

Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A PRIVATE COMPANY**

Name of company: **INGWELALA SHARE BLOCK PROPRIETARY (PRIVATE) LIMITED**

Registration No.: 1983/06997/07

This MOI was adopted by Special Resolution passed on **14<sup>th</sup> November 2013** in substitution for the existing memorandum and articles of the Company.

## 1. INTERPRETATION

In this MOI, –

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference but which do not form part of this MOI for purposes of interpretation) and/or the Share Blocks Control Act, but not defined in this MOI, will bear the same meaning in this as in the Companies Act and/or the Share Blocks Control Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
  - 1.2.1. "**Companies Act**" means the Companies Act, 2008, as amended or any legislation which replaces it;
  - 1.2.2. "**Company**" means Ingwelala Share Block Proprietary Limited or by whatever other name it may be known from time to time;
  - 1.2.3. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 30 and the Companies Act;
  - 1.2.4. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by the Holder;
  - 1.2.5. "**Holders**" means
    - 1.2.5.1. the registered holders of Shares issued by the Company from time to time and who are entered as such in the Securities Register of the Company; and
    - 1.2.5.2. if applicable, the holders of any Securities (other than Shares), issued by the Company from time to time, but only to the extent that such Securities confer Voting Rights on the holders thereof in respect of any matter to be considered by the holders of Shares contemplated in clause 1.2.5;
  - 1.2.6. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act, which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
  - 1.2.7. "**Main Object**" means the main object of the Company, namely to operate a Share Block Scheme (as defined in the Share Blocks Control Act) in respect of the Properties;

- 1.2.8. **"MOI"** means this Memorandum of Incorporation;
- 1.2.9. **"Present"** means, in relation to any Holder entitled to exercise any Voting Rights at Shareholders Meetings, that such Holder is:
- 1.2.9.1. present in person; or
  - 1.2.9.2. represented by:
    - 1.2.9.2.1. proxy; or
    - 1.2.9.2.2. a letter of representation (in respect of a Holder which is a Juristic Person); or
    - 1.2.9.2.3. an agent appointed under a general or special power of attorney (in respect of any individual);
- 1.2.10. **"Property/ies"** means, collectively:
- 1.2.10.1. the immovable property/ies owned by the Company as at the date of adoption of this MOI, namely:
    - 1.2.10.1.1. certain remaining extent of Portion 8 of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 62,4429 (sixty two comma four four two nine) hectares;
    - 1.2.10.1.2. certain Portion 12 (a portion of Portion 8) of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 42,6365 (forty two comma six three six five) hectares;
    - 1.2.10.1.3. certain Portion 13 (a portion of Portion 8) of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 42,8266 (forty two comma eight two six six) hectares;
    - 1.2.10.1.4. certain Portion 14 (a portion of Portion 8) of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 42,8266 (forty two comma eight two six six) hectares;
    - 1.2.10.1.5. certain Portion 19 (a portion of Portion 8) of the Farm Argyle No. 46, Registration Division K.U., Transvaal,

measuring 42,8266 (forty two comma eight two six six) hectares;

1.2.10.1.6. certain Portion 20 (a portion of Portion 8) of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 42,8271 (forty two comma eight two seven one) hectares;

1.2.10.1.7. certain remaining extent of Portion 2 of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 607,6029 (six hundred and seven comma six nought two nine) hectares;

1.2.10.1.8. certain Portion 23 (a portion of Portion 2) of the Farm Argyle No. 46, Registration Division K.U., Transvaal, measuring 428,2673 (four hundred and twenty eight comma two six seven three) hectares; and

1.2.10.2. such further immovable property/ies as the Company may acquire from time to time, in accordance with this MOI;

1.2.11. "**Regulations**" means regulations published pursuant to the Companies Act;

1.2.12. "**Round Robin Resolution**" means a resolution passed other than at a meeting of Directors, which was submitted in Writing to each Director for consideration, and was approved in Writing by at least 75% (seventy five percent) of the Directors within 20 (twenty) Business Days after the resolution was submitted to them;

1.2.13. "**Schedules**" means the schedules to this MOI, as amended from time to time;

1.2.14. "**Share Block**" means a class and number of Shares conferring the right of use of one or more Properties upon the Holders of such Shares;

1.2.15. "**Share Blocks Control Act**" means the Share Blocks Control Act, 1980, as amended, or any Act which replaces it;

1.2.16. "**Unit**" means that portion of the Property to which a Share Block held by a particular Holder relates, as set out in the Use Agreement;

1.2.17. "**Use Agreement**" means an agreement concluded between the Company and each Holder, regulating, *inter alia*, such Holder's rights of use in respect of the relevant Unit and the common areas on the Property;

- 1.2.18. **"Writing"** includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3. all references to "section/s" in this MOI refer to the sections of the Companies Act, unless the context indicates otherwise;
- 1.4. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.5. this MOI includes all attached schedules and/or annexures, which form an integral part of this MOI;
- 1.6. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.7. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.8. save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.9. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## 2. **CALCULATION OF BUSINESS DAYS**

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by –

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

## 3. **PRIVATE COMPANY**

The Company –

- 3.1. is a Profit Company;

- 3.2. is prohibited from offering any of its Shares or other Securities to the public; and
- 3.3. has restrictions on the transferability of its Shares or other Securities as set out in clause 11.1, and accordingly it is a Private Company.

#### 4. **POWERS AND CAPACITY OF THE COMPANY**

- 4.1. The Company has the powers and capacity of an Individual, save to the extent of the following limitations which the Shareholders may rely upon against the Directors, namely –
- 4.1.1. the Company shall only exercise such powers as may be necessary to enable it to realise its Main Object and objects ancillary to its Main Object;
- 4.1.2. the Company shall not have the power to alienate any of the Properties, save with the approval:
- 4.1.2.1. of a Special Resolution of the Company; and
- 4.1.2.2. if applicable, by the Holders of at least 75% of the Shares constituting a separate Share Block which pertains to the particular Property being alienated;
- 4.1.3. the Company shall not have the power to operate a Share Block Scheme in respect of any immovable property which is not owned by it;
- 4.1.4. the Company shall not have the power to increase its Loan Obligations (as defined in the Share Blocks Control Act) or encumber any of its assets, save as contemplated in clause 21 below.
- 4.2. Notwithstanding the omission from this MOI of any provision to that effect, but subject always to clause 4.1 above, the Company may do anything which the Companies Act and/or the Share Blocks Control Act empowers a company to do if so authorised by its MOI.

#### 5. **AMENDMENTS TO THE MOI**

The Board shall have the power to correct errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI. All other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act.

#### 6. **RULES AND MANAGEMENT REGULATIONS**

- 6.1. The Board shall not be entitled to make Rules, as contemplated in section 15(3) of the Companies Act.

- 6.2. The Board shall issue management regulations (“**the Management Regulations**”) from time to time, which:
- 6.2.1. shall regulate matters which pertain generally to the Company, the Property and the Holders, and which are not otherwise provided for in this MOI and/or the Use Agreement;
  - 6.2.2. shall specifically incorporate a fines schedule and a domestic waste policy;
  - 6.2.3. must be read in conjunction with this MOI and the Use Agreement, it being recorded that the provisions of the Use Agreement shall prevail in the event of any conflict between such provisions and those of the Management Regulations;
  - 6.2.4. shall be subject to approval by Ordinary Resolution of the Company;
  - 6.2.5. may be amended by the Board from time to time, provided that any such amendment shall be subject to approval by an Ordinary Resolution of the Company; and
  - 6.2.6. shall be available to Holders at the registered office of the Company.
- 6.3. The Board shall further issue building regulations (“**the Building Regulations**”) from time to time, which shall regulate the construction of any dwellings and/or improvements on any Unit/s. The provisions of clauses 6.2.3 to 6.2.6 (inclusive) shall apply, *mutatis mutandis*, to the Building Regulations.

## 7. **AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE**

- 7.1. The Company is authorised to issue 1,500 (one thousand five hundred) ordinary Shares with a par value of R1.00 (one rand) each (which includes Shares already issued at any time), which shall –
- 7.1.1. have Voting Rights on the basis of 1 (one) vote per Share in respect of every matter that may be decided by voting;
  - 7.1.2. rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions;
  - 7.1.3. save as aforesaid, be entitled to receive the net assets of the Company upon its liquidation; and
  - 7.1.4. be apportioned between Share Blocks number 1 to 209 in accordance with **Schedule 3** hereto.

- 7.2. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.
- 7.3. All Securities of a class shall rank *pari passu* in all respects. All or any of the rights, privileges or conditions for the time being attached to any class of Securities of the Company may (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied in any manner with the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that class, or with the sanction of a Special Resolution passed at a separate meeting of the Holders of that class. The Holders of that class of Securities shall also be entitled to vote with the Holders of the ordinary Shares as regards the passing of any resolution required to be passed for such variation by the Holders of the ordinary Shares. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that –
- 7.3.1. the necessary quorum shall be a Shareholder or Shareholders of the class Present and holding at least 25% (twenty five percent) of the capital paid or credited as paid on the issued shares of that class;
- 7.3.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 7.3.1 is not Present, those Persons entitled to vote who are Present shall be a quorum.
- 7.4. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a related or inter-related company without complying with section 44(3).

## 8. **SHARES AND INTEREST IN USE OF THE COMPANY'S PROPERTIES**

- 8.1. The class and number of Shares constituting the Share Block pertaining to the Properties shall be set out in **Schedule 3**, as amended from time to time.
- 8.2. Each Holder shall be entitled to the exclusive use, occupation and enjoyment (free from the payment of any rental therefore) of its Unit in terms of this MOI and subject to the provisions of the Use Agreement concluded in respect of such Unit. Subject to the provisions of such Use Agreement, the aforesaid rights of the Holder shall endure for as long as such Holder continues to be the registered holder of the Shares comprising the Share Block and continues to comply with the terms and conditions of such Use Agreement.

## 9. **AUTHORITY TO ISSUE SECURITIES**

- 9.1. The Board shall, with the prior approval of an Ordinary Resolution, have the power to:



9.1.1. issue authorised Shares and options related to such Shares and secured and unsecured debt instruments as contemplated in section 43 of the Companies Act; and

9.1.2. issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act.

9.2. Any approval contemplated in clause 9.1 may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any Securities contemplated in clauses 9.1 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities. Such authority shall endure for the period provided in the Ordinary Resolution in question but may be revoked by Ordinary Resolution at any time.

## 10. **CERTIFICATES EVIDENCING ISSUED SECURITIES AND SECURITIES REGISTER**

10.1. Any Securities issued by the Company from time to time shall be certificated. For every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue.

10.2. The Company shall convert its share register into a Securities Register with effect from the Effective Date, which shall reflect all such information in relation to the Securities of the Company, as may be required in terms of sections 49 and 50.

10.3. Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe, save that they must –

10.3.1. state on the face –

10.3.1.1. the name of the Company;

10.3.1.2. the name of the Person to whom the Securities were issued;

10.3.1.3. the number and class of Securities and the designation of the series, if any, evidenced by that certificate; and

10.3.1.4. any restriction on the transfer of the Securities evidenced by that certificate;

10.3.2. must be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.

10.4. Each class of Securities must be distinguished by an appropriate numbering system.

- 10.5. Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in her/his/its name, or to several certificates, each for a part of such Securities.
- 10.6. A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person who has been nominated as the authorised representative for this purpose by such joint Holders in accordance with the Management Regulations (“**Authorised Representative**”) in the Securities Register and Delivery of a certificate for Securities to the Authorised Representative shall be a sufficient Delivery to all joint Holders.
- 10.7. If a certificate for Securities is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate to the Company.
- 10.8. A Person –
- 10.8.1. acquires the rights associated with any particular Securities of the Company when that Person’s name is entered in the Company’s Securities Register as a Person to whom those Securities have been issued or transferred; and
  - 10.8.2. ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company’s Securities Register.

## 11. **TRANSFER OF SECURITIES**

- 11.1. A Holder shall not be entitled to dispose of any right, title or interest in and to a Share Block and/or a Use Agreement otherwise than in accordance with this MOI. Should a Holder wish to dispose of a Share Block and/or a Use Agreement, the Holder shall be obliged to give an irrevocable notice (“**the Transfer Notice**”) to the Board or its nominee as provided for in this MOI.
- 11.2. A Transfer Notice given by a Holder shall state:
- 11.2.1. that the Holder is offering to dispose of, as one indivisible transaction, the Share Block held by the Holder together with a cession and delegation of all rights and obligations of the Holder pursuant to the Use Agreement and the allocated loan, if any, attributable to such Share Block;
  - 11.2.2. the price per Share of the Share Block at which such disposition shall be effected and the terms and conditions governing such disposition, including the period for payment, whether cash or otherwise, interest attributable to a credit sale and security for payment;

- 11.2.3. the face value of the allocated loan;
  - 11.2.4. the closing date of the transactions contemplated by the Transfer Notice, which shall not be earlier than 60 (sixty) days nor later than 90 (ninety) days after the date on which the Transfer Notice is given.
- 11.3. Upon the giving of any Transfer Notice, the Board or its nominee shall be entitled, prior to the closing date set out therein, to dispose of the Share Block and the rights and obligations of the Holder pursuant to the Use Agreement and the allocated loan, if any, attributable to the Share Block on the terms set out in the Transfer Notice for and on behalf of the Holder.
- 11.4. In issuing the Transfer Notice, the Purchaser thereby nominates, constitutes and appoints the Board or its nominee to be his true and lawful attorney and agent, thereby authorising them on behalf of the member to sign all such documents and to do all such things as the Holder would be obliged to sign or to do in accordance with the foregoing disposition and thereby promises to ratify, allow and confirm all and whatsoever the Board or its nominee in such capacity as attorney and agent shall lawfully do, or cause to be done, by virtue of these presents.
- 11.5. To the extent that the Board or its nominee has been unable to dispose of the Share Block, the Use Agreement and the allocated loan, if any, pursuant to the Transfer Notice, the Holder shall be entitled for a period of 60 (sixty) days (or such longer period as may be determined by the Board in its discretion) to offer those items to any person (hereinafter referred to as "**the Prospective Purchaser**"), whose identity shall be communicated to the Board 7 (seven) days after such Prospective Purchaser intimates his willingness to accept the said offer, on the same terms and conditions as are specified in the Transfer Notice, provided, however, that:
- 11.5.1. the Board does not object to such person (provided that the consent of the Board shall not be unreasonably withheld), which objection shall be communicated to the Holder within 14 (fourteen) days after advice as to the identity of the Prospective Purchaser;
  - 11.5.2. the Prospective Purchaser shall, before the transaction takes place, satisfy the Board that he is able fully to perform all the terms and conditions of the Share Block sale agreement governing the original purchase of the Share Block, the Use Agreement and the allocated loan, if any, attributable to the Share Block;
  - 11.5.3. the Prospective Purchaser shall accept the said offer within 30 (thirty) days (or such longer period as may be determined by the Board in its discretion) after the said offer has been made to him.

- 11.6. The transfer of any Securities which are certificated shall be implemented in accordance using the then common form of transfer. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Securities.
- 11.7. All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be 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 the Company's registered office. Even after the giving and lodging of such notices 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.
- 11.8. The Company must enter in its Securities Register regarding every transfer of any Securities the information contemplated in section 51, provided that such entry may be made only if the transfer is evidenced by a proper instrument of transfer that has been delivered to the Company or was effected by operation of law.
- 11.9. Should the member fail to dispose of the Share Block, Use Agreement and allocated loan, if any, pursuant to the Transfer Notice within the period of 60 (sixty) days allowed therefor, the parties shall revert to the *status quo ante*.

## 12. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

Subject to the laws relating to securities transfer upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability -

- 12.1. the parent or guardian or curator of any Holder who is a minor;
- 12.2. the trustee of an insolvent Holder;
- 12.3. the liquidator of a body corporate Holder;
- 12.4. the tutor or curator of a Holder under disability;
- 12.5. the executor or administrator of the estate of a deceased Holder; or
- 12.6. any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Board, have the right either -

- 12.7. to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the Holder of the Securities registered in the name of the Holder concerned; or
- 12.8. himself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Board shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the Holder.

13. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 13.1. The Company shall maintain the necessary Accounting Records, which, without limitation, shall comply with the provisions of the Companies Act and the Share Blocks Control Act, and shall be accessible from its Registered Office.
- 13.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, and shall have its annual Financial Statements audited.
- 13.3. The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the Holders and holders of Beneficial Interests are entitled to inspect and take copies of –
- 13.3.1. the MOI;
  - 13.3.2. amendments to the MOI;
  - 13.3.3. records in respect of Directors;
  - 13.3.4. reports to Annual General Meetings;
  - 13.3.5. annual Financial Statements;
  - 13.3.6. notices and minutes of Shareholders Meetings;
  - 13.3.7. communications generally to Holders;
  - 13.3.8. the Securities Register.

- 13.4. Apart from the Holders, no other Person shall be entitled to inspect and/or take copies of any of the documents of the Company (other than the Securities Register), unless expressly authorised by the Directors or by Ordinary Resolution.
- 13.5. The Company shall notify the Holders of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder demands a copy of the annual Financial Statements, the Company shall make same available to such Holder, free of charge.

#### 14. APPOINTMENT OF AUDITOR

- 14.1. The Company shall appoint as Auditor an audit firm registered with the Independent Regulatory Board for Auditors at its Annual General Meeting, provided that such Auditor shall comply with the provisions of section 90(2).
- 14.2. If an Annual General Meeting does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office in accordance with section 91. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless any of the circumstances contemplated in section 90(6) are present.
- 14.3. Any Auditor appointed by the Company shall ensure that the designated Individual auditor responsible for performing the Audit must comply with the requirements of section 90(2), provided that the provisions of section 92 shall at apply at all times.
- 14.4. The Auditor's rights and functions shall be regulated in accordance with section 93.
- 14.5. If a vacancy arises in the office of Auditor (including in the circumstances contemplated in section 91(5)), the Board shall comply with the provisions of sections 91(2) and 91(3).

#### 15. SHAREHOLDERS MEETINGS

- 15.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –
- 15.1.1. presentation of –
- 15.1.1.1. the Directors' report; and
- 15.1.1.2. Audited Financial Statements for the immediately preceding financial year;
- 15.1.2. election of Directors, to the extent required by the Companies Act or the MOI;

- 15.1.3. appointment of an Auditor for the ensuing year;
  - 15.1.4. any matters (other than proposed resolutions) raised by Holders for discussion, with or without advance notice to the Company. Should a Holder wish to raise a matter which requires the passing of a resolution, such resolution shall be subject to the provisions of clause 15.4; and
  - 15.1.5. the declaration or sanction of an annual dividend.
- 15.2. The Company may not permit resolution/s that could be voted on at a Shareholders Meeting to be dealt with by round robin resolutions of those Persons entitled to vote.
- 15.3. The Board or the Company secretary, if there are no Directors, may convene a Shareholders Meeting whenever it deems fit.
- 15.4. A Company must hold a Shareholders Meeting –
- 15.4.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Holders entitled to vote for decision;
  - 15.4.2. whenever required to fill a vacancy on the Board, where such vacancy gives rise to the number of Directors falling below the minimum number of Directors stipulated in clause 17.1; and
  - 15.4.3. if one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and -
    - 15.4.3.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
    - 15.4.3.2. in aggregate, demands for substantially the same purpose are made and signed by the Holders of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting,within 60 (sixty) days after the date upon which the first such demand is delivered to the Company.
- 15.5. Every Shareholders Meeting shall be held where the Board determines from time to time. A Shareholders Meeting may at the discretion of the Board be held entirely by Electronic Communication, or the Company may at the discretion of the Board provide for participation in a Shareholders Meeting by Electronic Communication, so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders

Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2).

- 15.6. A Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice.
- 15.7. A Holder entitled to vote, who is Present at a Shareholders Meeting –
- 15.7.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;
- 15.7.2. has a right to –
- 15.7.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and
- 15.7.2.2. participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
- 15.7.3. except to the extent set out in clause 15.7.2, is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 15.8. The chairperson of the Shareholders Meeting shall be entitled, in his sole and absolute discretion, to determine the materiality of any alleged defect contemplated in clause 15.7.2. Should the chairperson deem the alleged defect to be immaterial, the item on the agenda for the Shareholders Meeting shall be discussed and voted on in the normal course.
- 15.9. A notice of a Shareholders Meeting must be in writing, in plain language and must include –
- 15.9.1. the date, time and place for the Meeting, and the Record Date for the Meeting;
- 15.9.2. the general purpose of the Meeting, and any specific purpose contemplated in clause 15.1, if applicable;
- 15.9.3. in the case of the Annual General Meeting a summary of the annual financial statements of the Company, together with directions for obtaining a copy of the annual financial statements of the Company (which shall be made available prior to the scheduled date of the meeting);
- 15.9.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;



- 15.9.5. a reasonably prominent statement that –
  - 15.9.5.1. a Holder entitled to attend and vote at the Shareholders Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholders Meeting in the place of the Holder entitled to vote;
  - 15.9.5.2. a proxy need not be a Holder;
  - 15.9.5.3. the proxy may not delegate the authority granted to him as proxy, subject to any restriction in the proxy itself;
  - 15.9.5.4. participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Shareholders Meeting; and
  - 15.9.5.5. if so determined by the Board, participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 15.10. A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 15.11, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Shareholders Meeting is present at the Shareholders Meeting and votes to approve the ratification of the defective notice.
- 15.11. If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting –
  - 15.11.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 15.11.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 15.12. An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.

- 15.13. Business may be transacted at any Shareholders Meeting only while a quorum is present.
- 15.14. The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient Persons Present at the Shareholders Meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting (“**General Quorum Requirement**”), but if the Company –
- 15.14.1. has more than 2 (two) Holders, the Shareholders Meeting may not begin unless, in addition to the General Quorum Requirement, at least 4 (four) Persons entitled to vote are Present;
- 15.14.2. is a subsidiary of a company, those constituting the quorum must include its holding company (or its nominee) present in person.
- 15.15. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 19.16 continue to be Present.
- 15.16. If a quorum is not Present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, or if the quorum requirements in clause 15.14 cannot be achieved for any one or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 15.19, for 1 (one) week to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday. If a quorum is not Present at such postponed Shareholders Meeting within 30 (thirty) minutes from the time appointed for the Shareholders Meeting, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 15.17. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights –
- 15.17.1. held by all of the Persons who are present at the Shareholders Meeting at the time; and
- 15.17.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.
- Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders) as agreed at the Shareholders Meeting.
- 15.18. A Shareholders Meeting may not be adjourned beyond the earlier of –

- 15.18.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
  - 15.18.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 15.19. No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 15.15, unless the location for the Shareholders Meeting is different from –
- 15.19.1. the location of the postponed or adjourned Shareholders Meeting; or
  - 15.19.2. a location announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.
- 15.20. After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Shareholders Meeting, or on that matter, is Present at the Shareholders Meeting.
- 15.21. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote who are Present shall select a Director present at the Shareholders Meeting, or if no Director be present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.
- 15.22. At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by –
- 15.22.1. not less than 5 (five) Persons having the right to vote on that matter; or
  - 15.22.2. a Person/s entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total Voting Rights entitled to vote on that matter,

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 lost, and an entry to that effect in the minute book 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. No objection shall be raised as to the admissibility of any vote, except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

- 15.23. 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 Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded.
- 15.24. In the case of an equality of votes the chairperson of the Shareholders Meeting shall be entitled to a second or casting vote.
- 15.25. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 75% (seventy five per cent) of the Voting Rights exercised on the resolution.
- 15.26. Subject to any rights or restrictions attaching to any class or classes of Securities, on a show of hands a Person entitled to vote who is Present at the Meeting shall have only 1 (one) vote, irrespective of the number of Securities he holds or represents. A proxy shall, irrespective of the number of holders of Securities entitled to vote which he represents, have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.
- 15.27. In the case of joint Holders, the vote of the Authorised Representative shall be accepted to the exclusion of the votes of the other joint Holders.
- 15.28. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed, unless the proxy itself provides for a longer or shorter duration, but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Holder

entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.

- 15.29. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, immediately prior to the Shareholders Meeting, before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting.
- 15.30. The form appointing a proxy and the power of attorney, if any, under which it is signed shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, no later than 48 (forty eight) hours prior to the time scheduled for the commencement of the Shareholders Meeting, provided that the Chairperson of the Shareholders Meeting shall be entitled, in his sole and absolute discretion, to accept or reject any proxies delivered to the Company (or the Person authorised to receive the proxies as aforesaid) less than 48 (forty eight) hours prior to the time scheduled for the commencement of the Shareholders Meeting.
- 15.31. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, unless the Company is informed in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.
- 15.32. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form, and may also be provided by means of Electronic Communication if approved by the Board. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 15.33. The Company must keep minutes of the meetings of the Shareholders, and include in such minutes every resolution adopted by the Shareholders.
- 15.34. Resolutions adopted by the Shareholders—
  - 15.34.1. must be dated and sequentially numbered; and
  - 15.34.2. are effective as of the date of the resolution, unless the resolution or any regulatory requirement states otherwise.

- 15.35. Any minutes of a meeting, or a resolution, signed by Chairperson of the Shareholders Meeting, or by the Chairperson of the next Shareholders Meeting, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 15.36. Any extract from such minutes or extract from any resolution in writing, if signed by any Director or by the Company secretary, or by any duly authorised person acting in the place of the Company secretary, shall be receivable as evidence of the matters stated in such minutes or resolution.

## 16. **RECORD DATE**

- 16.1. The Board shall determine each Record Date and inform each Holder thereof in accordance with the requirements of the Companies Act.
- 16.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- 16.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders Meeting;
- 16.2.2. in the case of dividends, the day immediately following the declaration date or the date of confirmation of the dividend, whichever is the later;
- 16.2.3. the date of the action or event, in any other case.

## 17. **ELECTION OF DIRECTORS AND VACANCIES**

- 17.1. The minimum number of Directors shall be 2 (two) and the maximum number of Directors shall be 12 (Twelve). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 17.2. At the Annual General Meeting held in each year 1/3 (one third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as an executive Director. The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot: notwithstanding anything herein contained, if, at the date of any Annual General Meeting any Director will have held office for a period of 3 (three) years since his last election or appointment he shall retire at such Annual General Meeting, either as one of the Directors to

retire in pursuance of the foregoing or additionally thereto. A retiring Director shall act as a Director throughout the Annual General Meeting at which he retires. The length of time a Director has been in office shall be computed from the date of her/his last election. Retiring Directors shall be eligible for re-election.

- 17.3. No Person other than a Director retiring at the Meeting shall, unless recommended by the Board for election, be eligible for election to the office of Director at any Annual General Meeting unless:
- 17.3.1. not less than 7 (seven) days nor more than 14 (fourteen) days before the day appointed for the Annual General Meeting, a Holder entitled to be present and vote at the Annual General Meeting for which such notice is given notifies the Company secretary in Writing of its intention to propose such Person for election; and
  - 17.3.2. the Person to be proposed notifies the Company secretary of his willingness to be elected.
- 17.4. If at any Annual General Meeting, the place of any retiring Director is not filled, he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, unless it shall, on the recommendation of the Board, be determined at such Annual General Meeting not to fill such vacancy.
- 17.5. Notwithstanding anything to the contrary herein contained or contained in any agreement or arrangement affecting or concerning the company or the Share Block Scheme operated by or pursuant to the Share Blocks Control Act, the Holders, collectively, shall, if they –
- 17.5.1. do not exceed 10 (ten) in number, have the right to appoint at least 1 (one) of the Directors of the Company; and
  - 17.5.2. exceed 10 (ten) in number, have the right to appoint at least 2 (two) of the Directors of the Company.
- 17.6. Subject to clause 17.5, each of the Directors, other than a Director contemplated in clause 17.11, shall be elected to serve for such term as the Company may determine by Ordinary Resolution.
- 17.7. The Company shall not have any Alternate Directors.
- 17.8. There are no general qualifications prescribed by the Company for a Person to serve as a Director in addition to the requirements of the Companies Act.
- 17.9. In any election of Directors, the election is to be conducted as follows –

17.9.1. a series of votes of those entitled to exercise votes regarding such election, 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 at that time have been filled; and

17.9.2. in each vote to fill a vacancy –

17.9.2.1. each Voting Right entitled to be exercised may be exercised once; and

17.9.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.

17.10. No Person shall be elected as a Director if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of court so permits.

17.11. The election of a Director shall take effect as at the date upon which he has complied with the provisions of section 66(7).

17.12. Any vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, if any, but the Individual so appointed shall cease to hold office at the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director unless he is elected at such Shareholders Meeting.

17.13. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body. Should the number of Directors be reduced below the number fixed by or pursuant to this MOI as the minimum, the continuing Directors or Director shall as soon as possible, but in any event not later than 3 (three) months from the date that the number falls below the minimum, fill the vacancy or call a Shareholders Meeting for the purpose of filling the vacancy.

17.14. If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of appointing Directors.

## 18. **CESSATION OF OFFICE AS DIRECTOR**

A Director shall cease to hold office as such –

18.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the Director has not within the permitted period filed an



application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);

- 18.2. when his term of office contemplated in clause 17.5 expires;
- 18.3. when he dies;
- 18.4. when he resigns by Written notice to the Company;
- 18.5. if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 18.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the company;
- 18.7. if he is removed by Ordinary Resolution;
- 18.8. if he is removed by a resolution passed by the Board for being negligent or derelict in performing the functions of a Director, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 18.9. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with her/his/its creditors generally; or
- 18.10. he is otherwise removed in accordance with the Companies Act and/or this MOI; or
- 18.11. if he is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors and the Directors resolve that the office be vacated, provided that the Directors shall have the power to grant any Director leave of absence for any or an indefinite period; or
- 18.12. if he is removed by a written resolution signed by all of the other Directors.

## 19. **REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

- 19.1. The Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or members of Board Committees as may have been determined from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors shall be entitled to all reasonable expenses in travelling (including accommodation) to and from meetings of the Board and Shareholders, and the members of the Board committees

shall be entitled to all reasonable expenses in travelling (including accommodation) to and from meetings of the Board and Shareholders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including accommodation) to and from meetings of the members of the Board committees as determined by a disinterested quorum of Directors. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act to any executive Directors.

19.2. A Director may be employed in any other capacity in the Company or as a Director or employee of a company controlled by, or itself a subsidiary of, the Company and in that event, his/her appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

**20. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

20.1. The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) are not limited in any manner.

20.2. If the Board adopts a resolution as contemplated in section 45(2) of the Companies Act regarding financial assistance to the Directors or Prescribed Officers and others contemplated in that section, the Company shall Deliver to all Shareholders notice in Writing of that resolution unless every Shareholder is also a Director, and to any trade union representing its employees —

20.2.1. within 10 (ten) Business Days after the Board adopts the resolution, if the total value of all loans, debts, obligations or assistance contemplated in that resolution, together with any previous such resolution during the financial year, exceeds 1/10<sup>th</sup> (one tenth) of 1% (one per cent) of the Company's net worth at the time of the resolution; or

20.2.2. within 30 (thirty) Business Days after the end of the financial year, in any other case.

**21. BORROWING POWERS OF DIRECTORS**

21.1. The Company shall not increase its Loan Obligation (as defined in the Share Blocks Control Act) or encumber any of its assets, unless the increase or encumbrance has been approved by a resolution of at least 75% in number of the Holders of the Company having the right to vote at the relevant meeting and holding in aggregate at least 75% of the total number of votes of all such Holders.

21.2. Subject to clause 21.1 –

21.2.1. the Board may in its discretion, from time to time, raise or borrow from the Holders or such other persons any sums of money for the purposes of the Company, without limitation;

21.2.2. the Board may secure the payment or repayment of any sums of money borrowed or raised in terms of clause 21.2.1 or the payment of any debt, liability or obligation whatsoever of the Company or of a third party, in such manner and upon such terms and conditions in all respects as they think fit.

## 22. GENERAL POWERS AND DUTIES OF DIRECTORS

22.1. The powers of management granted to the Directors in terms of section 66(1) of the Companies Act are limited as follows –

22.1.1. the business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act, the Share Blocks Control Act or this MOI provides otherwise; and

22.1.2. the Board shall have the power to delegate to any person or persons any of its powers and discretions and to give to any such person or persons the power of sub-delegation. The delegation of such powers and discretions may be reduced or withdrawn at any time by the Board.

22.2. The Board may from time to time appoint one or more of the Directors as executive officers of the Company, (provided always that the number of Directors holding any executive office, shall at all times be less than  $\frac{1}{2}$  (one half) of the number of Directors in office) for such period and at such remuneration and generally on such terms as it may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office.

22.3. The Board may from time to time entrust to and confer upon an executive Director such of the powers vested in the Board as it may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as it may think expedient; and it may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers. An executive Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Board and, after powers have

been conferred upon him by the Board in terms hereof, he shall be deemed to derive such powers directly from this clause.

**23. BOARD COMMITTEES**

- 23.1. The Board may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include Persons who are not Directors, as long as they are not Ineligible or Disqualified to be Directors who shall not be able to vote.
- 23.2. No Person shall be appointed as a member of a Board committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 23.3. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 23.4. A member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified.
- 23.5. Committees of the Board may consult with or receive advice from any person.
- 23.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of the Board.

**24. PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES**

- 24.1. For the purposes of this clause 24, "Director" includes a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 24.2. This clause 24 shall not apply to a Director in respect of a decision that may generally affect –
- 24.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) were applicable unless the Directors are acting pursuant to an authorisation given by the Holders for the Board to make a decision within certain thresholds, relating to their capacity as Directors; or

- 24.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-related to the Director.
- 24.3. If there is only 1 (one) Director in office at any time, that Director must comply with the requirements of section 75(3).
- 24.4. A Director may at any time disclose any Personal Financial Interest in advance by delivering to the Board, or Holders (if the circumstances contemplated in clause 24.3 prevail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 24.5. If, in the reasonable view of the other non conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 24.6. If a Director (whilst the circumstances contemplated in clause 24.3 are not applicable), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director -
- 24.6.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
- 24.6.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
- 24.6.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 24.6.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 24.6.2 or 24.6.3;
- 24.6.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 24.6.2 or 24.6.3;
- 24.6.6. while absent from the meeting in terms of this clause 24.6 –
- 24.6.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and

24.6.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

24.6.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

24.7. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Holders entitled to vote (if the Company is a company contemplated in clause 24.3), the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

24.8. A decision by the Board, or a transaction or agreement approved by the Board, or by the Holders (if the Company is a company contemplated in clause 24.3), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –

24.8.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 24; or

24.8.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

## 25. **PROCEEDINGS OF THE BOARD**

25.1. The chairperson of the Board or a Director authorised by the Board –

25.1.1. may, at any time, summon a meeting of the Board; and

25.1.2. must call a meeting of the Board if required to do so by at least 2 (two) Directors.

25.2. The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.

25.3. If all of the Directors –

25.3.1. acknowledge actual receipt of the notice;

25.3.2. are present at a meeting of the Board; or

- 25.3.3. waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 25.4. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 25.5. Unless otherwise resolved by the Board, all its meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of the Board may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of the Board by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 25.6. The quorum for a Board meeting is a majority of Directors.
- 25.7. The Board may elect a chairperson and determine the period for which he is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.
- 25.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 25.9. In the case of a tied vote, the chairperson shall be entitled to cast a deciding vote.
- 25.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 25.10.1. any declaration given by notice or made by a Director as required by clause 25;
- 25.10.2. every resolution adopted by the Board.
- 25.11. Resolutions adopted by the Board –
- 25.11.1. must be dated and sequentially numbered; and
- 25.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.

- 25.12. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 25.13. Any extract from such minutes or extract from any resolution in writing, if signed by any Director or by the Company secretary, or by any duly authorised person acting in the place of the Company secretary, shall be receivable as evidence of the matters stated in such minutes or resolution.
- 25.14. A Round Robin Resolution shall, once inserted in the minutes of the Board kept in accordance with clause 25.10, be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided upon. Such resolution 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).

26. **PRESCRIBED OFFICERS**

- 26.1. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 26.2. A Prescribed Officer shall cease to hold office as such immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.

27. **APPOINTMENT OF SECRETARY**

The Directors may appoint any one or more of their number or any Related company as the secretary of the Company from time to time.

28. **DISTRIBUTIONS**

- 28.1. The Company may make Distributions from time to time, provided that:
- 28.1.1. it shall comply with section 46 of the Companies Act in respect of each distribution to be made; and
  - 28.1.2. any Distribution made other than in anticipation of the dissolution of the Company shall require the approval of a Special Resolution.



- 28.2. A dividend or other Distribution payable in cash relating to a Share may be paid by such method as the Board may in its absolute discretion determine. Different methods of payment may apply to different Holders or groups of Holders.
- 28.3. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution of the Company in terms of clause 28.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.
- 28.4. All unclaimed dividends or other Distributions as contemplated in this clause may be invested or otherwise be made use of by the Directors for the benefit of the Company until claimed, provided that any dividend (but not any other Distribution, which shall be held by the Company until lawfully claimed) remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Company.
- 28.5. The Company shall not pay interest on any dividend or other Distribution due to any Holder.
- 28.6. The Company shall be entitled to terminate the payment of dividends to any Holder if the correspondence enclosing a dividend cheque is returned undelivered and/or such cheque remains uncashed and/or any payment made by electronic transfer is unsuccessful due to invalid or incorrect bank account details provided by the Holder on 3 (three) or more consecutive occasions. Pending receipt by the Company of a notice of change of address and/or valid bank account details from the Holder concerned, all further dividends payable to such Holder shall be regarded as unclaimed dividends and be subject to the provisions of clause 28.4.

29. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

30. **NOTICES**

- 30.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or by sending them prepaid through the post or by transmitting them by telegram, telex or fax.
- 30.2. Any Holder who/which has furnished an Electronic Address to the Company, by doing so –

- 30.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and
- 30.2.2. confirms that same can conveniently be printed by the Holder within a reasonable time and at a reasonable cost.
- 30.3. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with **Schedule 2**.
- 30.4. A Holder or Person entitled to Securities (or his/her executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of, or Person entitled to, the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was, not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 30.5. If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of, or Persons entitled to, or otherwise interested in the Securities.
- 30.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
- 30.7. The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 30.8. As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating

in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

### 31. **INDEMNITY**

- 31.1. For the purposes of this clause 31, "Director" includes current and former Directors, Prescribed Officers, and/or members of a committee of the Board, irrespective of whether or not such persons are or were also members of the Board and/or members of the Audit committee.
- 31.2. Subject to any limitation placed on the Company in this regard in terms of the Companies Act, the Company indemnifies any Director against any liability which such Director may incur in exercising his duties in the normal manner. The Company is entitled to purchase Director Indemnity insurance in this regard in accordance with section 78(7). The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.
- 31.3. Subject to any limitation placed on the Company in this regard in terms of the Companies Act, the Company shall be entitled to advance expenses to a Director in the circumstances contemplated in section 78(4), and to purchase Director Indemnity insurance in this regard in accordance with section 78(7). The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.

### 32. **ACQUISITION OF SECURITIES**

The Company is authorised to acquire its own Securities, subject to compliance with the Companies Act.

### 33. **LEVY FUND**

- 33.1. The Board shall establish and maintain a levy fund, to which end it shall from time to time raise levies from the Holders such amounts as are in its opinion sufficient for:
- 33.1.1. the repair, upkeep, control, management and administration of the Company and the Property, including roads, fencing, controlled veld burning, fire breaks, bush clearing, water holes for game, game rangers, maintaining and cleaning of sites, and any other services to the Property;
- 33.1.2. services required by the Company;

- 33.1.3. the covering of any losses suffered by the Company;
  - 33.1.4. the payment of any insurance premiums;
  - 33.1.5. the discharge of any other obligation of the Company.
- 33.2. The Board shall estimate the amount which shall be required by the Company to meet the above expenses during each financial year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding financial year or portion thereof, and shall raise a levy from the Holders equal as nearly as is reasonably possible to such estimated amount. The Board may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such as expenses to be incurred for renovation of the Property or any part thereof. Every such levy shall be made payable by equal monthly instalments, due in advance on the first day of each and every succeeding month of each financial year. For the purposes of this clause, the financial year of the Company shall run from the first day of July in each year to the last day of June in the following year.
- 33.3. The Board may from time to time raise special levies from the Holders in respect of all such costs, expenses and requirements as are mentioned in clause 33.2 and such levies may be made payable in one sum or by such instalments and at such time or times as the Board deems fit.
- 33.4. Notices shall be given in respect of levies payable by Holders in accordance with clause 32.
- 33.5. Every levy contemplated in this clause 33 shall be raised in the proportion that the number of Shares held by each Holder bears to the total number of issued Shares in the share capital of the Company.
- 33.6. Any amount due by a Holder by way of a levy or instalment of a levy shall be a debt owed by the Holder to the Company and shall be recoverable by the Company. The obligation of a Holder to pay a levy shall cease upon the lawful termination of the Holder's right of use, save that any arrear levies to the date of such termination shall nevertheless be recoverable from the Holder. No levies and no part of any levy paid by the Holder shall be refundable by the Company on the termination of the Holder's right of occupation of the Property.
- 33.7. Notwithstanding anything to the contrary contained in these articles, 11 (eleven) Share Blocks in the Company relate to vacant sites on the Property of the Company and no member acquiring any such Share Block shall be obliged to pay a levy in respect thereof until building operations, as determined in the sole discretion of the Board, commence on any such site.
- 33.8. The Board:

- 33.8.1. must ensure that all contributions to the levy fund are paid forthwith into a separate account kept for this purpose with a bank or be entrusted to an attorney contemplated in the Attorneys Act, 1979 or to an estate agent contemplated in the Estate Agents Act, 1976, and such contributions must be utilised to defray the costs in respect of the matters referred to in clause 33.1;
- 33.8.2. reserves the right, notwithstanding anything to the contrary contained in this MOI, to charge a Holder special fees, from time to time, in respect of the use which such Holder makes of any asset or service of the Company, for example, use of special vehicles for game viewing purposes, laundry equipment, electricity (where applicable) and so forth;
- 33.8.3. shall be entitled to require that a Holder, as and when requested by the Company, shall duly sign and delivery to the Company debit orders or stop orders on his bank account to provide for the payment of any monies owing to the Company.

#### 34. **LOAN OBLIGATIONS**

- 34.1. The loan obligation of the Company shall be allocated to all members of the Company, in accordance with the provisions of this MOI, the Use Agreement or any other agreement or arrangement in writing relating to the loan obligation between the Company and the Holders or, in the absence of such provisions, in the proportion of each Holder's share to the total number of issued Shares of the Company.
- 34.2. A Holder shall be liable to the Company in respect of its loan obligation for an amount equal to that portion of the loan obligation, if any, as may be allocated to him in terms of clause 34.3.
- 34.3. No monies paid to the Company in reduction or in settlement of the amount for which a Holder is liable in respect of the Company's loan obligation shall be applied otherwise than in accordance with the relevant provisions of this MOI, the Use Agreement or any other agreement or arrangement in writing relating to the repayment of that amount between the Company and its Holders or, failing such provision, in accordance with a Special Resolution.
- 34.4. All moneys paid to the Company by a Holder in respect of its loan obligation shall be dealt with strictly in accordance with the provisions of section 15 of the Share Blocks Control Act.

## Schedule 1 – Definitions in the Companies Act

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

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

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

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

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

"**Banks Act**" means the Banks Act, 1990 (Act No. 1194 of 1990);

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

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

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

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

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

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

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

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

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

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

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

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

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

"**distribution**" means a direct or indirect—

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether—
  - (i) in the form of a dividend;
  - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
  - (iii) as consideration for the acquisition—
    - (aa) by the company of any of its shares, as contemplated in section 48; or
    - (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
  - (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

"**effective date**", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

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

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

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

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

**"exercise"**, when used in relation to Voting Rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

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

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

**"financial statement"** includes—

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

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

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

**"incorporator"**, when used—

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

**"individual"** means a natural person;

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

**"juristic person"** includes—

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

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

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



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

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

(a) at a shareholders meeting; or

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

"**person**" includes a juristic person;

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

(a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

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

"**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"**private company**" means a profit company that—

(a) is not a public, personal liability or state-owned company; and

(b) satisfies the criteria set out in section 8(2)(b);

"**profit company**" means a company incorporated for the purpose of financial gain for its shareholders;

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

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

"**registered auditor**" has the meaning set out in the Auditing Profession Act;

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

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

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

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

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

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

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

"**shareholders meeting**", with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to exercise Voting Rights in relation to that matter;

"**solvency and liquidity test**" means the test set out in section 4(1);

"**special resolution**" means—

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

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

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

- (a) carry Voting Rights with respect to that matter; or
- (b) are presently convertible to securities that carry Voting Rights with respect to that matter; and

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

**Schedule 2 – Prescribed Methods of Delivery in the Regulations**

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive</p>

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	to the main door of the office or place of business.	evidence that the document was affixed on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>

