arrears of and the then current preferential dividend calculated down to the date of such redemption. The Company shall not be liable to a holder of Preference Share for interest on any unclaimed redemption moneys;
- 2.7 a Preference Share shall entitle the holder thereof to receive notice of and to attend but not to vote at any general meeting of the Company -
- 2.7.1 unless the dividend on that Preference Share is, at the date of holding of such meeting, 6 (six) months or more in arrears; or
- 2.7.2 unless any redemption payment on the Preference Share is, at the date of holding of such meeting, 6 (six) months or more in arrear; or
- 2.7.3 save upon any resolution proposed at any such general meeting -
- 2.7.3.1 for the winding-up or reduction of capital of the Company; or
- 2.7.3.2 directly affecting the rights attached to that Preference Share or the interests of the holder thereof; or
- 2.7.3.3 which relates to any proposal to amend the preferences, rights, limitations and other terms associated with that Preference Share;
- 2.8 in the event that the holder of a Preference Share is entitled to vote at a general or annual general meeting, each holder of Preference Shares (irrespective of class) shall be entitled to one vote per Preference Share held by that holder, provided that such number of votes shall not exceed the number of votes calculated as follows (with any fraction of a vote rounded down to the nearest whole number) -

$$MV = TMV \times \frac{HPP}{TPP}$$

where:

MV = the maximum number of votes that the Preference Shareholder will be entitled to exercise in respect of the relevant resolution;

TMV = 24.99% (twenty four point nine nine percent) of all the votes entitled to be exercised in respect of the relevant resolution;

HPP = the total issue price of all the Preference Shares of whatsoever class held by the holder that are entitled to be voted in respect of the relevant resolution; and

TPP = the total issue price of all the Preference Shares of whatsoever class entitled to be voted in respect of the relevant resolution;

- 2.9 the variation of any preferences, rights, limitations and other terms attaching to any Preference Share must be approved by a special resolution taken by the holders of such Preference Shares at a separate meeting, in addition to any resolution which is required to be passed by the holders of ordinary shares in the Company;
- 2.10 the Board may determine such additional preferences, rights, limitations and other terms in respect of the Preference Shares as the Board may deem fit, provided that such preferences, rights, limitations and other terms may not be inconsistent with the Companies Act, the JSE Listings Requirements or the provisions hereof;
- 2.11 if the Company, in respect of different allotments of Preference Shares, issues Preference Shares having different dividend or other rights or limitations, the Preference Shares with the same dividend and other rights and limitations shall be deemed to be and shall be designated as a separate class of Preference Shares from the other Preference Shares having a different dividend or other rights or limitations; and
- 1.12 no further securities ranking in priority to or pari passu with existing Preference Shares of any class shall be created or issued without the –
- 2.11.1.1 consent in writing of the holders of 75% (seventy five per cent) of the existing Preference Shares of such class; or

2.11.1.2 the sanction of a resolution of the holders of such class of Preference Shares, passed at a separate general meeting of such holders at which Preference Shareholders holding in aggregate not less than one quarter of the total votes of all Preference Shareholders holding securities in that class entitled to vote at that meeting, are present in person or by proxy, and a resolution has been passed by not less than three fourths of the total votes to which the members of that class, present in person or by proxy, are entitled.

SCHEDULE "4"

GENERAL PREFERENCE SHARE TERMS AND CONDITIONS IN RESPECT OF
DOMESTIC MEDIUM TERM NOTE AND PREFERENCE SHARE PROGRAMME

1. Definitions and Interpretation

In the Preference Share Terms and Conditions, unless inconsistent with the context or separately defined in the Applicable Pricing Supplement (Preference Shares) in a manner not inconsistent with these General Preference Share Terms, the following expressions shall have the following meanings:

- 1.1 **"Accrued Preference Dividends"** means, at any time, any and all Preference Dividends which have accrued (whether declared or not), but which have not been paid at that time;
- 1.2 **"Actual Redemption Date"** in relation to a Preference Share, the date upon which that Preference Share is redeemed in full by the Issuer;
- 1.3 **"Additional Preference Dividends"** the additional preference dividends which are payable in respect of the Preference Shares in accordance with Condition 6.8 (*Adjustment Events*) of the Preference Share Terms and Conditions and the relevant Applicable Pricing Supplement (Preference Shares);
- 1.4 **"Adjustment Event"** has the meaning specified in Condition 6.8 (*Adjustment Events*) or any other event specified as such in the Applicable Pricing Supplement (Preference Shares);
- 1.5 **"Applicable Law"** in relation to a person, all and any:
- 1.5.1 statutes and subordinate legislation;
- 1.5.2 regulations, ordinances and directives;

- 1.5.3 by-laws;
- 1.5.4 codes of practice, circulars, guidance notices, judgements and decisions of any competent authority; and
- 1.5.5 other similar provisions, from time to time,
- 1.6 **"Applicable Pricing Supplement (Preference Shares)"** in relation to a Tranche of Preference Shares, the pricing supplement completed and signed by the Issuer in relation to the issue of that Tranche of Preference Shares, setting out such additional and/or other terms and conditions as are applicable to that Tranche of Preference Shares, based upon the *pro forma* pricing supplement which is set out in the section of the Programme Memorandum headed "*Pro Forma Applicable Pricing Supplement (Preference Shares)*";
- 1.7 **"Applicable Procedures"** the rules and operating procedures for the time being of the Central Securities Depository, Settlement Agents and the JSE, as the case may be;
- 1.8 **"Authorising Resolution"** in respect of each Tranche of Preference Shares, a resolution of the Board (i) determining the Specific Preference Share Terms of that Tranche of Preference Shares, and (ii) authorising the issue of that Tranche of Preference Shares;
- 1.9 **"Banks Act"** the Banks Act, 1990;
- 1.10 **"Beneficial Interest"** in relation to a Tranche of Preference Shares an interest as co-owner of an

- undivided interest in a Preference Share held in uncertificated form in accordance with the Financial Markets Act;
- 1.11 **"Board"** the board of directors of the Issuer from time to time;
- 1.12 **"Business Day"** a day (other than a Saturday or Sunday or public holiday which is a day on which commercial banks settle Rand payments in Johannesburg;
- 1.13 **"Calculation Agent"** in relation to a Class of Preference Shares, such person with whom the Issuer enters into an agreement in terms of which such person agrees to perform various calculations in respect of the Preference Shares;
- 1.14 **"Central Securities Depository"** Strate Proprietary Limited (registration number 1998/022242/07), or its nominee (being the Central Securities Depository's Nominee), a central securities depository operating in terms of the Financial Markets Act, or any additional or alternate depository approved by the Issuer, the Dealer and the JSE;
- 1.15 **"Central Securities Depository's Nominee"** any wholly owned subsidiary (as defined in the Companies Act) of the Central Securities Depository approved by the Registrar (as defined in the Financial Markets Act) for purposes of, and as contemplated in, section 36 of the Financial Markets Act and any reference to "Central Securities Depository's Nominee" shall,

- term insurance companies and tax holiday companies) from time to time in terms of the Income Tax Act;
- 1.22 **"Dealer(s)"** Rand Merchant Bank and/or such other person(s) appointed by the Issuer in terms of the Programme Agreement, which appointment may be for a specific issue or an on-going basis;
- 1.23 **"Designated Maturity"** in relation to a Class of Floating Rate Preference Shares, has the meaning ascribed thereto in the Applicable Pricing Supplement (Preference Shares) relating to each Tranche in that Class;
- 1.24 **"Dividend Commencement

Date"** in relation to a Tranche of Preference Shares, the first date from which dividends on such Tranche will accrue, being the Issue Date of that Tranche or such other date as specified in the Applicable Pricing Supplement (Preference Shares);
- 1.25 **"Dividend Compounding
Date(s)"** in relation to a Class of Preference Shares, the last day of each Dividend Period, as specified in the Applicable Pricing Supplement (Preference Shares) relating to each Tranche in that Class;
- 1.26 **"Dividend Payment Date(s)"** in relation to a Class of Preference Shares, the date(s) specified as such in the Applicable Pricing Supplement (Preference Shares) relating to each Tranche in that Class;

- in the share capital of the Issuer, issued by the Issuer in accordance with Issuer's Memorandum of Incorporation and remaining in issue as at the Programme Date and any further preference shares, in the share capital of the Issuer, issued by the Issuer in accordance with Issuer's Memorandum of Incorporation prior the date of issue of the first Preference Shares under the Programme;
- 1.34 **"Extraordinary Resolution"** a resolution passed at a properly constituted meeting of the Preference Shareholders by a majority consisting of not less than 66.67% (sixty-six point six seven percent) of the votes cast by Preference Shareholders or Preference Shareholders of the relevant Class of Preference Shares, as the case may be, present in person or by proxy;
- 1.35 **"Final Redemption Amount"** in relation to a Class of Preference Share, the amount payable in respect of each Preference Share in the Class upon final redemption thereof, as specified in the Applicable Pricing Supplement (Preference Shares);
- 1.36 **"Final Redemption Date"** in relation to a Class of Preference Shares, the final date upon which the Preference Shares are to be redeemed, set out in the Applicable Pricing Supplement (Preference Shares);
- 1.37 **"Financial Indebtedness"** means any present or future indebtedness (whether being principal, interest or other amounts) for or in respect of:

- 1.37.1 moneys borrowed and debit balances at any bank or financial institution;
- 1.37.2 liabilities under or in respect of any acceptance or acceptance credit;
- 1.37.3 any notes, bonds, debentures, debenture stock, loan stock or other securities offered, issued or distributed whether by of public offer, private placing, acquisition consideration or otherwise and whether issued for cash or in whole or in part for a consideration other than cash;
- 1.37.4 any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the Issuer) or otherwise classified as borrowings under IFRS;
- 1.37.5 the amount of any liability in respect of leases or hire purchases contract which would, in accordance with applicable law and generally accepted accounting principles, be treated as finance or capital leases;
- 1.37.6 the amount of trade payables or due to trade creditors in respect of any purchase price for assets or services the payment of which is deferred for a period in excess of 90 days;
- 1.37.7 any amount raised by acceptance under any acceptance credit or bill discounting facility;

- 1.37.8 receivables sold or discounted (other than to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under IFRS);
- 1.37.9 any derivative transaction entered into in connection with protection against fluctuations in any rate or price;
- 1.37.10 guarantees give, whether present or future, actual or contingent;
- 1.37.11 any counter-indemnity obligation (other than those given in the ordinary course of business) in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- 1.37.12 amounts raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and lease back agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS;
- 1.38 **"Financial Markets Act"** the Financial Markets Act, 2012;
- 1.39 **"Fixed Rate Preference Shares"** Preference Shares which will bear dividends at a fixed dividend rate, as specified in the Applicable Pricing Supplement (Preference Shares) and more fully described in Condition 6.1 (*Dividend*

on Fixed Rate Preference Shares);

- 1.40 **"Floating Rate Preference Shares"** Preference Shares which will bear dividends at a floating dividend rate, as specified in the Applicable Pricing Supplement (Preference Shares) and more fully described in Condition 6.2 (*Dividend on Floating Rate Preference Shares*);
- 1.41 **"General Preference Share Terms"** the preferences, rights, limitations and other terms attaching to each Preference Share, as set out in this Schedule 4 to the Memorandum of Incorporation;
- 1.42 **"Group"** the Issuer and each of its Subsidiaries;
- 1.43 **"IFRS"** the international financial reporting standards issued by the International Accounting Standard Board ("**IASB**") and interpretations issued by the Financial Reporting Interpretations Committee of the IASB (as amended or reissued from time to time);
- 1.44 **"Income Tax Act"** the Income Tax Act, 1962;
- 1.45 **"Issue Date"** in relation to each Preference Share, the date on which the Issuer allots and issues that Preference Share to the subscriber, as specified in the Applicable Pricing Supplement (Preference Shares);
- 1.46 **"Issue Price"** in relation to each Preference Share, the subscription price payable as consideration for the issue of that Preference Share, as

- specified in the Applicable Pricing Supplement (Preference Shares);
- 1.47 **"Issuer"** RMB Holdings Limited (registration number 1987/005115/06), a public company with limited liability duly incorporated in accordance with the company laws of South Africa;
- 1.48 **"JSE"** JSE Limited (registration number 2005/022939/06), licensed as an exchange in terms of the Financial Markets Act, or any exchange which operates as a successor exchange to the JSE in terms of the Financial Markets Act;
- 1.49 **"JSE Guarantee Fund"** the JSE Guarantee Fund operated by the JSE as a separate guarantee fund, in terms of the rules of the JSE, as required by sections 8(1)(h) and 17(2)(w) of the Financial Markets Act or any successor fund;
- 1.50 **"JSE Listings Requirements"** the listings requirements of the JSE in force from time to time;
- 1.51 **"JSE Scheduled Trading Day"** means, in respect of any Preference Share listed on the JSE, any day on which the JSE is scheduled to be open for trading for its regular trading session;
- 1.52 **"Last Day to Trade"** with respect to a particular Class of Preference Shares, the date specified as such in the Applicable Pricing Supplement;
- 1.53 **"Margin"** in relation to a Class of Floating Rate Preference Shares, has the meaning ascribed thereto in the Applicable Pricing Supplement (Preference Shares) relating to

- each Tranche in that Class;
- 1.54 **"Mixed Rate Preference Shares"** Preference Shares which will bear dividends over respective periods at differing dividend rates applicable to any combination of Fixed Rate Preference Shares or Floating Rate Preference Shares, each as specified in the Applicable Pricing Supplement (Preference Shares) and as more fully described in Condition 6.3 (*Dividends on Mixed Rate Preference Shares*);
- 1.55 **"Memorandum of Incorporation"** the Memorandum of Incorporation of the Issuer, including its annexures and/or schedules, as the case may be;
- 1.56 **"Note Terms and Conditions"** the terms and conditions of the Notes as set out in the section of the Programme Memorandum headed "*Note Terms and Conditions*";
- 1.57 **"Notes"** the notes issued or to be issued by the Issuer under the Programme from time to time;
- 1.58 **"Ongoing Preference Dividends"** the cumulative cash preference dividends which are payable in respect of a Preference Share in accordance with the Preference Share Terms and Conditions and the relevant Applicable Pricing Supplement (Preference Shares);
- 1.59 **"Optional Redemption Amount"** has the meaning given in the Applicable Pricing Supplement (Preference Shares);

- 1.60 **"Optional Redemption Date(s)"** has the meaning given in the Applicable Pricing Supplement (Preference Shares));
- 1.61 **"Ordinary Resolution"** a resolution passed at a properly constituted meeting Preference Shareholders or Preference Shareholders of the relevant Class of Preference Shares, as the case may be, by a majority of the votes cast by Preference Shareholders or Preference Shareholders of the relevant Class of Preference Shares, as the case may be, present in person or by proxy
- 1.62 **"Participants"** a person that holds in custody and administers securities or an interest in securities and that has been accepted by the Central Securities Depository as a participant in terms of the Financial Markets Act Act;
- 1.63 **"Paying Agent"** the Issuer, unless the Issuer elects to appoint, in relation to a particular Class of Preference Shares, another entity as Paying Agent, in which event that other entity shall act as a Paying Agent in respect of that particular Class of Preference Shares;
- 1.64 **"Preference Dividend"** each dividend accrued and/or declared in relation to any Preference Share, including the Ongoing Preference Dividends, the Additional Preference Dividends and any other dividends specified in the Applicable Pricing Supplement;
- 1.65 **"Preference Shareholders"** the holders of the Preference Shares (as recorded in the Register);

1.66	"Preference Share"	a redeemable preference share in the share capital of the Issuer, having the preferences, rights, limitations and other terms set out in these General Preference Share Terms, as supplemented by the Specific Preference Share Terms;
1.67	"Preference Share Terms and Conditions"	in respect of a Tranche of Preference Shares, these General Preference Share Terms, as supplemented by the Specific Preference Share Terms;
1.68	"Programme"	RMB Holdings Limited ZAR15,000,000,000 Domestic Medium Term Note and Preference Share Programme;
1.69	"Programme Agreement"	the agreement concluded between the Issuer, the Arrangers, Debt Sponsor, if any, and Dealer(s) relating to the procuring of subscriptions for the Preference Shares;
1.70	"Programme Amount"	the maximum aggregate nominal amount of all of the Notes in issue and the aggregate Issue Price of all the Preference Shares in issue under the Programme at any one point in time, being R15 000 000 000 or such increased amount as is determined by the Issuer from time to time subject to and in accordance with all Applicable Laws, the Programme Agreement, the requirements of the JSE and/or any such other exchange(s) on which the Securities may be listed
1.71	"Programme Date"	the date of the Programme Memorandum;
1.72	"Programme Memorandum"	the information memorandum to be issued by the Issuer providing information about

- the Issuer, the Notes, the Preference Shares and incorporating the Note Terms and Conditions and Preference Share Terms and Conditions, as amended, novated or supplemented from time to time;
- 1.73 **"Rand Merchant Bank"** Rand Merchant Bank, a division of FirstRand Bank Limited, a company incorporated in accordance with the laws of South Africa, registration number 1929/001225/06;
- 1.74 **"Rating"** in relation to a Class of Preference Shares, the Programme or the Issuer, a rating, if any, granted by the Rating Agency, as specified in the Applicable Pricing Supplement (Preference Shares);
- 1.75 **"Rating Agency"** any of Global Credit Rating Co. Proprietary Limited, Standard & Poor's, Fitch Southern Africa (Pty) Ltd, Moody's Investors Service Limited and/or such other rating agency or rating agencies, if any, appointed by the Issuer to assign a Rating to the Issuer or to any Preference Shares issued by the Issuer, as specified in the Applicable Pricing Supplement (Preference Shares);
- 1.76 **"Record Date"** the date on which the Register must be in final form, being the Friday immediately prior to each Dividend Payment Date or Redemption Date, as the case may be, or if such Friday is not a Business Day, the last Business Day of the week preceding the Dividend Payment Date or Redemption Date, as the case may be;
- 1.77 **"Redemption Amount"** in respect of each Preference Share, the

amount per Preference Share payable on redemption of that Preference Share, in an amount equal to:

- 1.77.1 in the case of redemption on the Final Redemption Date, its Final Redemption Amount, together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the Final Redemption Date;
- 1.77.2 in the case of redemption on the Optional Redemption Date, its Optional Redemption Amount, together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the Optional Redemption Date;
- 1.77.3 in the case of redemption in terms of Condition 11 (*Redemption Events*), its Final Redemption Amount, together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the Redemption Date;
- 1.78 **"Redemption Date"** each date on which any Preference Share is to be redeemed, in terms of the Preference Share Terms and Conditions, including:
- 1.78.1 the Final Redemption Date;
- 1.78.2 any Optional Redemption Date;
- 1.78.3 the date on which the Issuer is obliged to redeem that Preference

- Share in accordance with Condition 11 (*Redemption Events*) or Condition 7.3 (*Redemption following receipt of an Adjustment Notice*); and
- 1.78.4 the date of payment of a return of capital, in the event of the liquidation, dissolution or winding-up of the Issuer;
- 1.79 **"Redemption Event"** in relation to any Preference Shares, any of the events specified as such in Condition 11 (*Redemption Events*);
- 1.80 **"Reference Rate"** in relation to a Class of Floating Rate Preference Shares, the meaning ascribed thereto in the Applicable Pricing Supplement (Preference Shares) relating to each Tranche in that Class;
- 1.81 **"Register"** the register of shareholders maintained by the Transfer Agent;
- 1.82 **"Relevant Date"** the date on which a payment first becomes due and payable in accordance with the Preference Share Terms and Conditions, except that in relation to monies payable to the Central Securities Depository in accordance with the Preference Share Terms and Conditions, the claim in respect of any payment under the Preference Shares will prescribe 3 years after the date on which (i) the full amount of such monies have been received by the Central Securities Depository, (ii) such monies are available for payment to the holders of Beneficial Interests, and (iii) notice to that effect has been duly given to such holders

- in accordance with the Applicable Procedures;
- 1.83 **"Relevant Indebtedness"** means any indebtedness (whether principal, premium, interest or other amounts) for or in respect of (i) monies borrowed, or (ii) liabilities under any acceptance or acceptance credit, or (iii) any bonds, notes, debentures, loan stock, redeemable preference shares or other debt securities or similar instrument, or (iv) any guarantees or indemnities given for indebtedness of another person described in (i), (ii) or (iii) above, without double-counting, whether present or future, actual or contingent;
- 1.84 **"Relevant Screen Page"** the page, section or other part of a particular information service (including, without limitation, Reuters) specified as the Relevant Screen Page in the Applicable Pricing Supplement (Preference Shares), or such other page, section or other part as may replace it on that information service or such other information service, in each case, as may be nominated by the person providing or sponsoring the information appearing there for the purpose of displaying rates or prices comparable to the Reference Rate;
- 1.85 **"Solvency and Liquidity Test"** means the "solvency and liquidity test" contemplated in section 4(1) of the Companies Act;
- 1.86 **"SENS"** Stock Exchange News Service;

- 1.87 **"Settlement Agents"** those Participants which are approved by the JSE or any other relevant financial exchange from time to time, in terms of the Applicable Procedures of the JSE, as settlement agents to perform electronic settlement of funds and scrip on behalf of market participants;
- 1.88 **"South Africa"** the Republic of South Africa;
- 1.89 **"Specific Preference Share Terms"** the preferences, rights, limitations and other terms attaching to each Preference Share, to be determined by the Board at the time of allotment and issue thereof, in accordance with section 36(3) of the Companies Act and set out in an Applicable Pricing Supplement, to supplement these General Preference Share Terms;
- 1.90 **"Specified Office"** in relation to each of the Issuer, the Calculation Agent and the Transfer Agent, the address of the office specified in respect of such entity in the Applicable Pricing Supplement (Preference Shares), or such other address as is notified by such entity (or, where applicable, a successor to such entity) to the Preference Shareholders in accordance with the Preference Share Terms and Conditions, as the case may be;
- 1.91 **"Specified Preference Shareholders"** has the meaning given in the Applicable Pricing Supplement (Preference Shares);
- 1.92 **"Special Resolution"** a resolution passed at a properly constituted meeting of the Preference Shareholders by a majority consisting of

- not less than 75% (seventy five percent) of the votes cast by Preference Shareholders or Preference Shareholders of the relevant Class of Preference Shares, as the case may be, present in person or by proxy;
- 1.93 **"Subsidiary"** a subsidiary within the meaning of section 1 of the Companies Act;
- 1.94 **"STT"** securities transfer tax levied under the Securities Transfer Tax Act, 2007;
- 1.95 **"Taxes"** all present and future taxes, duties, imposts, levies, charges, fees withholdings or deductions of whatever nature imposed, levied, collected, withheld or assessed by, or on behalf of, any governmental, fiscal or other competent authority in South Africa (including any penalty payable in connection with any failure to pay, or delay in paying, any of the same) and "*Tax*" and "*Taxation*" will be construed accordingly;
- 1.96 **"Tranche"** all Preference Shares which are identical in all respects (including as to listing) and are issued in a single issue;
- 1.97 **"Transfer Agent"** Rand Merchant Bank, or such other person with whom the Issuer enters into an agreement in terms of which such person agrees to provide note registry services to the Issuer;
- 1.98 **"Transfer Form"** in relation to the transfer of a Preference Share as contemplated in the Preference Share Terms and Conditions, a form of transfer in the usual form or in such other form approved by the Transfer Agent;

- 1.99 **"Unredeemed Preference Shares"** at any time, any redeemable Preference Shares which have not been redeemed by the Issuer at that time in accordance with the Preference Share Terms and Conditions;
- 1.100 **"ZAR"** the lawful currency of South Africa, being South African Rand, or any successor currency;
- 1.101 **"ZAR-JIBAR-SAFEX"** the mid-market rate for deposits in ZAR for a period of the Designated Maturity which appears on the Reuters Screen SAFEX Page as at 12h00, Johannesburg time on the relevant date, or any successor rate.
- 1.102 In the Preference Share Terms and Conditions, unless inconsistent with the context, any reference to:
- 1.102.1 one gender includes a reference to the others;
- 1.102.2 the singular includes the plural and vice versa;
- 1.102.3 natural persons include juristic persons and vice versa;
- 1.102.4 any agreement or instrument is a reference to that agreement or instrument as amended, supplemented, varied, novated, restated or replaced from time to time, and **amended** or **amendment** will be construed accordingly;
- 1.102.5 a provision of law is a reference to that provision as amended or re-enacted, and includes any subordinate legislation;
- 1.102.6 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- 1.102.7 **assets** includes present and future properties, revenues and rights of every description;
- 1.102.8 **disposal** means a sale, transfer, grant, lease or other disposal (whether voluntary or involuntary);
- 1.102.9 **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.102.10 an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
- 1.102.11 days is a reference to calendar days, unless expressly stated otherwise;
- 1.102.12 a Party or any other person includes that person's permitted successor, transferee, assignee, cessionary and/or delegate; and
- 1.102.13 a time of day is a reference to Johannesburg time.
- 1.103 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect must be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is contained in the interpretation clause.
- 1.104 Headings are inserted for the sake of convenience only and do not in any way affect the interpretation of the Preference Share Terms and Conditions.
- 1.105 The use of the word including followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the eiusdem generis rule must not be applied in the interpretation of such general wording or such specific examples.

2. **Issue**

- 2.1 The Issuer may issue Preference Shares from time to time, subject to these General Preference Share Terms, which will be supplemented, in respect of each Class of Preference Shares to be issued by the Issuer, by the Specific Preference Share Terms.
- 2.2 Preference Shares will be issued in individual Tranches which, together with

other Tranches, may form a Class of Preference Shares.

- 2.3 Before the Issuer issues any Tranche of Preference Shares, the Board will pass a resolution (i) determining the Specific Preference Share Terms of that Tranche of Preference Shares, and (ii) authorising the issue of that Tranche of Preference Shares, and the Issuer will complete and sign the Applicable Pricing Supplement (Preference Shares) in respect of that Tranche.
- 2.4 The Applicable Pricing Supplement (Preference Shares) for each Tranche of Preference Shares is incorporated in these General Preference Share Terms for the purposes of that Tranche of Preference Shares and supplements these General Preference Share Terms in respect of that Tranche of Preference Shares. The Applicable Pricing Supplement (Preference Shares) may specify other terms and conditions, which are not inconsistent with these General Preference Share Terms, in which event such other terms and conditions shall, to the extent so specified in the Applicable Pricing Supplement (Preference Shares), supplement these General Preference Share Terms.

3. Form and Denomination

- 3.1 Preference Shares will be issued in registered form in such denominations, if any, as may be determined by the Issuer and as specified in the Applicable Pricing Supplement (Preference Shares).
- 3.2 Listed and/or unlisted Preference Shares may be issued under the Programme.
- 3.3 Each Preference Share will be issued in a specified Class, as set out in the Applicable Pricing Supplement (Preference Shares).
- 3.4 Each Class of Preference Shares will:
- 3.4.1 be redeemable;
 - 3.4.2 be issued with a Redemption Date which falls more than three years after the Issue Date, as indicated in the Applicable Pricing Supplement (Preference Shares);
 - 3.4.3 be issued as fully paid up shares in the Issuer;

- 3.4.4 be issued in accordance with the Companies Act;
 - 3.4.5 be issued at such Issue Price as is specified in the Applicable Pricing Supplement (Preference Shares);
 - 3.4.6 be a Fixed Rate Preference Share, a Floating Rate Preference Share, a Mixed Rate Preference Share, or such combination of any of the foregoing, or such other type of Preference Share, as may be determined by the Issuer (subject to the provisions of the applicable Authorising Resolution) and specified in the Applicable Pricing Supplement (Preference Shares);
 - 3.4.7 be cumulative; and
 - 3.4.8 have the status set out in Condition 5 (*Status of Preference Shares*).
- 3.5 The Preference Shares in a Tranche of Preference Shares will be issued in the form of registered Preference Shares, represented by (i) Certificates registered in the name, and for the account of, the relevant Preference Shareholder or (ii) no Certificate, and held in uncertificated form in the Central Securities Depository in terms of section 33 of the Financial Markets Act, and registered in the name, and for the account of, the Central Securities Depository. The Central Securities Depository will hold the Preference Shares subject to the Financial Markets Act and the Applicable Procedures.

4. Title

- 4.1 Title to the Preference Shares will pass upon registration of transfer in the Register. The Issuer and the Transfer Agent shall recognise a Preference Shareholder as the sole and absolute owner of the Preference Shares registered in that Preference Shareholder's name in the Register (notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) and shall not be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust, express, implied or constructive, to which any Preference Share may be subject.
- 4.2 Beneficial Interests in Preference Shares held in uncertificated form may, in terms of existing law and practice, be transferred through the Central

Securities Depository by way of book entry in the central securities accounts of the Participants. Such transfers will not be recorded in the Register and the Central Securities Depository will continue to be reflected in the Register as the Preference Shareholder in respect of the Preference Shares held in uncertificated form, notwithstanding such transfers.

- 4.3 Any reference in the Programme Memorandum to the relevant Participant shall, in respect of Beneficial Interests, be a reference to the Participant appointed to act as such by a holder of such Beneficial Interest.

5. Status of Preference Shares

5.1 *Ranking*

The Preference Shares of each Class of Preference Shares will rank:

- 5.1.1 equally among themselves and with every other Class of Preference Shares and with every class of Existing Preference Shares with respect to:
- 5.1.1.1 the payment of dividends by the Issuer; and
 - 5.1.1.2 the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise;
- 5.1.2 equally in right of payment with the Notes;
- 5.1.3 in priority to the rights of all other classes of shares in the issued share capital of the Issuer, other than any other Preference Shares or Existing Preference Shares, with respect to:
- 5.1.3.1 the payment of dividends by the Issuer; and
 - 5.1.3.2 the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or

otherwise.

5.2 *Right of the Preference Shares on liquidation, dissolution or winding-up*

Each Preference Share shall confer on the holder thereof, the right of the holder to receive, in the event of the liquidation, dissolution or winding-up of the Issuer, a preferential right in priority to the rights of all other classes of shares in the issued share capital of the Issuer, other than any other Preference Shares or Existing Preference Shares, to a return of capital in an amount equal to the Final Redemption Amount in respect of such Preference Share, together, if applicable, with any Accrued Preference Dividends which have not yet been paid, calculated on the date on which payment of that return of capital is made by the Issuer to the holder of such Preference Share.

5.3 *Non-participating Preference Shares*

Save as set out in Condition 6 (*Dividends*) and Condition 5.2 (*Right of the Preference Shares on liquidation, dissolution or winding-up*), the Preference Shares do not confer on the Preference Shareholders any further right to participate in the profits or assets of the Issuer nor, upon a winding-up, to any surplus assets of the Issuer.

5.4 *The Existing Preference Shares*

In accordance with the Issuer's Memorandum of Incorporation, the Existing Preference Shareholders have consented in writing to the creation and issue of the Preference Shares and the Notes, and confirmed that such Preference Shares and Notes may rank *pari passu* with the Existing Preference Shares.

6. **Dividends**

6.1 **Dividends on Fixed Rate Preference Shares**

6.1.1 **Fixed Dividend Rate**

Each Fixed Rate Preference Share will have associated with it the right of the holder of such Fixed Rate Preference Share to receive a cumulative preferential cash dividend during each Dividend Period commencing on (and including) the Dividend Commencement Date to (but excluding), if applicable, the Actual Redemption Date in an amount

calculated at the Dividend Rate specified in the Applicable Pricing Supplement (Preference Shares).

6.1.2 **Dividend Payment Dates**

Dividends will be payable in arrears on each Dividend Payment Date. The first payment of dividends will be made on the Dividend Payment Date following the Dividend Commencement Date. If any Dividend Payment Date falls upon a day which is not a Business Day, the provisions of Condition 8.3 shall determine the date of payment of dividends due upon such Dividend Payment Date. The Ongoing Preference Dividend in respect of any Dividend Period shall accrue to and be paid on the relevant Dividend Payment Date.

6.1.3 **Calculation of Ongoing Preference Dividend**

6.1.3.1 The Calculation Agent will calculate the Ongoing Preference Dividend payable in respect of each Class of Fixed Rate Preference Shares for each Dividend Period.

6.1.3.2 Unless stated otherwise in the Applicable Pricing Supplement (Preference Shares), the Ongoing Preference Dividend shall be calculated by multiplying the Dividend Rate by the aggregate of the Issue Price of the Fixed Rate Preference Share together with all Preference Dividends which have accrued and been compounded in accordance with Condition 6.1.3.3, but which have not been declared and paid, and then multiplying such product by the actual number of days elapsed in such Dividend Period, divided by 365. The resultant sum will be rounded to the nearest cent, half a cent being rounded upwards.

6.1.3.3 The Ongoing Preference Dividend will accrue on a daily basis and be compounded in arrears on the last day of each Dividend Period to the extent not paid on that date.

6.2 **Dividends on Floating Rate Preference Shares**

6.2.1 **Dividend Rate**

Each Floating Rate Preference Share will have associated with it the

right of the holder of such Floating Rate Preference Share to receive a cumulative preferential cash dividend during each Dividend Period commencing on (and including) the Dividend Commencement Date to (but excluding), if applicable, the Actual Redemption Date in an amount calculated at the Dividend Rate specified in the Applicable Pricing Supplement (Preference Shares).

6.2.2 **Dividend Payment Dates**

The Ongoing Preference Dividend will be payable in arrears on each Dividend Payment Date. The first payment of dividends will be made on the Dividend Payment Date following the Dividend Commencement Date. If any Dividend Payment Date falls upon a day which is not a Business Day, the provisions of Condition 8.3 shall determine the date of payment of dividends due upon such Dividend Payment Date. The Ongoing Preference Dividend in respect of any Dividend Period shall accrue to and be paid on the relevant Dividend Payment Date.

6.2.3 **Determination of Dividend Rate and calculation of Ongoing Preference Dividend**

6.2.3.1 The Calculation Agent will, on each Rate Determination Date, determine the Dividend Rate applicable to a Class of Floating Rate Preference Shares for the Dividend Period commencing on that Rate Determination Date and calculate the Ongoing Preference Dividend payable in respect of each Floating Rate Preference Share in that Class for that Dividend Period.

6.2.3.2 Unless stated otherwise in the Applicable Pricing Supplement (Preference Shares), the Ongoing Preference Dividend will be determined by multiplying the Dividend Rate by the aggregate of the Issue Price of such Floating Rate Preference Share together with all Preference Dividends which have accrued and been compounded in accordance with Condition 6.2.3.3, but which have not been declared and paid, and then multiplying such product by the actual number of days elapsed in such Dividend Period, divided by 365. The resultant sum will be rounded to the nearest cent, half a cent being rounded upwards.

6.2.3.3 The Ongoing Preference Dividend will accrue on a daily basis and be compounded in arrears on the last day of each Dividend Period to the extent not paid on that date.

6.2.4 **Basis of Dividend Rate**

6.2.4.1 The Dividend Rate will be determined:

- (b) on the basis of Screen Rate Determination; or
- (c) on such other basis as may be determined by the Issuer,

all as indicated in the Applicable Pricing Supplement (Preference Shares).

6.2.4.2 **Screen Rate Determination**

Where Screen Rate Determination is specified in the Applicable Pricing Supplement (Preference Shares) as the manner in which the Dividend Rate is to be determined, the Dividend Rate for each Dividend Period will, subject as provided below, be either:

- (a) the offered quotation (if there is only one quotation on the Relevant Screen Page); or
- (b) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0,000005 being rounded upwards) of the offered quotations (if there is more than one quotation on the Relevant Screen Page) and subject to adjustment in terms of the JSE's approved methodology,

for the Reference Rate(s) which appears or appear, as the case may be, on the Relevant Screen Page as at 11h00 (Johannesburg time) on the Rate Determination Date in question, as determined and published by the JSE, plus or minus (as indicated in the Applicable Pricing Supplement (Preference Shares)) the Margin (if any), all as determined by the Calculation Agent.

If the Relevant Screen Page is not available or if, in the case of (a) above in this Condition 6.2.4.2, no such offered quotation

appears or, in the case of paragraph (b) above in this Condition 6.2.4.2, fewer than three such offered quotations appear, in each case at the time specified in the preceding paragraph, the Calculation Agent shall request the principal Johannesburg office of each of the Reference Banks (as defined below) to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately 12h00 (Johannesburg time) on the Rate Determination Date in question. If two or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Dividend Rate for such Dividend Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0,000005 being rounded upwards) of such offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Calculation Agent.

If the Dividend Rate cannot be determined by applying the provisions of the preceding paragraphs of this Condition 6.2.4.2, the Dividend Rate for the relevant Dividend Period shall be the rate per annum which the Calculation Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0,00005 being rounded upwards) of the rates, as communicated to (and at the request of) the Calculation Agent by the Reference Banks or any two or more of them, at which such banks offered, at approximately 12h00 (Johannesburg time) on the relevant Rate Determination Date, in respect of deposits in an amount approximately equal to the Issue Price of the Preference Shares, for a period equal to that which would have been used for the Reference Rate, to Reference Banks in the Johannesburg inter-bank market plus or minus (as appropriate) the Margin (if any). If fewer than two of the Reference Banks provide the Calculation Agent with such offered rates, the Dividend Rate for the relevant Dividend Period will be determined by the Calculation Agent as the arithmetic mean (rounded as provided above) of the rates for deposits in an amount approximately equal to the Issue Price of the Preference Shares, for a period equal to that which would have been used for the Reference Rate, quoted at

approximately 12h00 (Johannesburg time) on the relevant Rate Determination Date, by the Reference Banks (selected by the Calculation Agent and approved by the Issuer) plus or minus (as appropriate) the Margin (if any). If the Dividend Rate cannot be determined in accordance with the foregoing provisions of this paragraph, the Dividend Rate shall be determined as at the last preceding Rate Determination Date (though substituting, where a different Margin is to be applied to the relevant Dividend Period from that which applied to the last preceding Dividend Period, the Margin relating to the relevant Dividend Period, in place of the Margin relating to that preceding Dividend Period).

If the Reference Rate from time to time in respect of Floating Rate Preference Shares is specified in the Applicable Pricing Supplement (Preference Shares) as being other than the JIBAR rate, the Dividend Rate in respect of such Preference Shares will be determined, in the manner provided above, or as may be provided in the Applicable Pricing Supplement (Preference Shares).

"Reference Banks" means for the purposes of this Condition 6.2.4.2 four leading banks in the South African inter-bank market selected by the Calculation Agent and approved by the Issuer (where the Issuer does not act as the Calculation Agent).

6.3 **Dividends on Mixed Rate Preference Shares**

- 6.3.1 Each Mixed Rate Preference Share will have associated with it the right of the holder of such Mixed Rate Preference Share to receive a cumulative preferential cash dividend for such Dividend Period(s), as is/are specified for this purpose in the Applicable Pricing Supplement (Preference Shares), commencing on (and including) the Dividend Commencement Date to (but excluding), if applicable, the Actual Redemption Date in an amount calculated at the Dividend Rate applicable to the relevant form of Preference Share (be it a Fixed Rate Preference Share or Floating Rate Preference Share) specified in the Applicable Pricing Supplement (Preference Shares).

6.3.2 Unless otherwise specified in the Applicable Pricing Supplement (Preference Shares), a Class of Mixed Rate Preference Shares shall (i) for the Dividend Period(s) during which such Class applies the Dividend Rate applicable to Fixed Rate Preference Shares, be construed for all purposes as a Class of Fixed Rate Preference Shares and (ii) for the Dividend Period(s) during which such Class applies the Dividend Rate applicable to Floating Rate Preference Shares, be construed for all purposes as a Class of Floating Rate Preference Shares.

6.4 **Publication by the Calculation Agent of Dividend Rate and Preference Dividends payable**

6.4.1 The Calculation Agent will cause the Dividend Rate for each Class of Preference Shares (other than Fixed Rate Preference Shares) determined upon each Rate Determination Date to be notified to the Preference Shareholders (in the manner set out in Condition 12), the Issuer and, in relation to any Class of Preference Shares listed on the Dividend Rate Market of the JSE, and as soon as practicable after such determination but in any event not later than 5 Business Days after such determination.

6.4.2 The Calculation Agent will, in relation to each Class of Preference Shares, at least 2 Business Days before each Dividend Payment Date, cause the aggregate Preference Dividends payable on such Dividend Payment Date to be notified to the Preference Shareholders (in the manner set out in Condition 12), the Issuer and, in relation to any Class of Preference Shares listed on the JSE, the JSE.

6.5 **Calculations final and limitation of liability**

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained by the Calculation Agent pursuant to the exercise or non-exercise by it of its powers, duties and discretions under the Preference Share Terms and Conditions, will, in the absence of wilful deceit, bad faith or manifest error, be binding on the Issuer and all Preference Shareholders, and the Calculation Agent will not have any liability to the Issuer or the Preference Shareholders in connection therewith.

6.6 **Accumulated Preference Dividends**

6.6.1 To the extent that all or any part of a Preference Dividend has accrued or has become payable in accordance with the Preference Share Terms and Conditions, the Issuer shall be liable to pay, and the Preference Shareholders shall be entitled to be paid, by no later than the Redemption Date all Preference Dividends that have accrued or become payable in relation to the Preference Shares in accordance with the Preference Share Terms and Conditions and which have not been paid on the applicable Dividend Payment Dates.

6.7 **Payment of Preference Dividends**

The Issuer and the Board shall each comply with the requirements of section 46 of the Companies Act in respect of the declaration and payment of each Preference Dividend.

6.8 **Adjustment Events**

6.8.1 An "**Adjustment Event**" shall occur if, at any time, any Tax is or becomes payable on any Preference Dividend, any Redemption Amount or any other amount received or receivable (or any amount deemed to be received or receivable) in respect a Preference Share, which decreases the net financial after-tax return that a South African corporate tax resident Preference Shareholder would have received, had such Tax not been payable.

6.8.2 If an Adjustment Event occurs, the Issuer shall be obliged to:

6.8.2.1 declare and pay on the immediately following Dividend Payment Date an Additional Preference Dividend in such amount; and/or

6.8.2.2 increase the Dividend Rate, with effect from the date on which the Adjustment Event takes effect, by such a margin,

as will result in the Preference Shareholders of that Class achieving the net financial after-tax return it would have received, had such Tax not been payable .

6.8.3 The new Dividend Rate determined shall be applied retrospectively in re-

calculating, *mutatis mutandis* in accordance with Conditions 6.1, 6.2 or 6.3, as the case may be, all Accrued Preference Dividends.

- 6.8.4 Without double counting, if any amount payable pursuant to the adjustment provisions is subject to Tax, then the Issuer shall pay such additional amounts to the Preference Shareholders of the Class so as to place the Preference Shareholders in a position as if no such Tax was payable.

7. Redemption and Purchase

7.1 Final Redemption of the Preference Shares

Unless previously redeemed or purchased and cancelled as specified below, each Preference Share in a Class of Preference Shares shall, subject to the Conditions, be redeemed by the Issuer at its Final Redemption Amount, together, if applicable, with any Accrued Preference Dividends which have not yet been paid, on the Final Redemption Date.

7.2 Early Redemption at the option of the Issuer

If the Issuer is specified in the Applicable Pricing Supplement (Preference Shares) as having an option to redeem the Preference Shares in a Class of Preference Shares, the Issuer shall be entitled, having given not less than 10 days' notice to the Preference Shareholders in accordance with Condition 12 (which notice shall be revocable) to redeem all or some of the Preference Shares in that Class of Preference Shares then outstanding, on the Optional Redemption Date(s) and at the Optional Redemption Amount(s) specified in, or determined in the manner specified in, the Applicable Pricing Supplement (Preference Shares) together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the Optional Redemption Date(s).

7.3 Redemption following receipt of an Adjustment Notice

- 7.3.1 If an Adjustment Event occurs which affects one third or less of the Preference Shareholders (by value) (the "**Affected Preference Shareholders**"), then the Issuer shall be entitled, having given not less than 10 days' notice to the Preference Shareholders of that Class in

accordance with Condition 12 (which notice shall be irrevocable) to redeem all, and not some only, of the Preference Shares of the Affected Preference Shareholders in that Class of Preference Shares then outstanding, on the next Dividend Payment Date and at the Early Redemption Amount(s) specified in, or determined in the manner specified in, the Applicable Pricing Supplement (Preference Shares), together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the date of redemption.

- 7.3.2 If an Adjustment Event occurs which increases the Dividend Rate in respect of the relevant Class of Preference Shares by 25 basis points or more, then the Issuer shall be entitled, having given not less than 10 days' notice to the Preference Shareholders of that Class in accordance with Condition 12 (which notice shall be irrevocable) to redeem all, and not some only, of the Preference Shares of all the Preference Shareholders in that Class of Preference Shares then outstanding, on the next Dividend Payment Date and at the Early Redemption Amount(s) specified in, or determined in the manner specified in, the Applicable Pricing Supplement (Preference Shares), together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the date of redemption.

7.4 **Early Redemption Amounts**

- 7.4.1 For the purpose of Condition 7.3 (*Redemption following receipt of an Adjustment Notice*) and Condition 11 (*Redemption Events*) (and otherwise as stated herein), the Preference Shares will be redeemed at the Early Redemption Amount calculated as follows:

- 7.4.1.1 in the case of Preference Shares with a Final Redemption Amount equal to the Issue Price, at the Final Redemption Amount thereof; or

- 7.4.1.2 in the case of Preference Shares with a Final Redemption Amount which is or may be less or greater than the Issue Price (to be determined in the manner specified in the Applicable Pricing Supplement (Preference Shares)), at that Final Redemption Amount or, if no such amount or manner is so specified in the

Applicable Pricing Supplement (Preference Shares), at their Issue Price.

- 7.4.2 Where such calculation is to be made for a period which is not a whole number of years, it shall be calculated on the basis of actual days elapsed divided by 365, or such other calculation basis as may be specified in the Applicable Pricing Supplement (Preference Shares).

7.5 Purchases

The Issuer may at any time, subject to Applicable Laws, purchase Preference Shares at any price in the open market or otherwise. In the event of the Issuer purchasing Preference Shares, such Preference Shares shall be held, resold or at the option of the Issuer cancelled.

7.6 Cancellation

All Preference Shares which are redeemed in full will forthwith be cancelled. Where only some of the Preference Shares represented by a Certificate are cancelled, the Transfer Agent shall deliver a Certificate to such Preference Shareholder in respect of the balance of the Preference Shares remaining after such cancellation. The Issuer shall notify the Central Securities Depository, if applicable, and, in relation to any Class of Preference Shares listed on the JSE, the JSE, of any cancellation of the Preference Shares or redemption of some of the Preference Shares.

7.7 Procedure for Redemptions

- 7.7.1 Subject to the provisions of Applicable Law:

- 7.7.1.1 the Board shall, on or before the applicable Redemption Date, apply the Solvency and Liquidity Test and if the Board is reasonably satisfied that the Issuer will satisfy the Solvency and Liquidity Test immediately after paying all Accrued Preference Dividends and the aggregate Redemption Amount in respect of the Preference Shares being redeemed, the Board shall, on or before the applicable Redemption Date, pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Issuer will satisfy the Solvency and

Liquidity Test immediately after paying all Accrued Preference Dividends and the aggregate Redemption Amount in respect of the Preference Shares being redeemed;

7.7.1.2 the Issuer shall, on the applicable Redemption Date, declare, if applicable, and pay, in respect of each Preference Share being redeemed, all Accrued Preference Dividends; and

7.7.1.3 the Issuer shall, on the applicable Redemption Date, redeem the relevant Preference Shares for, and by paying, the aggregate Redemption Amount in respect of all of the Preference Shares being redeemed.

7.7.2 The Preference Shares of each Class held by each Preference Shareholder shall be redeemed in the proportion that the Preference Shares of that Class held by that Preference Shareholder bears to the total number of unredeemed Preference Shares in that Class.

7.7.3 The Issuer shall be liable for any STT and/or any other similar duty which may be or become payable by the Issuer and/or a Preference Shareholder in respect of the redemption of any Preference Shares for any reason. To the extent that any Preference Shareholder becomes liable to pay such STT or any other similar duty, the Issuer shall pay to the relevant Preference Shareholder on demand an amount equal to such STT and/or other similar duty paid by that Preference Shareholder and the Issuer hereby indemnifies and holds that Preference Shareholder harmless accordingly.

8. **Payments**

8.1 **Method of payment**

8.1.1 Payments of dividends and Redemption Amounts in respect of Preference Shares shall be made to the person reflected as the registered holder of the Preference Shares in the Register on the Record Date. To be recorded in the Register on the Record Date, the trade must take place by 17h00 on the Last Day to Trade. The Preference Shares will trade "ex-entitlement" on the first Business Day after the Last Day to Trade.

- 8.1.2 The Issuer shall pay the dividend and Redemption Amounts payable in respect of each Preference Shares, in immediately available and freely transferable funds, in ZAR by electronic funds transfer, to the bank account of the Preference Shareholder as set forth in the Register at 17h00 (Johannesburg time) on the Record Date preceding the relevant Dividend Payment Date or Redemption Date, as the case may be, or, in the case of joint Preference Shareholders, the account of that one of them who is first named in the Register in respect of that Preference Share. If two or more persons are entered into the Register as joint Preference Shareholders, then without affecting the previous provisions of this condition, payment to any one of them of any monies payable on or in respect of the Preference Share shall be an effective and complete discharge by the Issuer of the amount so paid, notwithstanding any notice (express or otherwise) which the Issuer may have of the right, title, interest or claim of any other person to or in any Preference Share or interest therein.
- 8.1.3 Only Preference Shareholders, or, in the case of joint Preference Shareholders, the one of them who is first named in the Register in respect of that Preference Share, reflected in the Register at 17h00 (Johannesburg time) on the relevant Record Date will be entitled to payments of dividends and/or Redemption Amounts in respect of Preference Shares.
- 8.1.4 Payments will be subject in all cases to any Taxation or other laws, directives and regulations applicable to such payment in the place of payment.
- 8.2 **Surrender of Certificates**
- 8.2.1 On or before the Record Date prior to any Redemption Date, the holder of a Certificate, in respect of a Preference Share to be redeemed shall deliver to the Transfer Agent the Certificates to be redeemed. This will enable the Transfer Agent to issue a new Certificate for the balance of the Preference Shares held or, in the case of final Redemption, to cancel the relevant Certificates.
- 8.2.2 Should the holder of a Certificate refuse or fail to surrender the Certificate

for replacement or cancellation on or before a Redemption Date, the amount payable to him in respect of such redemption, including any Accrued Preference Dividends, shall be retained by the Issuer for such Preference Shareholder, at the latter's risk, until the Preference Shareholder surrenders the necessary Certificate, and dividends shall cease to accrue to such Preference Shareholder from the Redemption Date in respect of the amount redeemed. No interest will be payable on the amount withheld.

8.2.3 Documents required to be presented and/or surrendered to the Transfer Agent in accordance with the Preference Share Terms and Conditions will be so presented and/or surrendered at the Specified Office of the Transfer Agent.

8.3 **Payment date**

Notwithstanding anything to the contrary contained in the Preference Share Terms and Conditions, if the date for payment of any amount payable in respect of any Preference Share is not a Business Day, then such date for payment shall be the following Business Day.

8.4 **Calculation and notice of Redemption Amounts**

The Calculation Agent will calculate the aggregate Redemption Amounts due and payable by the Issuer for each Preference Share on each date that payment of Redemption Amounts is due and payable as specified in the Applicable Pricing Supplement (Preference Shares). The Calculation Agent will, at least 2 Business Days before each such date, cause such aggregate amount of Redemption Amounts to be notified to the Preference Shareholders (in the manner set out in Condition 12), the Issuer, the Central Securities Depository, if applicable, and, in relation to any Class of Preference Shares listed on the JSE, the JSE.

9. **Calculation Agent and Transfer Agent**

9.1 There will at all times be a Calculation Agent and a Transfer Agent with a Specified Office. The Transfer Agent and the Calculation Agent act solely as the agents of the Issuer and do not assume any obligation towards or relationship of agency or trust for or with any Preference Shareholders.

- 9.2 The Issuer is entitled to vary or terminate the appointment of the Calculation Agent and/or the Transfer Agent and/or to appoint additional or other agents. The Issuer shall notify Preference Shareholders (in the manner set out in Condition 12), the Central Securities Depository and, in relation to any Class of Preference Shareholders listed on the JSE, the JSE in the event of a change in the identity of the Calculation Agent and/or Transfer Agent.

10. Negative pledge

- 10.1 The Applicable Pricing Supplement (Preference Shares) shall specify whether the holders of the Preference Shares in a Class of Preference Shares have the benefit of the negative pledge set out in this Condition 10.
- 10.2 Subject to the remaining provisions of this Condition 10, after the Issue Date and for as long as any Class of Preference Shares remains outstanding, the Issuer undertakes not to create, or permit the creation of, any Encumbrance over any of its present or future businesses, undertakings, assets or revenues to secure any present or future Relevant Indebtedness of the Issuer .
- 10.3 The provisions set out in Condition 10.2 shall not apply to any of the following (each, a "**Permitted Encumbrance**"):
- 10.3.1 any Encumbrance of the Issuer in existence at the Issue Date disclosed in writing and which secures debt outstanding at the Issue Date;
- 10.3.2 any Encumbrance created over any asset owned, acquired, purchased, developed or constructed by the Issuer after the Issue Date (including any Encumbrance over the shares or other ownership interests in, or securities of, any company or other person, acquired or subscribed for by the Issuer, after the Issue Date, or the assets of such other company or person) if such Encumbrance was created for the sole purpose of financing or refinancing that asset by the Issuer ; provided that the Relevant Indebtedness so secured shall not exceed the *bona fide* arm's length market value (on or about the date of creation of such Encumbrance) of that asset or the cost of the acquisition, purchase, development or construction of that asset by the Issuer (including all interest and other finance charges, adjustments due to changes in circumstances and other charges reasonably incidental to such cost, whether contingent or

otherwise) and where such market value and such cost both apply, the higher of the two;

- 10.3.3 any Encumbrance created over or with respect to any receivables of the Issuer after the Issue Date, if such Encumbrance was created pursuant to any securitisation or like arrangement in accordance with normal market practice and the Indebtedness secured by such Encumbrance is limited to the value (on or about the date of creation of such Encumbrance) of such receivables;
- 10.3.4 any Encumbrance created over or with respect to any netting or set-off arrangement entered into by the Issuer in the ordinary course of its banking arrangements for the purposes of netting debit and credit balances;
- 10.3.5 any statutory Encumbrance or Encumbrance created by operation of law in the ordinary course of the business of the Issuer;
- 10.3.6 any Encumbrance over or affecting any asset acquired by the Issuer after the Issue Date if:
- 10.3.6.1 the asset was subject to that Encumbrance prior to the date of acquisition of that asset and the Encumbrance was not created in contemplation of the acquisition of that asset by the Issuer and
- 10.3.6.2 the principal amount secured has not increased in contemplation of or since the acquisition of that asset by the Issuer ; and
- 10.3.7 any other Encumbrances permitted in terms of the Applicable Pricing Supplement (Preference Shares); or
- 10.3.8 any extension or renewal of any Encumbrance contemplated in Conditions 10.3.1 to 10.3.7 inclusive.

11. Redemption Events

11.1 Redemption Events relating to the Preference Shares

A Redemption Event in relation to a Class of Preference Shares shall arise if any of the following events occurs and is continuing:

- 11.1.1 *Non-payment:* the Issuer fails to pay:
- 11.1.1.1 any Preference Dividend in respect of any Preference Shares in that Class in full on the relevant Dividend Payment Date;
- 11.1.1.2 the Redemption Amount in respect of any Preference Share in that Class in full on its Redemption Date;
- 11.1.1.3 any other amount in respect of any Preference Shares in that Class on the due date for payment thereof,
- and such failure remains unremedied for 3 Business Days after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer; or
- 11.1.2 *Breach of other obligations:* the Issuer fails to perform any of its other obligations under or in respect of the Preference Shares in that Class, and such failure, if capable of remedy, remains unremedied for 15 Business Days after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer; or
- 11.1.3 *Consents, licences and authorisations:* the Issuer fails to maintain any consent, licence, approval or authorisation now or in future necessary for the establishment of the Programme or the issue of Preference Shares under the Programme or any such consent, licence, approval or authorisation ceases to remain in full force and effect, resulting in the Issuer being unable to perform any of its obligations under the Preference Shares or the Programme, and such failure or cessation continues for more than 15 Business Days after the Issuer becomes aware of such event; or
- 11.1.4 *Cross-default or security enforced:*
- 11.1.4.1 if any Relevant Indebtedness of the Issuer is declared to be or otherwise becomes due and repayable before its scheduled due date for payment by reason of an event of default (however described); or
- 11.1.4.2 the Issuer fails to make any payment in respect of any Relevant Indebtedness on the due date for payment (as extended by any

originally applicable grace period); or

11.1.4.3 any security given by the Issuer for any Relevant Indebtedness becomes enforceable by reason of default in relation thereto and steps are taken to enforce such security; or

11.1.4.4 if default is made by the Issuer in making any payment due under any guarantee and/or indemnity (at the expiry of any originally applicable grace period) given by it in relation to any Relevant Indebtedness of any other person;

and the position remains unremedied for one Business Day after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer; provided that in each case no event shall constitute a Redemption Event unless the Relevant Indebtedness, either alone or when aggregated with other Relevant Indebtedness at that point in time, exceeds ZAR250 000 000 (or its equivalent in any other currency); or

11.1.4.5 an event of default (however described) occurs in respect of the Notes or an early redemption event (however described) occurs in respect of the Existing Preference Shares.

For the purposes of this Condition 11.1.4 and 11.1.5 and 11.2, any indebtedness which is in a currency other than ZAR shall be translated into South African Rand at the spot rate for the sale of ZAR against the purchase of the relevant currency quoted by the Calculation Agent on the date of such Event of Default; or

11.1.5 *Judgment.* any final judgment or arbitration award ("**judgement**") in respect of a claim of more than ZAR250 000 000, or its equivalent in any other currency, is given by a court of competent jurisdiction or arbitrator against the Issuer, or against the assets or revenues of the Issuer, and is not discharged or contested with 10 Business Days of the final judgment being granted and the position remains unremedied for one Business Day after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer; or

11.1.5.1 if such judgement is appealable, the Issuer fails to appeal against

such judgement within the time limits prescribed by law or fails to diligently prosecute such appeal thereafter or ultimately fails in such appeal; and/or

11.1.5.2 if such judgement is a default judgment, the Issuer fails to apply for the rescission thereof within the time limits prescribed by law or fails to diligently prosecute such application thereafter or ultimately fail in such application; and/or

11.1.5.3 if such judgement is reviewable, the Issuer fails to initiate proceedings for the review thereof within the time limits prescribed by law or fails to diligently prosecute such proceedings thereafter or ultimately fails in such proceedings; or

11.1.6 *Insolvency*: an Insolvency Event occurs in respect of the Issuer and the position remains unremedied for one Business Day after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer

For the purposes of this Condition 11.1.6, "**Insolvency Event**" means the occurrence of any of the following events:

- (i) any third party takes any steps or proceedings against the Issuer (other than a frivolous or vexatious application which is discharged or stayed within 21 days), or an order is made, for (a) the compulsory, provisional or final winding-up, liquidation, compromise, administration order, curatorship, business rescue, dissolution or administration of the Issuer; or (b) the appointment of an administrator, trustee, liquidator, business rescue practitioner or similar officer over any or all of the assets or revenues of the Issuer; or (c) the removal of the Issuer from the register of companies; or
- (ii) the Issuer seeks the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner or other similar official for it or for all or substantially all its assets or estate (in each case other than for purposes of a solvent reconstruction or amalgamation in which the Issuer remains the debtor under the

Preference Shares); or

- (iii) the Issuer takes any proceedings or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; or
- (iv) the Issuer compromising with or taking any procedural step attempting to compromise with its creditors generally (or any significant class of creditors) or deferring or taking any procedural step attempting to defer payment of debts owing by it to its creditors generally (or any significant class of creditors) (except a deferral provided for in terms of the Preference Share Terms and Conditions) or proposing or seeking to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or
- (v) the Issuer committing an act which would be an act of insolvency, in terms of the Insolvency Act, 1936, if committed by a natural person; or
- (vi) the Issuer is unable (or admits inability) to pay its debts generally as they fall due or is deemed to be unable to pay its debts or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness; or
- (vii) the board or members of the Issuer convening a meeting in order to consider the passing of a resolution providing for the Issuer to be wound-up, liquidated, deregistered or placed under business rescue, or any resolution being passed to this effect (in each case other than for purposes of a solvent reconstruction or amalgamation in which the Issuer remains the debtor under the Preference Shares); or
- (viii) the Issuer causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an

analogous effect to any of the events specified in (i) to (vii) above;

11.1.7 *Attachment of assets:* any attachment in execution of a judgment in respect of a claim for more than ZAR250 000 000 is levied against any undertaking or asset of the Issuer and such attachment or execution is not set aside or lifted with 15 Business Days after it came to the attention of the Issuer and the position remains unremedied for one Business Day after written notice thereof has been delivered by or on behalf of any Preference Shareholder to the Issuer;

11.1.8 *Additional Redemption Events:* any other Redemption Event specified in the Applicable Pricing Supplement (Preference Shares).

11.2 **Steps following a Redemption Event relating to the Preference Shares**

Upon the happening of such a Redemption Event any holder of Preference Shares in that Class may, by notice to the Issuer, declare the Preference Shares held by that Preference Shareholder to be immediately due and payable, and require the Preference Shares held by that Preference Shareholder to be redeemed at the Early Redemption Amount, together, if applicable, with any Accrued Preference Dividends which have not yet been paid calculated up to the Redemption Date.

11.3 **Notice of a Redemption Event**

If a Redemption Event occurs, the Issuer will forthwith upon becoming aware of such Redemption Event, give notice thereof in writing to the Transfer Agent, the Calculation Agent, the Debt Sponsor, if any, and the Preference Shareholders of that Preference Shares and, if any Preference Shares are listed on the JSE, to the JSE, to the Preference Shareholders through SENS and to the Central Securities Depository.

12. **Notices**

12.1 Subject to Condition 12.2, all notices (including all demands or requests under the Preference Share Terms and Conditions) to the Preference Shareholders will be valid if mailed by registered post or delivered by hand to their addresses appearing in the Register or published in a leading English language daily newspaper of general circulation in South Africa. Each such

notice will be deemed to have been given on the day of first publication or delivery by hand or on the 14th day after the day on which it is mailed, as the case may be.

- 12.2 For so long as the Preference Shares are held in their entirety by the Central Securities Depository, notice as contemplated in Condition 12.1 may be substituted with the delivery of the relevant notice to the Central Securities Depository, the Participants and the JSE for communication by them to the holders of Beneficial Interests in the Preference Shares, in accordance with the Applicable Procedures.
- 12.3 Where any provision of the Preference Share Terms and Conditions requires notice to be given to the Preference Shareholders of any matter other than a meeting of Preference Shareholders, such notice will be given *mutatis mutandis* as set out in Condition 12.1 and Condition 12.2, respectively, subject to compliance with any other time periods prescribed in the provision concerned.
- 12.4 All notices (including all communications, demands and/or requests under the Preference Share Terms and Conditions) to be given by or on behalf of any Preference Shareholder to the Issuer or the Transfer Agent, as the case may be, will be in writing and given by delivering the notice, by hand or by registered post, together with a certified copy of the relevant Certificate, to the Specified Office of the Issuer or the Specified Office of the Transfer Agent, as the case may be. Any notice to the Issuer or the Transfer Agent, as the case may be, will be deemed to have been received by the Issuer or the Transfer Agent, as the case may be, on the second Business Day after being delivered by hand to the Specified Office of the Issuer or the Transfer Agent, as the case may be, or on the 14th day after the day on which it is mailed by registered post to the Specified Office of the Issuer or the Transfer Agent, as the case may be.
- 12.5 Whilst any of the Preference Shares are held in uncertificated form, notices to be given by any holder of a Beneficial Interest to the Issuer shall be given by such holder through such holder's Participant in accordance with the Applicable Procedures.
- 12.6 In relation to any Class of Preference Shares listed on the JSE, copies of any

notices to Preference Shareholders delivered as set out above, including of meetings and any amendments to the Preference Share Terms and Conditions, shall be published on SENS.

13. Amendment of these General Preference Share Terms and the Specific Preference Share Terms

13.1 Any amendment to these General Preference Share Terms may be made only with the prior authorisation of a Special Resolution of the Preference Shareholders of each Class of Preference Shares, at a separate meeting of each such Class of Preference Shares.

13.2 Any amendment to the Specific Preference Share Terms of a particular Class of Preference Shares may be made only with the prior authorisation of a Special Resolution of the Preference Shareholders of that Class of Preference Shares.

13.3 No proposed amendment will be made to the Preference Share Terms and Conditions until such amendment has been approved by Special Resolution at such meeting or meetings (or a written resolution in accordance with the Memorandum of Incorporation), and, in relation to any Class of Preference Shares listed on the JSE, such proposed amendment has been subject to the prior approval of the JSE in compliance with the JSE Listings Requirements.

14. No voting rights on Preference Shares held by any Subsidiary

No Subsidiary will have any voting rights in respect of Preference Shares which are beneficially held by or on behalf of such Subsidiary.

15. Prescription

Any claim for payment of Redemption Amounts and/or dividends in respect of the Preference Shares will prescribe 3 years after the Relevant Date.

16. Notices of Meetings and Voting Rights

16.1 The Preference Shareholders of each Class of Preference Shares shall be entitled to receive notice of, and be present (either in person or by proxy) at, every shareholders meeting of the Issuer.

- 16.2 The Preference Shareholders of a Class of Preference Shares shall not have any voting rights at any shareholders meeting unless any one or more of the following circumstances is prevailing at the time of such shareholders meeting:
- 16.2.1 any Preference Dividend or part thereof in respect of that Class of Preference Shares remains unpaid for a period of more than 6 months from its applicable Dividend Payment Date;
 - 16.2.2 any Redemption Amount or part thereof in respect of that Class of Preference Shares remains unpaid for a period of more than 6 months from its applicable Redemption Date;
 - 16.2.3 a resolution of the Issuer is proposed for the winding-up or reduction of capital of the Issuer;
 - 16.2.4 a resolution of the Issuer is proposed which directly affects the Preference Shares Terms and Conditions, the rights to receive the Preference Dividends, the rights to receive the Redemption Amounts or the interests of the Preference Shareholders, in each case in respect of that Class of Preference Shares.
- 16.3 At every meeting of the Preference Shareholders as a separate class of shareholders of the Issuer, the provisions of the Memorandum of Incorporation relating to shareholders meetings shall apply mutatis mutandis.
- 16.4 At every shareholders meeting at which the Preference Shareholders are entitled to exercise voting rights, the provisions of the Memorandum of Incorporation relating to shareholders meetings shall apply mutatis mutandis, except that there shall be no quorum unless one or more Preference Shareholders are present, in person or by proxy, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the Memorandum of Incorporation relating to adjourned general meetings shall, mutatis mutandis, apply.
- 16.5 At every shareholders meeting of the Issuer at which both the Preference Shareholders of the Preference Shares and the holders of ordinary shares are entitled to exercise voting rights, each Preference Shareholder shall in respect of each Preference Share held by it be entitled to exercise one vote for every Preference Share held, subject to a maximum of 24.9% (twenty four point

nine) percent of the voting rights exercisable by all the shareholders at such meeting.

17. **Governing law**

The Preference Shares and the Preference Share Terms and Conditions are governed by, and will be construed in accordance with, the laws of South Africa.

18. **Further issues**

The Issuer shall be at liberty from time to time, without the consent of Preference Shareholders or holders of Notes, to create and issue further Preference Shares.

19. **Note terms and conditions**

19.1 Each Preference Shareholder, upon its subscription for any Preference Share and the issue of any Preference Shares to it, or upon the transfer of any Preference Shares to it, as the case may be, accepts the benefit of any stipulation granted in its favour in the Note terms and conditions.

19.2 The Issuer undertakes not to issue any Notes that do not include Condition 16.3 (Amendments of the Note Terms and Conditions) and Condition 5 (Status of the Notes) as set out in the *pro forma* terms and conditions of the Notes set out in the Programme Memorandum in effect on the Issue Date of the Preference Shares.

20. **Financial Indebtedness**

20.1 Except as permitted under Condition 20.1, the Issuer shall not incur or allow to remain outstanding any Financial Indebtedness.

20.2 Condition 20.1 does not apply to:

20.2.1 any Financial Indebtedness in existence at the Issue Date disclosed in writing to the Preference Shareholders;

20.2.2 Financial Indebtedness incurred under the Programme; or

20.2.3 any Financial Indebtedness incurred under short-term bank facilities with a maturity of less than one year and guarantees, in an aggregate principal amount at any one time outstanding not to exceed

R 500 000 000 or such other amount as may be approved by Special Resolution of the Preference Shareholders of each Class of Preference Shares; or

20.2.4 any Financial Indebtedness as may be approved by Special Resolution of the Preference Shareholders of each Class of Preference Shares.