

Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION**

Name of company: Nedbank Group Limited

Registration No.: 1966/010630/06


This MOI was adopted by Special Resolution passed on 3 May 2013 in substitution for the existing memorandum and articles of the Company, and subsequently amended by Special Resolutions passed on 7 August 2014, 5 May 2016, 18 May 2017, ~~and~~ 2 June 2023 and 31 May 2024.

**This is to certify that this document**

**is the Memorandum of Incorporation tabled**

**and approved by shareholders at the shareholders' meeting**

**of Nedbank Group Limited held on Friday, 3 May 2013, and amended by shareholders at the shareholders' meeting held on 7 August 2014, 5 May 2016, 18 May 2017, ~~and~~ 2 June 2023 and 31 May 2024.**



---

**Signature of Chairman**

18 April 2024

---

**Date**

## 1. INTERPRETATION

In this MOI, unless the context clearly indicates otherwise -

- 1.1. except where a different definition is provided for a term in this MOI, words that are defined in the Companies Act (which are contained in **Schedule 1** for ease of reference but which do not form part of this MOI other than for purposes of information) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act read, where necessary, with definitions in the Listings Requirements (for the sake of clarity, in respect of the interpretation of this MOI the definitions in this MOI shall, insofar as is lawful, prevail over the definitions of the same terms in the Companies Act). For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires the terms defined below shall have the corresponding meaning when used in this MOI –
  - 1.2.1. **"Audit Committee"** means any audit committee of the Company that may be appointed in accordance with the Companies Act as contemplated in clause 22.1, provided that the requirements of the Companies Act, Banks Act and the Listings Requirements in relation to the audit committee are met and that it carries out the functions required by the Companies Act and the Banks Act;
  - 1.2.2. **"Bank"** has the meaning ascribed thereto in the Banks Act;
  - 1.2.3. **"Board"** means a duly constituted meeting of the board of directors of the Company (only including Alternate Directors when they are attending a board meeting as an alternate for a Director), and resolutions of the Directors passed by way of a Round Robin Resolution shall be deemed to be resolutions of the Board;
  - 1.2.4. **"Companies Act"** means the Companies Act, No. 71 of 2008, as amended or replaced from time to time;
  - 1.2.5. **"Company"** means Nedbank Group Limited, or by whatever other name it may be known from time to time;
  - 1.2.6. **"Controlling Company"** has the meaning ascribed thereto in the Banks Act;
  - 1.2.7. **"Deliver"** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 43 (*Notices*) and the Companies Act;
  - 1.2.8. **"Director"** means a person appointed as member of the Board, or an Alternate Director, and includes any person occupying the position of a director or alternate

director, by whatever name designated, except as where expressly stated otherwise;

- 1.2.9. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Security Holder;
- 1.2.10. **"Equity Securities"** has the meaning ascribed thereto in the Listings Requirements;
- 1.2.11. **"Exchange Control Regulations"** means the South African exchange controls of the South African Reserve Bank, regulated and promulgated in terms of the Currency and Exchanges Act, No. 9 of 1933, and the related regulations, including the Exchange Control Regulations (1961), as amended or replaced from time to time;
- 1.2.12. **"Income Tax Act"** means the Income Tax Act, No. 58 of 1962, as amended or replaced from time to time;
- 1.2.13. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in clause 26.2, which shall apply not only to Directors and Alternate Directors but, insofar as is lawful, also to members of Board committees and members of Audit Committees and Prescribed Officers and the secretary of the Company;
- 1.2.14. **"JSE"** means the JSE Limited (registration no. 2005/022939/06) (or any other name by which it may be known in the future), a company duly incorporated under the company laws of the Republic and licensed as an exchange under the Securities Services Act, or its successor body;
- 1.2.15. **"JSE Exchange"** means the exchange operated by the JSE or its successor body;
- 1.2.16. **"Listings Requirements"** means the listings requirements of the JSE, as amended or replaced from time to time;
- 1.2.17. **"MOI"** means this Memorandum of Incorporation;
- 1.2.18. **"NSX"** means the Namibian Stock Exchange;
- 1.2.19. **"NSX Requirements"** means the listings requirements of the NSX, as amended or replaced from time to time;
- 1.2.20. **"Ordinary Share"** means an ordinary share in the Company, whether having a par value or not;

- 1.2.21. **“Ordinary Shareholders”** means the registered holders of Ordinary Shares;
- 1.2.22. **"Participant"** means a depository institution accepted by a Central Securities Depository as a Participant in the Securities Services Act;
- 1.2.23. **“Present”** has the meaning ascribed to “present at a meeting” in section 1 of the Companies Act;
- 1.2.24. **“Registrar of Banks”** means the “Registrar” as contemplated in the Banks Act;
- 1.2.25. **"Regulations"** means regulations published pursuant to the Companies Act;
- 1.2.26. **“Republic”** means the Republic of South Africa;
- 1.2.27. **“Round Robin Resolution”** means a resolution passed other than at a meeting of the Shareholders or the Directors, as the case may be, being -
  - 1.2.27.1. in the case of Shareholders, a resolution as contemplated in section 60 of the Companies Act; and
  - 1.2.27.2. in the case of Directors, a resolution as contemplated in section 74 of the Companies Act, read with clause 37.14;
- 1.2.28. **"Security Holders"** means registered holders of Securities;
- 1.2.29. **"Securities Services Act"** means the Securities Services Act, No. 36 of 2004, as amended or replaced from time to time;
- 1.2.30. **“Securities Transfer Tax”** means securities transfer tax as contemplated in section 2(1) of the Securities Transfer Tax Act (25 of 2007);
- 1.2.31. **"SENS"** means the Stock Exchange News Service of the JSE, or its successor or replacement;
- 1.2.32. **“Unlisted Security”** means any Security not listed on the JSE Exchange; and
- 1.2.33. **"Writing"** and **“Written”** includes Electronic Communication but as regards any Security Holder entitled to vote, only to the extent that such Security Holder has notified the Company of an Electronic Address;
- 1.3. where there is a conflict between a term defined in the Companies Act and this MOI, the definition in this MOI shall prevail;
- 1.4. references to Security Holders represented by proxy shall include Security Holders entitled to vote represented by an agent appointed under a general or special power of attorney;

- 1.5. references to Security Holders entitled to vote Present or acting in person shall include Juristic Persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;
- 1.6. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.7. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8. without limitation to the defined terms of "Person" and "Juristic Person", words in the singular number shall include the plural, and words in the plural number shall include the singular, and words importing the masculine gender shall include the other genders;
- 1.9. 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;
- 1.10. where any clauses of this MOI must be interpreted, a reasonable interpretation should be allowed that accords with the context of the relevant clause, this MOI as a whole and the Companies Act;
- 1.11. 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 unalterable provisions of the Companies Act, the unalterable provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.12. 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;
- 1.13. all references to, and compliance with, the Listings Requirements shall only apply for as long as the Securities of the Company are listed on the JSE Exchange in accordance with clause 4 (*Listing of Securities on the JSE Exchange*) (taking into account any exemptions granted by the JSE, such exemptions being read as applying to the requirements in this MOI);
- 1.14. when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by —
  - 1.14.1. excluding the day on which the first such event occurs;
  - 1.14.2. including the day on or by which the second event is to occur; and

1.14.3. in the case of Business Days, excluding any official public holiday in the Republic, Saturday or Sunday that falls on or between the days contemplated in clauses 1.14.1 and 1.14.2, respectively;

1.15. references to, and compliance with, the Banks Act shall only apply for so long as, and to the extent that, the Banks Act applies to the Company (taking into account any exemptions granted by the Registrar of Banks to the Company, such exemptions being read as applying to the requirements in this MOI);

1.16. where reference is made to the “current” Listings Requirements, legislation or regulations, this is a reference to such Listings Requirements, legislation or regulations at the date the relevant clause of this MOI is adopted (being the date on which the Special Resolution amending the MOI is passed to include the relevant clause); and

1.17. references to the Companies Act and the Banks Act shall be read as including references to any related applicable ordinance or regulation.

## 2. **PUBLIC COMPANY**

The Company is a Public Company as it is not a Private Company, or a State-Owned Company, or a Personal Liability Company.

## 3. **OBJECTIVES AND BANKS ACT**

3.1. Without limitation to the powers and capacity of the Company, the main business of the Company is to be that of a banking and financial services holding company and the main object of the Company is to invest in banking companies and financial services companies. The Company may, however, pursue any other objects whatsoever.

3.2. For so long as the Company controls a company registered as a bank in South Africa as contemplated in the Banks Act, it shall be subject to the applicable obligatory provisions of the Banks Act (as amended from time to time), which shall prevail in the event of a conflict with this MOI.

## 4. **LISTING OF SECURITIES ON THE JSE EXCHANGE AND THE NSX**

4.1. The Ordinary Shares in the Company are at the date of adoption of this clause listed:

4.1.1. on the JSE Exchange; and

4.1.2. on the NSX, as a secondary listing.

4.2. The Listings Requirements shall apply to the Company for as long as the Securities of the Company are listed on the JSE Exchange, insofar as the Listings Requirements are

applicable. All references to the Listings Requirements in this MOI and compliance with the Listings Requirements shall only apply for as long as any Securities of the Company remain listed on the JSE Exchange.

- 4.3. For as long as the Ordinary Shares remain listed on the NSX, the NSX Requirements shall apply to the Company insofar as the NSX Requirements are applicable to the Company's secondary listing on the NSX. All references to the NSX Requirements in this MOI and compliance with the NSX Requirements shall only apply for as long as the Ordinary Shares of the Company remain listed on the NSX.
- 4.4. Furthermore, all reference to and the application of, and compliance with, the Listings Requirements and the NSX Requirements (as the case may be) are subject to any exceptions and exemptions that may be granted by the JSE or the NSX (as the case may be) and any amendments to the Listings Requirements and the NSX Requirements (as the case may be), from the date of such amendment. Accordingly, all requirements associated with the Listings Requirements or the NSX Requirements (as the case may be) in this MOI must be read as qualified by any such exceptions and exemptions granted by the JSE or the NSX (as the case may be).

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

- 5.1. The Company has the powers and capacity of an Individual, save to the extent of the limitations contained in this clause 5.
- 5.2. The Company shall not, to the extent prohibited by section 80(3) of the Banks Act, without the prior written approval of the Registrar of Banks, either jointly or individually, acquire or hold shares in any registered long-term insurer (as defined in section 1 of the Long-term Insurance Act, No. 52 of 1998) or in any short-term insurer (as defined in section 1 of the Short-term Insurance Act, No. 53 of 1998), to the extent to which the nominal value of those shares exceed 49% (forty nine percent) of the nominal value of all the issued shares of such insurer.
- 5.3. Notwithstanding the omission from this MOI of any provision to that effect, but subject to the provisions of this MOI, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.
- 5.4. In addition to the matters requiring approval by way of a Special Resolution in terms of the Companies Act, the following additional matters shall require approval by way of a Special Resolution -
  - 5.4.1. for so long as any Securities of the Company are listed on the JSE Exchange, if any of the Listings Requirements require an Ordinary Resolution to be passed with a 75% (seventy five percent) majority, the resolution shall instead be

required to be passed by a Special Resolution with at least a 75% (seventy five percent) majority calculated in accordance with the Listings Requirements; and

5.4.2. amendments to the MOI requiring approval by way of Special Resolution in terms of clause 6 (*Amendments to the MOI*).

5.5. For as long as the Securities of the Company are listed on the JSE Exchange, no resolution contemplated in sections 20(2) and 20(6) of the Companies Act will be put to the Shareholders if such resolution would lead to the ratification of an act which is contrary to the Listings Requirements, unless otherwise agreed with, or approved by, the JSE. **[LR: Sch. 10.3]**

## 6. AMENDMENTS TO THE MOI

6.1. Except where ordered by a court in terms of sections 16(1)(a) and 16(4) of the Companies Act, the correction of errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) and an alteration of the authorised Shares as contemplated in clause 8.2, which amends the Board is empowered to make, all other amendments of this MOI must be approved by a Special Resolution and are subject to the provisions of the Banks Act, including obtaining the prior written approval of the Registrar of Banks where required under the Banks Act, and shall be effected in accordance with section 16(1) of the Companies Act and in compliance with the Listings Requirements. For as long as the Securities of the Company are listed on the JSE Exchange and the Listings Requirements so require, the amendments to the MOI requiring approval by way of a Special Resolution shall, to the extent they require an amendment to the MOI, include (but not be limited to) **-[LR: Sch. 10.5(d)] [LR: Sch. 10.9(c)]**

6.1.1. the creation of any new class of Shares; **[LR: Sch. 10.5(d)(i)]**

6.1.2. subject to clause 8 (*Authorised Shares and Allotment and Issue of Securities*), the variation of the preferences, rights, limitations and other terms attaching to any class of Shares of the Company; **[LR: Sch. 10.5(d)(ii)]**

6.1.3. the conversion of one class of Shares into one or more other classes, whether issued or not, and in particular (but without derogating from the generality of the foregoing) converting Ordinary Shares or preference Shares to redeemable preference Shares, to the extent such conversion constitutes an amendment of the MOI; **[LR: Sch. 10.5(d)(iii)]**

6.1.4. an increase in the number of Securities of a class authorised in clause 8 of the MOI; **[LR: Sch. 10.5(d)(iv)]**

6.1.5. a consolidation of Securities authorised in the MOI; **[LR: Sch. 10.5(d)(v)]**



- 6.1.6. a sub-division of Securities authorised in the MOI; **[LR Sch. 10.5(d)(vi)]**
- 6.1.7. a change in the name of the Company; **[LR Sch. 10.5(d)(vii)]**
- 6.1.8. a cancellation of authorised unissued Shares which, at the time of the passing of the resolution in that respect, have not been taken or agreed to be taken by any Person or Persons; and
- 6.1.9. if at some time in the future the Company is no longer prohibited from doing so under the Banks Act, a conversion all of its Shares having par value into Shares of no par value.
- 6.2. Notice of a correction effected by the Board as permitted in accordance with the above correction must be given, which may be done by way of notification on the Company's website.

## 7. THE MAKING OF RULES

For as long as the Securities of the Company are listed on the JSE Exchange, the Board shall not make, amend or repeal Rules. **[LR: Sch. 10.4]**

## 8. AUTHORISED SHARES AND ALLOTMENT AND ISSUE OF SECURITIES [BA: S37]

- 8.1. Subject to the provisions of the Banks Act, the Company is authorised to issue (which includes Shares already issued at any time):
- 600 000 000 (six hundred million) Ordinary Shares with a par value of R1.00 (one Rand) each, which shall have Voting Rights in respect of every matter that may be decided by voting, as set out in clause 23.36, and which shall rank after all other classes of Shares in the Company which rank in preference to the Ordinary Shares as regards Distributions and returns of capital and profits or assets, but save as aforesaid, shall be entitled to receive the net assets of the Company upon its liquidation, in accordance with clause 46 (*Winding-up*).
  - 1 000 000 (one million) cumulative redeemable non-participating preference shares with a par value of R10 000.00 (ten thousand Rand) each, the preferences, rights, limitations and other terms as set out in clause 47.
  - ~~200 000 (two hundred thousand)~~ 1 000 000 (one million) non-redeemable, non-cumulative, non-participating perpetual preference shares (the A preferences shares) with a par value of ~~R1 000 000.00 (one million Rand)~~ R10 000.00 (ten thousand Rand) each, the preferences, rights, limitations and other terms as set out in clause 48.
- 8.2. If Listings Requirements are no longer applicable or no longer require a Special Resolution for such amendment to the MOI (as contemplated in clause 6.1), the Board shall 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, subject to compliance with the Banks Act and, if the Securities of the Company remain listed on the JSE Exchange, any other requirements of the Listings Requirements.

- 8.3. Unless expressly provided otherwise in this MOI or the terms applicable to the Securities (any such contrary provision being subject to the restrictions of the Companies Act and the Listings Requirements), all Securities of a class authorised in this MOI shall rank *pari passu* in all respects.
- 8.4. Subject to clause 8.7, 8.8 and 8.9, unless otherwise provided by the terms of the Securities or this MOI:
- 8.4.1. all or any of the rights, privileges or conditions for the time being attached to any class of Shares of the Company may, whether or not the Company is being wound-up, only be varied in any manner adverse to the Holders of that class of Shares with the consent, in Writing, of the Security Holders of not less than 75% (seventy five percent) of the issued Shares of that class, or with the sanction of a Special Resolution passed at a separate meeting of the Security Holders of that class of Shares; and
- 8.4.2. all or any of the rights, privileges or conditions for the time being attached to any class of Securities of the Company other than Shares may, whether or not the Company is being wound-up, in addition and without limitation to any other terms applicable to the Securities permitting variations, be varied in any manner with the consent in Writing of the Security Holders of not less than 75% (seventy five percent) of the issued Securities of that class, or with the sanction of a Special Resolution passed at a separate meeting of the Security Holders of that class.
- 8.5. The provisions of this MOI relating to general Shareholders Meetings shall *mutatis mutandis* apply to any separate meeting of the Security Holders of the relevant class of Securities except that unless the terms of the relevant class of Securities provide otherwise – **[LR: Sch. 10.5(a)]**
- 8.5.1. the necessary quorum to begin and consider the variation shall be:
- 8.5.1.1. in the case of variation of the Ordinary Shares, Shareholders Present holding in aggregate Ordinary Shares with Voting Rights comprising at least 25% (twenty five percent) of the aggregate Voting Rights of all the Shareholders of the Ordinary Shares, provided that, if the Company has more than 2 (two) Shareholders holding Ordinary Shares, at least 3 (three) Shareholders must be present; and

- 8.5.1.2. in the case of a variation of any other class of Securities, Security Holders of that class Present holding in aggregate Securities of that class with Voting Rights comprising at least 25% (twenty five percent) of the aggregate Voting Rights of all the Security Holders of that class of Securities, provided that, if the Company has more than 2 (two) Security Holders holding Securities of that class, at least 3 (three) Security Holders must be Present;
- 8.5.2. if a quorum is not achieved, the Shareholders Meeting shall be adjourned to the 5th (fifth) Business Day thereafter and, if at any adjourned Shareholders Meeting of such Security Holders, the quorum requirements contemplated in clause 8.5.1 are not met, those Persons entitled to vote who are Present, shall be a quorum; and
- 8.5.3. unless provided otherwise in this MOI, then each Security Holder of the Securities to be varied shall have 1 (one) vote for each Security held.
- 8.6. The requirements in clause 8.4 are in addition to the usual requirements for any related required amendment of this MOI. In addition to clause 8.4 but subject to clause 8.9, if any variation to any of the rights, privileges or conditions for the time being attached to any class of Shares of the Company is proposed, then, the Security Holders of the class of Shares proposed to be varied (in addition to those classes of Shares which already grant the Security Holder general Voting Rights at general Shareholders Meetings) shall vote with the Security Holders of the Ordinary Shares in respect of any proposed Special Resolution of the Shareholders required to approve the variation and amend this MOI. Unless the terms of the class of Shares to be amended provide otherwise, subject to the Listings Requirements, a Security Holder of such class of Shares shall have 1 (one) vote for each Share held by her/him/it. **[LR: Sch. 10.5(e)]**
- 8.7. If any variation to any of the rights, privileges or conditions for the time being attached to any class of Securities of the Company other than Shares is proposed, the Security Holders of such Securities proposed to be varied shall not have any rights to vote together with the Ordinary Shareholders to approve the variation and amend this MOI at the general meeting of Shareholders convened for such purpose, unless the terms of the Securities provide otherwise. If the terms of the Securities in question do provide that such Securities Holders can vote on any such amendment together with the Ordinary Shareholders, then unless the terms of the Securities provide for different Voting Rights, each Security Holder of the class of Securities to be amended shall have 1 (one) vote for each Security held by her/him/it.
- 8.8. Securities in each class for which listing on the JSE Exchange is applied for must comply with the Listings Requirements (unless an exemption is granted by the JSE), which currently require them to rank *pari passu* in respect of all rights (and in this context "securities in each

class ... must rank *pari passu*" shall be understood to have the meaning attributed to the phrase in paragraph 3.29 of the Listings Requirements). **[LR: Sch. 10.5(a)]**

- 8.9. Notwithstanding the above provisions, without limitation, the authorisation of more Shares and the issue of more Securities of an existing class of Securities shall not be regarded as a variation of the rights, privileges or conditions of that class of Securities unless the terms of the relevant Securities expressly provide otherwise.
- 8.10. To the extent required by the Listings Requirements, the preferences, rights, limitations or other terms of any class of Shares may not be varied (and no resolution may be proposed to Shareholders for rights to include such variation) in response to any objectively ascertainable fact or facts, as contemplated in terms of section 37(6) and 37(7) of the Companies Act, unless an exemption has been obtained from the JSE. **[LR: Sch. 10.5(g)]**

**9. AUTHORITY TO ISSUE SECURITIES AND GRANT SPECIAL PRIVILEGES [BA: S37]**

- 9.1. Subject to the restrictions and requirements of Banks Act in respect of the control over Banks and the acquisition of shares in a Controlling Company and to procuring any required approval of the JSE (where necessary, having regard to clause 4 (*Listing of Securities on the JSE Exchange*)) and to clause 9.8 and the pre-emption requirements of clause 13 (*Pre-emption on the Issue of Equity Securities*), the Company is authorised, and the Board shall have the power, to issue authorised Shares and to issue any other Securities provided that in respect of issues falling within the scope of clauses 9.3, 9.4, 9.5 and/or 9.6, as the case may be, only with the prior approval contemplated in such clauses.
- 9.2. For the sake of clarity, other issues falling outside the scope of clauses 9.3, 9.4 and 9.5 (or falling within any exceptions to such clauses) do not require the Board to procure prior Shareholder approval, for example, the issue of Securities contemplated in clause 9.9 (*Capitalisation Issues*).
- 9.3. In addition to clauses 9.4 and 9.5, for as long as the Securities of the Company are listed on the JSE Exchange, the Company may only undertake an issue of Equity Securities (or options to acquire Equity Securities) for cash (as contemplated in the Listings Requirements), if the applicable requirements of the Listings Requirements (currently set out in paragraphs 5.51 to 5.53 of the Listings Requirements) are met, which at the date of adoption of this clause require (amongst other things) specific or general approval by way of Special Resolution of Security Holders of Equity Securities as contemplated in clause 5.4.1, unless an exception or exemption contemplated in the Listings Requirements applies. This requirement in respect of the issue of Equity Securities for cash shall not be construed as in any way limiting the ability of the Company to issue Equity Securities other than for cash. **[LR: Sch. 5.50 – 5.52 & 10.9(a)]**

- 9.4. In addition to the qualifications to their power in clause 9.1, the Directors shall only have the power to issue Shares, Securities convertible into Shares, or grant options contemplated in section 42 of the Companies Act, or grant any other rights exercisable for Securities to Persons set out in section 41(1) of the Companies Act (an '**insider issue**') with the prior approval of the Shareholders by way of a Special Resolution, unless the issue of Shares, other Securities or relevant rights falls within the exceptions to section 41(1) of the Companies Act (but subject nevertheless to clause 9.3 where applicable), which exceptions are currently an issue:
- 9.4.1. under an agreement underwriting the Shares, Securities or rights;
  - 9.4.2. in the exercise of a pre-emptive right to be offered and to subscribe for Shares, as contemplated in section 39 of the Companies Act (which pre-emptive is not applicable to the Company) read with clause 13 (*Pre-emption on the Issue of Equity Securities*);
  - 9.4.3. in proportion to existing holdings, and on the same terms and conditions as have been offered to all the Shareholders or to all Shareholders of the class or classes of Shares being issued;
  - 9.4.4. pursuant to an Employee Share Scheme that satisfies the requirements of section 97 of the Companies Act; or
  - 9.4.5. pursuant to an offer to the public, as defined in section 95(1)(h) (read with section 96) of the Companies Act.
- 9.5. In addition to the qualifications to their power in clause 9.1, the Directors shall only have the power to issue Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or series of integrated transactions, that will exceed the threshold of 30% (thirty percent) of the Voting Power of all the Shares of the relevant class, as contemplated in section 41(3) of the Companies Act, with the prior approval of the Shareholders by way of a Special Resolution.
- 9.6. Without limitation to clause 9.1 and right to issue Shares, but subject to the Companies Act, the Banks Act and the Listings Requirements, the Company is authorised to, and the Board may allot and issue any Securities other than Shares (e.g. debentures, bonds, warrants, notes, derivatives and other instruments) (notwithstanding that such Securities are not specified in the authorised Shares in clause 8.1), subject to the following:
- 9.6.1. the Board may do so without the approval of the Shareholders, unless the approval of the Shareholders is required in terms of clauses 9.3, 9.4, 9.5 or 9.6.3, the Listings Requirements or the Companies Act, in which case the required Shareholder approval must be obtained;

- 9.6.2. for as long as the Listings Requirements prohibit special privileges in respect of debt instruments, the board may only issue such debt instruments with special privileges as contemplated in section 43(3) of the Companies Act, with the appropriate approval of, or exemption from, the JSE; and **[LR: Sch. 10.10]**
- 9.6.3. if such Securities grant special privileges to the Security Holders to attend and vote at general meetings of the Shareholders or to appoint Directors, then such privileges must be provided for in this MOI with any necessary amendment approved in accordance with the provisions of this MOI regulating amendments.
- 9.7. Except where the Companies Act or Listings Requirements require specific approval, any approval by the Shareholders for the issue of Securities contemplated in this clause 9 may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any relevant Securities in their discretion, subject to the restrictions in the Listings Requirements applicable to general approvals. Except where the Companies Act and the Listings Requirements or the particular approval provide otherwise, any authority granted to the Board to issue Securities shall endure indefinitely in respect of a specific approval and in the case of a general approval for the period provided in the authorising resolution in question (or if no duration is stated until the end of the next Annual General Meeting of the Company), but may be revoked by Ordinary Resolution, at any time.
- 9.8. Subject to the Listings Requirements, if at any time the Company (or a Subsidiary of the Company with the agreement of the Company) has Securities in issue, which Securities or the related debt are to be converted into or substituted for authorised Shares in the Company, or settled by the issue of authorised Shares (collectively the “**Conversion Issue**”), which Conversion Issue is not conditional upon the future approval of the Shareholders of the Company, then the Board shall not issue any further Shares of the relevant class (other than pursuant to the Conversion Issue) unless the Board is reasonably satisfied that, after the issue of the Shares, the Company will in its estimate still have sufficient authorised but unissued Shares of the relevant class available to comply with the anticipated Conversion Issue. Subject to the Listings Requirements, a determination by the Board of the Company in terms of this clause 9.8 as to the adequacy of the number of authorised but unissued Shares required to comply with the Conversion Issue may not be challenged on any basis other than section 77 of the Companies Act, read with section 77(2) of the Companies Act, nor shall any non-compliance with this obligation affect the validity of any issue of Shares.
- 9.9. Without limitation, the Board may issue capitalisation Shares or offer a cash payment in lieu of awarding capitalisation Shares in accordance with section 47 of the Companies Act and the Listings Requirements (for the sake of clarity, reference to a capitalisation issue shall have its ordinary meaning and include the issue of ‘scrip dividends’ contemplated in the Listings Requirements). **[LR: Sch. 10.6]**

9.10. The Listings Requirements provide that no Shares of a class which are listed on the JSE Exchange may be issued other than as fully paid up. If any Shares of a class which is not listed on the JSE Exchange are issued other than as fully paid up, then the issue must be in accordance with section 40 of the Companies Act and the related restrictions and provisions in the Companies Act. **[LR: Sch. 10.2(a)]**

9.11. 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) of the Companies Act.

## 10. FRACTIONAL ENTITLEMENTS

If, on any capitalisation issue (for the sake of clarity, reference to a capitalisation issue will have its ordinary meaning and include the issue of 'scrip dividends' contemplated in the Listings Requirements), consolidation, distribution or unbundling of Securities Security Holders would, but for the provisions of the clause, become entitled to fractions of Securities, *such fractions will be treated in accordance with the JSE Ltd Listings Requirements.*'

## 11. COMMISSION

The Company may pay commission not exceeding 10% (ten percent) of the subscription price at which Securities of the Company are issued to any Person, in consideration of her/him/it subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities or of her/him/it procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities. **[LR: Sch. 10.14]**

## 12. ODD LOT OFFERS

12.1. For the purposes of this clause 12, the "**Odd-Lot Threshold**" shall be that number of Securities of a class of Securities in the Company determined by the Board to comprise an 'odd-lot', provided that such determination shall not exceed the greater of 100 (one hundred) or such larger number permitted by the JSE ("**Odd-Lot**").

12.2. Subject to compliance with the applicable Listings Requirements, the Company may make offers (an "**Odd-Lot Offer**") to the holders and/or beneficial owners of a class of Securities who hold or own Securities comprising less than the Odd-Lot Threshold ("**Odd-Lot Holders**") requiring them to elect to:

12.2.1. retain their Odd-Lot; or

12.2.2. sell their Odd-Lot to the Company for such consideration as is reasonably determined by the Board or, at the election of the Company, authorise the

Company to cause the Odd-Lot to be sold on such basis as the Board may determine and the Company shall procure that such Odd-Lot Holders receive the proceeds thereof.

- 12.3. The Odd-Lot Offer may provide as a default that, should any Odd-Lot Holder fail to make any election to the contrary, then the Odd-Lot Holder shall be deemed to have elected to sell their Odd-Lot (as contemplated in clause 12.2.2) and the Company is hereby authorised to expropriate the Odd-Lot Holder's Odd-Lot, in accordance with the terms of the Odd-Lot Offer.

### 13. **PRE-EMPTION ON ISSUE OF EQUITY SECURITIES**

- 13.1. The pre-emptive requirements in the Listings Requirements in respect of Equity Securities shall apply (currently contained in paragraph 3.30 of the Listings Requirements), and Equity Securities in the Company which are intended to be issued for cash (not assets), shall be offered to the existing Security Holders of Equity Securities by way of a rights offer in accordance with the process set out in clause 13.2, before the Company may offer the subject matter Equity Securities for cash to other Persons or otherwise for cash than in the proportion mentioned above, unless – **[LR: 3.30 & Sch. 10.1]**

13.1.1. the issue is pursuant to an employee share incentive scheme which has been approved by the Shareholders (whether or not the scheme complies with section 97 of the Companies Act);

13.1.2. to the extent permitted by the Commission and subject to the prior approval of the JSE, with respect to Equity Securities that the Board consider necessary or expedient to be excluded from the offer because of legal impediments or compliance with the requirements of any regulatory body of any territory recognised as having import on the offer; **[LR: 3.31]**

13.1.3. the Security Holders of the Equity Securities of the Company provide their authorisation (specific or general) for the issue by way of Special Resolution satisfying the requirements for a waiver of the pre-emption as contemplated in the Listings Requirements (currently paragraph 3.32), in which circumstances the approved issue of Equity Securities for cash will be permitted (subject to any required approval by the JSE), as the case may be, in respect of a specific issue of Equity Securities for cash for such Equity Securities issue, or in respect of a general issue of Equity Securities for cash, for a fixed period of time thereafter in accordance with such general authority; **[LR: 3.32]**

13.1.4. the issue is a capitalisation issue (for the sake of clarity, reference to a capitalisation issue shall have its ordinary meaning and include the issue of 'scrip dividends' contemplated in the Listings Requirements), an issue for an acquisition



of assets (including the Securities of another company) or an issue for the purposes of an Amalgamation or Merger, to be undertaken, to the extent that any of these may be regarded as an issue for cash;

- 13.1.5. the Equity Securities are to be issued in terms of a duly authorised option or conversion rights;
- 13.1.6. the JSE waives the requirements as contemplated in the Listings Requirements (currently paragraph 3.33); or
- 13.1.7. the issue falls within any other exception to the pre-emptive requirements in the Listings Requirements, from time to time,

provided that if any fraction of an Equity Security will have to be issued, the provisions of clause 10 (*Fractional Entitlements*) shall apply.

- 13.2. The rights offer referred to in clause 13.1 above shall be made to Security Holders of Equity Securities *pro rata* to the proportion that the particular Security Holder's General Voting Rights bears to the aggregate of the General Voting Rights exercisable by all of the Security Holders of Equity Securities immediately before the offer was made, and in the following manner **[LR 3:30]** –

- 13.2.1. by the Company offering the Equity Securities to the relevant Security Holder by Written notice setting out -

- 13.2.1.1. the number of the Equity Securities;

- 13.2.1.2. the consideration to be paid by the Security Holder in respect of the Equity Securities;

- 13.2.1.3. the date by which the Security Holder must notify the Company of her/his/its acceptance of the rights offer, provided that such date shall not be more than 10 (ten) Business Days after the receipt or deemed receipt of the notice; and

- 13.2.1.4. the date by which the consideration must be paid to the Company; and

- 13.2.2. the Security Holder must notify the Company in Writing of her/his/its acceptance of the rights offer before or on the date referred to in clause 13.2.1.3.

- 13.3. The consideration must be paid by the Security Holder by way of direct electronic transfer of funds into a bank account nominated by the Company before or on the date referred to in

clause 13.2.1.4. The Equity Securities shall be issued to the Security Holder upon the Company receiving such payment.

13.4. After the expiration of the time within which an offer may be accepted (as referred to in clause 13.2.2), or within which the consideration must be paid (as referred to in clause 13.3), or on the receipt of an intimation from the Person to whom the offer is made that she/he/it declines to accept the Equity Securities offered, the Board may, subject to the foregoing provisions, issue such Equity Securities in such manner as they think most beneficial to the Company.

14. **CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND THE SECURITIES REGISTER**

14.1. The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or, if the Securities are listed on the JSE Exchange or if the Company establishes the required custody arrangement, uncertificated, in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities. When any new Securities are to be issued by the Company and listed on the JSE Exchange, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to her/him/it shall be in certificated or uncertificated form. Each original certificate issued to a Security Holder in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Security Holder, the Board shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs incurred in such issue.

14.2. A Security Holder of Uncertificated Securities in the Company shall not be entitled to certificates and the Company shall not issue certificates evidencing or purporting to evidence title to Uncertificated Securities of the Company, unless the Security Holder gives the Participant notice that such Security Holder wishes to withdraw its Uncertificated Securities and obtain a certificate in respect of all or part of that Security Holder's Uncertificated Securities maintained by the Participant in terms of the Companies Act and Securities Services Act.

14.3. In the event of a withdrawal referred to in clause 14.2 above, a certificate shall be issued under the authority of the Board in such manner and form as the Board shall from time to time determine.

14.4. The Company shall keep a Securities Register (and for this purpose may convert its share register) which shall reflect –

14.4.1. the number of Securities authorised and the number of Securities available to be issued and the date of authorisation;

14.4.2. the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;

- 14.4.3. the number of Securities of a class that are held in uncertificated form;
  - 14.4.4. the number of Securities of that class that are the subject of options or conversion rights which, if exercised, would require Securities of that class to be issued;
  - 14.4.5. in the case of Uncertificated Securities, a unique identifying number of the Person to, from or by whom the Securities were issued, re-acquired or surrendered, as the case may be; and
  - 14.4.6. details of any Unlisted Securities issued by the Company.
- 14.5. As soon as practicable after -
- 14.5.1. issuing any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities evidenced by certificates that it has issued —
    - 14.5.1.1. the names and addresses and unique identifying numbers of the Persons to whom the Securities were issued;
    - 14.5.1.2. those Persons' Electronic Addresses who have furnished them;
    - 14.5.1.3. the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the subscription Consideration;
    - 14.5.1.4. the total number of Securities of a class held by any Person;
    - 14.5.1.5. the date on which any such Securities were transferred by the Security Holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
    - 14.5.1.6. the number of, and prescribed circumstances relating to, any Securities –
      - 14.5.1.6.1. that have been placed in trust as contemplated in section (40)(6)(d) of the Companies Act by reason of not having been fully paid for; or
      - 14.5.1.6.2. whose transfer has been restricted;
    - 14.5.1.7. as regards debt instruments as contemplated in section 43 of the Companies Act –
      - 14.5.1.7.1. the number of those Securities still in issue; and

- 14.5.1.7.2. the names and addresses of the Security Holders of the Securities and any disclosed holders of a Beneficial Interest in the Securities; and
  - 14.5.1.8. the total number of Uncertificated Securities from time to time;
- 14.5.2. the re-acquisition or surrender of any Securities –
  - 14.5.2.1. the date on which the Securities were re-acquired by, or surrendered to, the Company;
  - 14.5.2.2. the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
  - 14.5.2.3. the Consideration for which the Securities were re-acquired by or surrendered to the Company; and
  - 14.5.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 14.5.3. as regards disclosures of Beneficial Interests, a record of all such disclosures, including the following information for any Securities in respect of which a disclosure was made –
  - 14.5.3.1. the name and unique identifying number of the Security Holder of the Securities;
  - 14.5.3.2. the number, class and the distinguishing numbers of the Securities; and
  - 14.5.3.3. for each Person who holds a Beneficial Interest in the Securities, the extent of the Person's Interest in the Securities, together with that Person's –
    - 14.5.3.3.1. name and unique identifying number;
    - 14.5.3.3.2. business, residential or postal address; and
    - 14.5.3.3.3. Electronic Address if available; and
- 14.5.4. any other information prescribed in terms of the Companies Act from time to time. For as long as the Company has Uncertificated Securities at any time, it shall comply with the provisions of sections 52 and 53 of the Companies Act and, in particular, shall enter or caused to be entered in its Securities Register the total number of such Uncertificated Securities from time to time.

- 14.6. A Securities Holder shall be entitled to register an address in the Republic or in some other country. **[LR: Sch. 10.18]**
- 14.7. Securities certificates shall be issued in such manner and form as the Board shall from time to time prescribe save that they must -
- 14.7.1. state on the face –
- 14.7.1.1. the name of the Company;
- 14.7.1.2. the name of the Person to whom the Securities were issued;
- 14.7.1.3. the number and class of Securities and the designation of the series, if any, evidenced by that certificate;
- 14.7.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE Exchange) evidenced by that certificate; and
- 14.7.2. be signed by two persons authorised by the Board, including by autographic, mechanical or electronic means.
- 14.8. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 14.9. Where the Securities issued by the Company are certificated (or are withdrawn from the uncertificated Securities Register in accordance with the Companies Act), each Security 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.
- 14.10. A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Security Holders.
- 14.11. 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 Board thinks fit, and in case of defacement on delivery of the old certificate to the Company.
- 14.12. A Person –
- 14.12.1. 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
- 14.12.2. 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.

14.13. After receiving a notice from a Central Securities Depository or Participant that a Security Holder who wishes to withdraw all or part of the Uncertificated Securities held by that Person in an uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, the Company must –

14.13.1. immediately enter the relevant Person's name and details of that Person's holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in uncertificated form; and

14.13.2. within 10 (ten) Business Days, or 20 (twenty) Business Days in the case of a Security Holder who is not resident within the Republic –

14.13.2.1. prepare and Deliver to the relevant Person a certificate in respect of the Securities; and

14.13.2.2. notify the Central Securities Depository that the Securities are no longer held in uncertificated form,

and may charge the Security Holder a reasonable fee to cover the actual costs of issuing a certificate.

14.14. If the Company issues Securities which are not listed on the JSE Exchange, the certificates for those Securities must be held in trust and stamped with the words "unlisted securities" and may only be released by the Company with the written permission of the JSE. **[LR: Section 4.23(a)]**

## 15. REGISTER OF DISCLOSURES AND NOTIFICATION

The Company must –

15.1. establish and maintain a register of the disclosures made in terms of section 56(7) of the Companies Act;

15.2. publish in its annual Financial Statements a list of the Persons who hold Beneficial Interests equal to, or in excess of, 5% (five percent) of the total number of Securities of that class issued by the Company, together with the extent of those Beneficial Interests;

15.3. file with the Panel a copy of a notification (which must be addressed to the secretary of the Company) in respect of:

- 15.3.1. the acquisition of any Beneficial Interest in sufficient Securities of a class issued by the Company such that, as a result of the acquisition, the Person holds a Beneficial Interest in Securities amounting to 5% (five percent), 10% (ten percent), 15% (fifteen percent), or any further whole multiple of 5% (five percent) of the issued Securities of that class; or
- 15.3.2. the disposal of a Beneficial Interest in sufficient Securities of a class issued by the Company such that, as a result of the disposition, the Person no longer holds a Beneficial Interest in Securities amounting to a particular multiple of 5% (five percent) of the issued securities of that class;
- 15.4. report the information to the Security Holders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 15.3 unless it relates to the disposition of any Beneficial Interest of less than 1% (one percent) of the class of Securities; and
- 15.5. within 48 (forty eight) hours after receiving a notification of the type referred to in clause 15.3, publish the information provided in the notice on SENS.

**16. RESTRICTION ON ANY LIEN**

For as long as the Securities of the Company are listed on the JSE Exchange, the Company shall not be entitled to take any lien over any Securities issued by it. **[LR: Sch. 10.12]**

**17. LISTINGS ON OTHER STOCK EXCHANGES**

- 17.1. The Company may seek listings of its Securities on such stock exchanges as the Board may consider appropriate from time to time.
- 17.2. For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE Exchange and the NSX, the Company shall be subject to any applicable listing requirements of such stock exchange to the extent applicable.

**18. TRANSFER OF SECURITIES**

- 18.1. Except for the restrictions and requirements of the Banks Act in relation to the holding of Securities in a Controlling Company, there is no restriction on the transfer of Securities listed on the JSE, unless the terms of any class of Securities provide for a restriction on transfer of such Securities and the JSE has approved such restriction. In the case of any Unlisted Securities, the terms applicable to such Unlisted Securities may include restrictions on their transferability.
- 18.2. The transfer of any Securities which are certificated shall be implemented in accordance with the then common form of transfer. Every instrument of transfer shall be signed by the

transferor and 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/her/its rights to transfer the Securities.

- 18.3. All authorities to sign transfer deeds granted by Security 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 transfer offices at which the authority was lodged, produced or exhibited. 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. **[LR: Sch. 10.2(b)]**
- 18.4. The transferor of any Security shall be deemed to remain the Security Holder of such Share until the name of the transferee is entered in the Securities Register, unless the contrary is proven to the satisfaction of the Board.
- 18.5. Subject to the Companies Act and the Listings Requirements, the Board may charge a reasonable fee on the registration or receipt of any transfer and/or of any letters of administration, probate, certificate of death or marriage, power of attorney or other notice or instrument affecting the title to or the right to transfer any Security.
- 18.6. The Company shall not be bound to allow the exercise of any act or matter by an agent for a Security Holder unless a duly certified copy of such agent's authority is produced and filed with the Company.
- 18.7. All instruments of transfer which shall be registered shall be retained by the Company, but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud), on demand, be returned to the Person depositing the same.
- 18.8. The Company (or the relevant Participant or Central Securities Participant in the case of Uncertificated Securities) must enter in its Securities Register regarding every transfer of any Securities the information contemplated in clause 14.5.1, any reference to issue being read as a reference to transfer, including in the entry -
  - 18.8.1. the name and address of the transferee;
  - 18.8.2. the description of the Securities, or interest transferred;
  - 18.8.3. the date of the transfer; and



18.8.4. the value of any Consideration still to be received by the Company on each Security or interest, in the case of a transfer of Securities the subscription price for which has not been fully paid,

provided that, subject to clause 19 (*Transmission of Securities by Operation of Law*), such entry may only be made only if all legal requirements have been complied with and –

18.8.5. in the case of certificated Securities, the transfer is evidenced by a proper instrument of transfer that has been delivered to the Company;

18.8.6. in the case of Uncertificated Securities, the transfer is in accordance with the laws and rules applicable to the transfer of Uncertificated Securities; or

18.8.7. the transfer was effected by the operation of law; and

18.8.8. in the case of Unlisted Securities, all the legal requirements have been complied with.

18.9. The Securities Register in respect of certificated and Uncertificated Securities and trading in Securities shall, in respect of the Securities listed on the JSE Exchange, be subject to the Listings Requirements regulating trading on the JSE Exchange and, in respect of Uncertificated Securities, corporate actions and any related rules of the relevant Central Securities Depository.

## 19. **TRANSMISSION OF SECURITIES BY OPERATION OF LAW**

Subject to any applicable laws -

19.1. the parent or guardian or curator of any Security Holder who is a minor;

19.2. the trustee of an insolvent Security Holder;

19.3. the liquidator of a Security Holder which is a body corporate;

19.4. the tutor or curator of a Security Holder under disability;

19.5. the executor or administrator of the estate of a deceased Security Holder; or

19.6. any other Person becoming entitled to any Securities held by a Security 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 (in the relevant capacity) either -

- 19.7. to exercise the same rights and to receive the same Distributions and other advantages to which she/he/it would be entitled if she/he/it were the Security Holder of the Securities registered in the name of the Security Holder concerned; or
- 19.8. herself/himself/itself to be registered as the Security Holder in respect of those Securities and to make such transfer of those Securities as the Security 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 Security Holder. **[LR: Sch. 10.13]**

20. **FINANCIAL YEAR**

The financial year end of the Company is 31 December.

21. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 21.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 21.2. Unless a deviation is specifically authorised by the Banks Act or the Registrar of Banks, the annual Financial Statements of the Company shall be prepared in accordance with the requirements of the Banks Act.
- 21.3. Subject to clause 21.2, the Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited. In addition the annual Financial Statements shall, to the extent required by the Listings Requirements and/or the Companies Act, reflect the -
- 21.3.1. Beneficial Interests of the Directors and major Shareholders; and
- 21.3.2. status of any Securities issued by the Company which are not listed on the JSE Exchange.
- 21.4. The Board 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 Security Holders and holders of Beneficial Interests are entitled to inspect and take copies of –
- 21.4.1. the MOI;
- 21.4.2. amendments to the MOI;
- 21.4.3. records in respect of Directors;
- 21.4.4. Accounting Records required to be maintained by the Company;

- 21.4.5. notices and minutes of Shareholders Meetings;
- 21.4.6. communications generally to Security Holders; and
- 21.4.7. the Securities Register.

21.5. Apart from the Security Holders and holders of Beneficial Interests to the extent they are entitled under the Companies Act, insofar as is lawful, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register and register of Directors) unless expressly authorised by the Board or by Ordinary Resolution.

21.6. The Company shall notify the registered Security Holders and, to the extent required by the Companies Act, the holders of Beneficial Interests of the publication of the annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Security Holder or holder of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Security Holder and/or a holder of Beneficial Interests free of charge.

## 22. **AUDIT COMMITTEE AND AUDITOR**

22.1. In accordance with the provisions of the Banks Act, read together with the Companies Act, the Board shall appoint at least 3 (three) of its members to form and serve on an Audit Committee.

22.2. The members of the Audit Committee must comply with the requirements of the Banks Act and the Companies Act (as applicable) which currently provide, amongst other things, that –

22.2.1. each member must be a person who is independent as contemplated in section 94(4) of the Companies Act and the Regulations and who is not:

22.2.1.1. an employee of the Company, or any of its Subsidiaries;

22.2.1.2. an employee of the Bank in respect of which the Company is a Controlling Company or any Subsidiary of such Bank; or

22.2.1.3. the chairperson of the Board or the chairperson of the board of directors of the Bank in respect of which the Company is the Controlling Company; and

22.2.2. at least one third of the members of the Audit Committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

22.3. The Audit Committee shall –

- 22.3.1. assist the Board –
  - 22.3.1.1. in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within the Company, as the case may be in the day-to-day management of its business;
  - 22.3.1.2. to facilitate and promote communication regarding the matters referred to in clause 22.3.1.1, or any other related matter, between the Board and the executive officers, and the Auditor and the employee charged with the internal auditing of the transactions, of the Company; and
  - 22.3.1.3. to introduce such measures as in the committee’s opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the Company, as the case may be; and
- 22.3.2. perform such further functions as may be prescribed by the Companies Act and the Banks Act.
- 22.4. The Board must appoint a person to fill any vacancy on the Audit Committee in accordance with the Banks Act read together with the Companies Act. **[BA S64]**
- 22.5. The Audit Committee has the duties under the Banks Act (including those referred to in clause 22.3 above), read together with the Companies Act and Regulations which currently include the following duties –
  - 22.5.1. to nominate, for appointment as Auditor, a Registered Auditor who, in the opinion of the Audit Committee, is independent of the Company;
  - 22.5.2. to determine the fees to be paid to the Auditor and the Auditor’s terms of engagement;
  - 22.5.3. to ensure that the appointment of the Auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors;
  - 22.5.4. to determine the nature and extent of any non-audit services that the Auditor may provide to the Company subject to compliance with the Companies Act, or that the Auditor must not provide to the Company, or a Related company;
  - 22.5.5. to pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;

- 22.5.6. to prepare a report, to be included in the annual Financial Statements for that financial year –
    - 22.5.6.1. describing how the Audit Committee carried out its functions;
    - 22.5.6.2. stating whether the Audit Committee is satisfied that the Auditor was independent of the Company; and
    - 22.5.6.3. commenting in any way the Audit Committee considers appropriate on the Financial Statements, the accounting practices and the internal financial control of the Company;
  - 22.5.7. to receive and deal appropriately with any concerns or complaints, whether from within or outside the Company, or on its own initiative, relating to –
    - 22.5.7.1. the accounting practices and internal audit of the Company;
    - 22.5.7.2. the content or auditing of the Company's Financial Statements;
    - 22.5.7.3. the internal financial controls of the Company; or
    - 22.5.7.4. any related matter;
  - 22.5.8. to make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
  - 22.5.9. to perform other oversight functions as may be determined by the Board.
- 22.6. In considering whether, for the purposes of clause 22.5, a Registered Auditor is independent of the Company, the Audit Committee must, in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group –
- 22.6.1. ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
    - 22.6.1.1. as Auditor; or
    - 22.6.1.2. for rendering other services to the Company, to the extent permitted in terms of the Companies Act;
  - 22.6.2. consider whether the Auditor's independence may have been prejudiced –
    - 22.6.2.1. as a result of any previous appointment as Auditor; or
    - 22.6.2.2. having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and

- 22.6.3. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act.
- 22.7. The Company must pay all expenses reasonably incurred by its Audit Committee, including, if the Audit Committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit Committee to assist it in the performance of its functions.
- 22.8. No person shall be elected as a member of the Audit Committee, if she/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 member of the Audit Committee nor act as a member of the Audit Committee. A person placed under probation by a court must not serve as a member of the Audit Committee unless the order of court so permits.
- 22.9. A member of the Audit Committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Banks Act or the Companies Act.
- 22.10. There are no general qualifications prescribed by the Company for a person to serve as a member of the Audit Committee in addition to the requirements of the Companies Act and the Banks Act (as applicable).
- 22.11. The Audit Committee will nominate Auditors for the Company. Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the Audit Committee, but if such an Auditor is elected, the appointment is valid only if the Audit Committee is satisfied that the proposed auditor is independent of the Company.
- 22.12. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Auditor is not appointed or reappointed at the Annual General Meeting, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –
- 22.12.1. the retiring Auditor is –
- 22.12.1.1. no longer qualified for appointment;
- 22.12.1.2. no longer willing to accept the appointment, and has so notified the Company; or
- 22.12.1.3. required to cease serving as Auditor, in terms of section 92 of the Companies Act;
- 22.12.2. the Audit Committee objects to the re-appointment; or

- 22.12.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 22.13. Notwithstanding the remaining provisions of this clause 22, the Auditor of the Company shall be:
- 22.13.1. subject to the approval of the Registrar of Banks as provided for in section 61(1)(a) of the Banks Act; and
  - 22.13.2. appointed for such period and on such conditions as may be prescribed as provided for in section 61(1)(b) of the Banks Act.
- 22.14. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act and the Banks Act, provided that –
- 22.14.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years; and
  - 22.14.2. if an Individual has served as the Auditor or designated Auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated Auditor, the Individual may not be appointed again as the Auditor or designated Auditor until after the expiry of at least 2 (two) further financial years.
- 22.15. The Auditor –
- 22.15.1. has the right of access at all times to the Accounting Records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
  - 22.15.2. if the Company is a Holding Company, has the right of access to all current and former Financial Statements of any Subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties;
  - 22.15.3. is entitled to –
    - 22.15.3.1. attend any Shareholders Meeting;
    - 22.15.3.2. receive all notices of and other communications relating to any Shareholders Meeting; and

22.15.3.3. be heard at any Shareholders Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions; and

22.15.4. may not perform any services for the Company –

22.15.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or

22.15.4.2. as may be prescribed by the Audit Committee.

22.16. If a vacancy arises in the office of Auditor, the Board –

22.16.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; or

22.16.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as auditor of the Company.

22.17. If, by comparison with the membership of a firm at the time of its latest appointment, less than ½ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

22.18. Before making an appointment in terms of clause 22.16, the Board –

22.18.1. must propose to the Audit Committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one Registered Auditor to be considered for appointment as the new Auditor; and

22.18.2. may proceed to make an appointment of a Person proposed in terms of clause 22.18.1 if, within 5 (five) Business Days after delivering the proposal, the Audit Committee does not give notice in Writing to the Board rejecting the proposed Auditor.

22.19. The provisions of clauses 40.4 and 40.5 apply *mutatis mutandis* in respect of the resignation or on removal of an Auditor.

## 23. **SHAREHOLDERS MEETINGS AND ROUND ROBIN RESOLUTIONS**

### General

23.1. 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 –

- 23.1.1. presentation of –
    - 23.1.1.1. the Directors' report;
    - 23.1.1.2. Audited Financial Statements for the immediately preceding financial year; and
    - 23.1.1.3. an Audit Committee report;
  - 23.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 23.1.3. appointment of an Auditor for the ensuing year; and
  - 23.1.4. any matters raised by Security Holders, Present and entitled to vote, with or without advance notice to the Company.
- 23.2. Subject to clause 23.3, the Company shall, as determined by the Board, either –
- 23.2.1. hold a Shareholders Meeting in order to consider one or more resolutions; or
  - 23.2.2. as regards such resolution/s that could be voted on at a Shareholders Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution, where not prohibited by the Listings Requirements.
- 23.3. All Shareholders Meetings that are called for in terms of the Listings Requirements must be held in person and may not be held by means of a Round Robin Resolution. **[LR: Sch. 10.11(c)]**
- 23.4. Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Security Holder who was entitled to vote on or consent to the Round Robin Resolution.
- 23.5. A Company must hold a Shareholders Meeting, or put the proposed resolution by way of a Round Robin Resolution (where a Round Robin Resolution is not prohibited by the Listings Requirements) –
- 23.5.1. at any time that the Board is required by the Companies Act or this MOI to refer a matter to Security Holders entitled to vote for decision; and
  - 23.5.2. whenever required to fill a vacancy on the Board,

provided that, notwithstanding anything to the contrary contained herein, the Company shall not be prohibited nor restricted from convening a Shareholders Meeting where the resolution which is the subject of such Shareholders Meeting is required to be passed in order for the Company to adhere to the relevant Listings Requirements. **[LR: Sch. 10.11(d)]**

- 23.6. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 23.7. The Board or, if the Company has no Directors, any single Security Holder entitled to vote, may, whenever she/he/it thinks fit, convene a Shareholders Meeting or put the proposed resolution by way of a Round Robin Resolution. A Shareholders Meeting must be convened, or the Board must put the proposed resolution by way of a Round Robin Resolution, if one or more Written and signed demands for such a Shareholders Meeting or Round Robin Resolution is/are delivered to the Company, and –
- 23.7.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
- 23.7.2. in aggregate, demands for substantially the same purpose are made and signed by the Security Holders at the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 23.8. Round Robin Resolutions must be submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution and, to be passed, must be voted on by the requisite percentage of Persons entitled to vote by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them (and in regard to the election of Directors includes Written polling of Persons entitled to vote in respect of the election). Shareholders Round Robin Resolutions will be passed if signed by Persons entitled to exercise sufficient Voting Rights for the proposed resolutions to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Shareholders Meeting.
- 23.9. Every Shareholders Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to 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) of the Companies Act, is not limited or restricted. The Board shall determine reasonable access for electronic participation and the procedures and processes relating thereto.

Notice

23.10. The Security Holder of any Securities which are in certificated form and thus not subject to the rules of Strate Limited, as a Central Securities Depository, in which any Person has a Beneficial Interest must deliver to each such Person –

23.10.1. a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and

23.10.2. a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11) of the Companies Act.

23.11. Subject to clause 23.12 (which reflects the provisions of section 62(2A) of the Companies Act), a Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company to all Security Holders entitled to vote at the Shareholders Meeting or otherwise entitled to receive notice and to the JSE. An announcement shall also be made on SENS. **[LR: Sch. 10.11(a), (b), (e) and (f)]**

23.12. The Company may call a Shareholders Meeting with less notice than required by clause 23.11, but such a Shareholders Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda –

23.12.1. is Present at the Shareholders Meeting; and

23.12.2. votes to waive the required minimum notice of the Shareholders Meeting.

23.13. A Security Holder entitled to vote, who is Present at a Shareholders Meeting –

23.13.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;

23.13.2. has a right to –

23.13.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and

- 23.13.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
  - 23.13.3. except to the extent set out in clause 23.13.2, is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 23.14. A notice of a Shareholders Meeting must be in writing, in plain language and must include –
- 23.14.1. the date, time and place for the Shareholders Meeting, and the Record Date for the Shareholders Meeting;
  - 23.14.2. the general purpose of the Shareholders Meeting, and any specific purpose contemplated in clause 23.1, if applicable;
  - 23.14.3. in the case of the Annual General Meeting -
    - 23.14.3.1. a copy of the complete annual Financial Statements to be presented, or a summarised form thereof, to the extent permitted by the JSE, and complying with the requirements of the Companies Act; and **[LR: Sch. 10.19]**
    - 23.14.3.2. directions for obtaining a copy of the complete annual Financial Statements for the preceding financial year unless it was distributed to them previously;
  - 23.14.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholders Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
  - 23.14.5. a reasonably prominent statement that –
    - 23.14.5.1. a Security 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 Security Holder entitled to vote, or give or withhold Written consent on behalf of the Security Holder entitled to vote to a decision by Round Robin Resolution (if not prohibited by the Listings Requirements);
    - 23.14.5.2. a proxy need not be a Security Holder;

- 23.14.5.3. a Security Holder entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by that Security Holder entitled to vote in respect of any Shareholders Meeting and may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by the Security Holder which entitle her/him/it to vote;
  - 23.14.5.4. the proxy may delegate the authority granted to her/him as proxy, subject to any restriction in the proxy itself;
  - 23.14.5.5. 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
  - 23.14.5.6. participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Security 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 Security Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 23.15. A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 23.16, 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 and votes to approve the ratification of the defective notice.
- 23.16. 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 –
- 23.16.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 23.16.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 23.17. 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 Security Holder to whom it was addressed, does not invalidate any action taken at the Shareholders Meeting.

Conduct

- 23.18. Notwithstanding any agreement to the contrary, the Company shall only permit Securities to be voted upon by the holder of a Beneficial Interest (who is not registered as a Security Holder vested with such rights), if such holder of the Beneficial Interest:
- 23.18.1. has provided reasonable evidence (to the satisfaction of the secretary or the chairperson of the Company) that she/he/it holds a Beneficial Interest in such Securities and that such Beneficial Interest includes the right to exercise the Voting Rights attached to such Securities;
  - 23.18.2. is reflected as Beneficial Interest holder in the Company's register (as contemplated in clause 14 (*Certificates Evidencing Issued Securities, Uncertificated Securities and the Securities Register*)) and such Beneficial Interest includes the right to exercise the Voting Rights attached to such Securities; or
  - 23.18.3. has been appointed as the registered Securities Holder's proxy, or on the case of a Juristic Person, its representative.
- 23.19. Business may be transacted at any Shareholders Meeting only after the quorum requirements have been met.
- 23.20. The quorum for the commencement of a Shareholders Meeting, shall be sufficient Persons Present to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting Rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at the Shareholders Meeting and, in addition, subject to the Companies Act, the Shareholders Meeting may not begin unless, if the Company –
- 23.20.1. has more than 2 (two) Persons entitled to vote, at least 3 (three) Persons entitled to vote are Present; and
  - 23.20.2. is a Subsidiary of a company, those constituting the quorum must include its Holding Company Present. **[LR: Sch. 10.11(h)]**
- 23.21. A matter to be decided at the Shareholders Meeting may not begin to be considered unless at least 25% (twenty five percent) of all the Voting Rights that are entitled to be exercised in respect of the matter are Present at the Shareholders Meeting and, in addition, if the Company –
- 23.21.1. has more than 2 (two) Persons entitled to vote, at least 3 (three) Persons entitled to vote are Present; and
  - 23.21.2. is a Subsidiary of a company, those constituting the quorum must include its Holding Company Present.

- 23.22. If within 30 (thirty) minutes (or an extension thereof in terms of clause 23.23) from the time appointed for the Shareholders Meeting to commence, a quorum has not been achieved for commencement of the Shareholders Meeting, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 23.28, for 1 (one) week to the same time on 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, and if at such adjourned Shareholders Meeting a quorum is not achieved within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 23.23. The person intended to preside at a Shareholders Meeting that cannot begin due to non-compliance with the quorum requirements set out in clause 23.20 above, or if a matter cannot begin to be considered due to the operation of clause 23.21, may extend the 30 (thirty) minute limit referred to in clause 23.22 for a reasonable period on the grounds that exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be Present at the Shareholders Meeting, or one or more particular Shareholders, having been delayed, have communicated an intention to attend the Shareholders Meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 23.20 and clause 23.21 above.
- 23.24. If a quorum is established for a Shareholders Meeting to commence and subsequently the Shareholders Meeting becomes inquorate, such that there is no quorum to consider any further matters and this lack of a quorum persists for 15 (fifteen) minutes (or an extension thereof in terms of clause 23.23), then the Shareholders Meeting in respect of the consideration of the outstanding matters shall be postponed, without motion, vote or further notice in respect of such matters, subject to clause 23.28, for 1 (one) week to the same time on 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, and, if at such adjourned Shareholders Meeting, a quorum is not achieved within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum for the Shareholders Meeting and all matters to be considered.
- 23.25. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned or postponed from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights –
- 23.25.1. held by all of the Persons who are Present at the Shareholders Meeting at the time; and
- 23.25.2. that are entitled to be exercised on at least 1 (one) matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.

- 23.26. 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 Security Holders), as agreed at the Shareholders Meeting. No business shall be transacted at the resumption of any adjourned Shareholders Meeting, other than the business unfinished at the Shareholders Meeting from which the adjournment took place.
- 23.27. A Shareholders Meeting may not be adjourned beyond the earlier of –
- 23.27.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
  - 23.27.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 23.28. Save where the adjournment or postponement is until further notice in terms of clause 23.22, clause 23.24 or clause 23.25, as the case may be, no further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 23.22, clause 23.24 or clause 23.25, if the location or time for the Shareholders Meeting –
- 23.28.1. is the same as the location or time of the postponed or adjourned Shareholders Meeting; or
  - 23.28.2. in the case of an adjourned Shareholders Meeting, was announced at the time of adjournment.
- 23.29. After a quorum has been established for:
- 23.29.1. a Shareholders Meeting, the Shareholders Meeting may continue, for so long as at least 1 (one) Shareholder is Present; or
  - 23.29.2. a matter to be considered at a Shareholders Meeting, the matter may be considered, as long as at least 1 (one) Person entitled to exercise Voting Rights on such a matter is Present.

Chairperson

- 23.30. 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 she/he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall elect a Director present at the Shareholders Meeting, or if no Director is present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons



entitled to vote shall elect one of their number which is present to be chairperson of the 4s Meeting.

Voting

23.31. 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 –

23.31.1. not less than 5 (five) Persons having the right to vote on that matter; or

23.31.2. 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, insofar as is lawful.

23.32. 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. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

23.33. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

23.34. Any Person entitled to a Security in terms of clause 19 (*Transmission of Securities by Operation of Law*) may vote at any Shareholders Meeting in respect thereof in the same manner as if she/he/it were the Security Holder of that Security, provided that (except where the Board has previously accepted her/his/its right to vote in respect of that Security) 24 (twenty four) hours at least before the time of holding the Shareholders Meeting at which

she/he/it proposes to vote, she/he/it shall have satisfied the Board that she/he/it is entitled to exercise the right referred to in clause 19 (*Transmission of Securities by Operation of Law*).

23.35. 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 percent) 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 at least 75% (seventy five percent) of the Voting Rights exercised on the resolution. For so long as the Securities of the Company are listed on the JSE Exchange, if any of the Listings Requirements require an Ordinary Resolution to be passed with a 75% (seventy five percent) majority, the resolution shall instead be required to be passed by a Special Resolution, as determined in accordance with clause 5.4.1. **[LR: Sch. 10.11(a)]**

23.36. Subject to any restrictions attaching to any class or classes of Securities which are not Ordinary Shares (as no voting restrictions shall be permitted as regards Ordinary Shares and no special rights or privileges shall attach to other Securities, subject to the Listings Requirements), on a show of hands a Person entitled to vote that is Present at the Shareholders Meeting shall have only 1 (one) vote, irrespective of the number of Securities she/he/it holds or represents. A proxy shall, irrespective of the number of Security Holders entitled to vote which she/he represents, have only 1 (one) vote on a show of hands. On a poll. **[LR: Sch. 10.5(b)]**

23.36.1. every Person entitled to vote who is Present shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question, which shall be subject to the Listings Requirements; and

23.36.2. a Shareholder, holding par value Shares, who is Present shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Shares held by her/him/it bears to the aggregate amount of the nominal value of all the Shares with a par value issued by the Company and carrying the right to vote. Accordingly, subject to any alterations of the Share capital, each Ordinary Share with a par value of R1.00 (one Rand) shall have one vote. If the issue of Shares with no par value is no longer prohibited by the Banks Act, then, unless specified otherwise, a Shareholder holding Ordinary Shares with no par value who is Present shall be entitled to 1 (one) vote in respect of each no par value Share she/he/it holds,

provided that, for as long as the Securities of the Company are listed on the JSE Exchange, the total Voting Rights of the Security Holders of all Securities, other than Ordinary Shares and any special shares created for the purposes of black economic empowerment in terms of

the Broad-Based Black Economic Empowerment Act (53 of 2003) and the codes promulgated under the aforementioned Act (“**BEE Shares**”), may not exceed 24.99% (twenty four point nine nine percent) of the total Voting Rights of all Persons entitled to vote at such a Shareholders Meeting, and in the event of the Voting Rights attaching to such Securities (other than Ordinary Shares and BEE Shares) exceeding this maximum voting threshold, the Voting Rights attaching to such Securities shall be reduced on a *pro rata* basis. If a resolution is proposed to meet the Listings Requirements, notwithstanding that the Security Holders of Securities not listed on the JSE Exchange shall be entitled to vote thereon as a matter of law, their votes shall not be taken into account for the purposes of determining whether or not the Listings Requirements have been met, and the relevant resolution shall only be passed if the Listings Requirements are complied with. **[LR: Sch. 10.5(c)]**

- 23.37. In the case of joint Security Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Security Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.

#### Proxies

- 23.38. 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 Security Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Security Holder entitled to vote.
- 23.39. 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, before the proxy exercises any rights of the Security Holder entitled to vote at a Shareholders Meeting.
- 23.40. 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, provided that no intimation 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.

- 23.41. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Security Holder entitled to vote.
- 23.42. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit, unless the proxy indicates otherwise.

## 24. RECORD DATE

- 24.1. The Board shall determine the Record Date in accordance with the applicable rules of the Central Securities Depository and, for so long as any of the Securities of the Company are listed on the JSE Exchange, the Listings Requirements. **[LR: Sch. 10.15]**
- 24.2. If, at any time, the Board fails to determine a Record Date, subject to the Listings Requirements, the Record Date for the relevant matter is –
- 24.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Security Holders entitled to vote, notice of that Shareholders Meeting;
- 24.2.2. in the case of dividends, having regard to the provisions in clause 41 (*Distributions*), the first permitted Record Date in terms of the Listings Requirements after the later of
- 24.2.2.1. the date of declaration of the dividend; and
- 24.2.2.2. the date on which the dividend becomes unconditional and is confirmed by the Board (to the extent it is subject to any conditions or confirmation); **[LR: Sch. 10.17(b)]** and
- 24.2.3. the date of the action or event, in any other case.
- 24.3. Except where the rules of a Central Securities Depository provide otherwise, the Company must publish a notice of a Record Date for any matter by –
- 24.3.1. delivering a copy to each Security Holder; and
- 24.3.2. posting a conspicuous copy of the notice –
- 24.3.2.1. at its principal office;
- 24.3.2.2. on its website, if it has one; and

24.3.2.3. on any automated system of disseminating information maintained by the JSE.

25. **ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES**

25.1. In this clause 25, reference to “Directors” means only Directors of the Company and not Alternate Directors, unless expressly stated otherwise.

25.2. The minimum number of Directors shall be 5 (five) and the maximum 25 (twenty five). 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.

**[LR: Sch. 10.16(a)]**

25.3. Subject to possible earlier termination in terms of clause 26 (*Disqualification from and Cessation of Office as Director or Alternate Director*), at the Annual General Meeting held in each year, 1/3 (one third) of the Directors (rounded up to the nearest whole number) shall retire by rotation. The rotating Directors so to retire at each Annual General Meeting shall be –

25.3.1. firstly, those Directors appointed in accordance with clause 25.15 and subject to retirement at the Annual General Meeting; and

25.3.2. thereafter, 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. **[LR: Sch. 10.16(g)]**

25.4. A Director retiring by rotation at an Annual General Meeting shall act as a Director throughout the Annual General Meeting at which she/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. No person other than a Director retiring at the Annual General Meeting or recommended by the Directors for election, shall be eligible for election to the office of Director at any Annual General Meeting unless the secretary receives a valid nomination for Directorship in Writing from a Security Holder duly qualified to be Present and vote at Annual General Meetings prior to the date 1 (one) month following the financial year end of the Company (as set out in clause 20 (*Financial Year*)) immediately before the relevant Annual General Meeting. In order to be valid a nomination for Directorship must be accompanied by a notice in Writing signed by the person nominated of her/his willingness to be elected. It is noted that any nominee for Directorship must be approved by the Registrar of Banks to the extent required by the Banks Act. If at any Annual General Meeting, the position of any retiring Director is not filled, she/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 her/his place is filled, unless it shall be determined at such Annual General Meeting (by way of an Ordinary Resolution) not to fill such vacancy. **[LR: Sch. 10.16(g)]**

- 25.5. For as long as any of the Securities of the Company are listed on the JSE Exchange, life directorships and directorships for an indefinite period are not permissible. **[LR: Sch. 10.16(k)]**
- 25.6. In addition to clause 25.3, and unless an earlier date is agreed to by the Board, a Non-Executive Director shall retire at the end of the first Annual General Meeting held after the Non-Executive Director reaches the retirement age determined from time to time by the Board, and an Executive Director shall retire from the Board on the date that he retires as an employee of the Nedbank Group.
- 25.7. In addition to clause 25.3, an Alternate Director's office shall terminate immediately upon the happening of any event which, if she/he were a Director, would cause her/him to cease to hold office in terms of this MOI and upon the Director for whom the Alternate Director stands as an alternate ceasing to be a Director for any reason whatsoever, provided that in the latter case, if the Alternate Director is an alternate for more than one Director, the Alternate Director shall continue to be an alternate for any such remaining Director.
- 25.8. Subject to an appointment by the Board in the case of a vacancy (as contemplated in clause 25.15), each of the Directors and the Alternate Directors shall be elected (which in the case of a vacancy arising shall take place at the next Shareholders Meeting) in accordance with clause 25.12. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing her/him during the Director's/s' absence or inability to act as Director. If a person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, she/he shall have a separate vote, on behalf of each Director she/he is representing in addition to her/his own vote, if any.
- 25.9. There are no general qualifications prescribed by the Company for a person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act and Banks Act. The Board, with the assistance of the nominations committee, must make recommendations to the Security Holders regarding the eligibility of persons nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief *curriculum vitae* of each person standing for election or re-election as a Director at a Shareholders Meeting or the Annual General Meeting, must accompany the notice of the meeting.
- 25.10. Neither a Director nor an Alternate Director shall be obliged to hold any qualification Shares.
- 25.11. Except in terms of clause 25.16, no Director shall be entitled to appoint any person as an Alternate Director to himself/herself, but each Director shall be entitled to nominate an Alternate Director for election by the Shareholders. **[LR: Sch. 10.16(b)]**
- 25.12. In any election of Directors and Alternate Directors, the election is to be conducted as follows –

- 25.12.1. 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
- 25.12.2. in each vote to fill a vacancy –
- 25.12.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 25.12.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 25.13. No person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 25.14. No election of a Director or Alternate Director shall take effect until she/he has delivered to the Company a Written consent to serve.
- 25.15. 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 she/he is elected at such Shareholders Meeting or by Round Robin Resolution adopted by the Shareholders (if not prohibited by the Listings Requirements). **[LR: Sch. 10.16(c)]**
- 25.16. At any time between Shareholders Meetings, a Director who does not have an Alternate Director for her/him shall be entitled to nominate a qualified person as her/his Alternate Director and the Board shall be entitled to fill such vacancy in accordance with clause 25.15, provided that after such appointment at least 50% (fifty percent) of the Alternate Directors will have been elected by the Shareholders and such Alternate Director shall retire from office at the end of the next Shareholders Meeting unless re-elected by the Shareholders.
- 25.17. An Alternate Director, whilst acting in the place of the Director for whom the Alternate Director stands as an alternate, shall exercise and discharge all the duties and functions of the Director she/he represents. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to clause 25.2 as the minimum, the continuing Directors or Director may act only for the purpose of summoning a Shareholders Meeting or filling

vacancies not later than 3 (three) months from the date that the number falls below the minimum. **[LR: Sch. 10.16(d)]**

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

26. **DISQUALIFICATION FROM AND CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

26.1. In this clause 26, reference to “Directors” means only Directors of the Company and does not include Alternate Directors, unless expressly stated otherwise.

26.2. A person shall be ineligible or disqualified from acting as a Director or Alternate Director if –

26.2.1. she/he is ineligible or disqualified as contemplated in the Companies Act (a list of which is contained in Schedule 2 for ease of reference but which do not form part of this MOI other than for purposes of information);

26.2.2. she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;

26.2.3. she/he files a petition for the surrender of her/his estate or an application for an administration order, or if she/he makes any arrangement or composition with her/his creditors generally;

26.2.4. assigns her/his estate for the benefit of her/his creditors, or suspends payment or files a petition for the liquidation of her/his affairs, or compounds generally with her/his creditors;

26.2.5. she/he becomes mentally ill; or

26.2.6. any of the events listed in clauses 26.2.2, 26.2.3, 26.2.4 or 26.2.5 occurred prior to consideration of her/his appointment as Director, and the circumstances continue to exist.

26.3. A Director or Alternate Director shall cease to hold office as such –

26.3.1. immediately after she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director / Alternate 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);



- 26.3.2. when her/his term of office contemplated in clauses 25.3, 25.6 and 25.7 expires;
- 26.3.3. when she/he dies;
- 26.3.4. if there are more than 3 (three) Directors in office and if the Board determines that she/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 / Alternate 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);
- 26.3.5. if she/he is removed by Ordinary Resolution;
- 26.3.6. if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate 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);
- 26.3.7. if she/he is employed by the Company, upon her/his employment contract with the Company being terminated for any reason whatsoever;
- 26.3.8. in the case of a Director (and not an Alternate Director), if she/he is absent from meetings of the Board for 6 (six) consecutive months without leave of the Directors and is not represented at any such meetings during such 6 (six) consecutive months by an Alternate Director and the Directors resolve that the office be vacated, provided that the Board shall have power to grant any Director leave of absence for any or an indefinite period;
- 26.3.9. 1 (one) month, or earlier if permission has been granted by the Board, after she/he has given notice in Writing of her/his intention to resign (subject to the Companies Act);
- 26.3.10. if she/he is removed from office by a resolution passed by the affirmative vote of two-thirds in number of her/his co-Directors (Alternate Directors included if attending the relevant Board meeting), subject to the Companies Act and Regulations; or
- 26.3.11. she/he is otherwise removed in accordance with any provisions of this MOI.

27. **REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES AND EXECUTIVE OFFICE**

- 27.1. In this clause 27, reference to “Directors” means only Directors of the Company and does not include Alternate Directors, unless expressly stated otherwise.
- 27.2. The Directors or Alternate Directors or members of Board committees shall be entitled to be paid such remuneration for their services as Directors or Alternate Directors or members of Board committees as may be approved from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors and Alternate Directors may be paid all their reasonable expenses properly and necessarily incurred by them in and about the business of the Company, and in particular for travelling (including hotels) to and from meetings of the Board, Security Holders and committees, as is determined in compliance with clause 36 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*), by a disinterested quorum of the Board, which may be either in addition to or in substitution for any other remuneration. **[LR: Sch. 10.16(f)]**
- 27.3. A Director or Alternate Director may hold office or be employed in any other capacity in the Company (other than as a Director) as contemplated in clause 30 (*Managing Directors and Executive Office and Delegation*) and in that event, his/her appointment and remuneration in respect of such other office or employment must, in addition to any other approvals required in terms of the Companies Act, be determined, in compliance with clause 36 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*), by a disinterested quorum of the Board, provided that any remuneration for the holding of such office or such employment shall not form part of the Director’s remuneration for their services as Director (even if the Director concerned does not receive any other remuneration for his/her services as Director) unless the payment of such remuneration is also approved by the Shareholders in accordance with clause 27.2. Further, a Director may hold office or be employed by any company controlled by, or itself a Subsidiary of, the Company. Unless otherwise determined by the Board (which determination may only be prospective), any Director or Alternate Director shall not have to account to the Company for any approved profits by virtue of holding such office or employment in respect of the Company or any other company controlled, by or a Subsidiary of, the Company. **[LR: Sch. 10.16(e)]**

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

- 28.1. The Board’s powers to provide direct or indirect financial assistance as contemplated in section 45(2) are not limited in any manner.
- 28.2. 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 –

28.2.1. 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 percent) of the Company's net worth at the time of the resolution; or

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

## 29. GENERAL POWERS AND DUTIES OF DIRECTORS

29.1. Subject to any provision to the contrary of the Companies Act, the Listings Requirements (for so long as any of the Company's Securities are listed on the JSE Exchange) and this MOI, the powers of management granted to the Board in terms of section 66(1) of the Companies Act are limited in that the powers of management granted to the Directors is subject to, and must be consistent with, any resolution passed at any Shareholders Meeting, provided that no resolution passed by the Company in a Shareholders Meeting shall, however, invalidate any prior act of the Directors, which would have been valid, if such resolution had not been passed.

29.2. The Board shall manage the Company having due regard to the provisions of the Banks Act.

29.3. Subject to compliance with clause 27 (*Remuneration of Directors and Members of Board Committees and Executive Office*), the applicable requirements of the Companies Act and the Listings Requirements (including Shareholder approval where required) the Board may –

29.3.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

29.3.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or office bearers or ex-employees or ex-office bearers (including Directors or ex-Directors) of the Company, or of any company which is or was a Subsidiary of the Company or is or was in any way allied to or associated with it or any such Subsidiary, and the wives, widows, families and dependants of such persons.

### 30. **MANAGING DIRECTORS AND EXECUTIVE OFFICE AND DELEGATION**

- 30.1. The Board must (complying with clause 27.3 and clause 36 (*Personal Financial Interests of Directors, Alternate Directors and Members of Board Committees*)) appoint a chief executive officer and an executive financial Director.
- 30.2. The Board may (in complying with clause 27.3, where applicable, and clause 36 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*)) from time to time appoint one or more of the Directors as employees to the office of managing Director, joint managing Directors or to be the holder of any other executive employment or office. Any such executive appointment may be at such remuneration (whether by way of salary or commission, or participation in profits or otherwise) and generally on such terms the Board may think fit, and it may be made a term of her/his appointment that she/he be paid a pension, gratuity or other benefit on her/his retirement from office, provided that if such remuneration is for the Director's services in his/her capacity as a Director (as opposed to his/her employment or other office), then approval by way of Special Resolution in accordance with clause 27.2 is required. Subject to any applicable contract and law, the Board may terminate any such executive appointment.
- 30.3. Insofar as is permitted under the Companies Act, the Board may from time to time entrust to and confer upon a managing Director, or manager for the time being, such of the powers vested in the Directors as they 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 they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A managing Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.
- 30.4. Insofar as is permissible under the Companies Act and the Listings Requirements (if applicable, having regard to clause 4 (*Listing of Securities on the JSE Exchange*)), the Directors shall have the power to delegate to any such Person or Persons any of their powers and discretions and to give to any such Person or Persons power of sub-delegation.
- 30.5. Subject to compliance with section 45 of the Companies Act regulating financial assistance, clause 27 (*Remuneration of Directors and Members of Board Committees and Executive Office*) and clause 36 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*), where relevant, the Board may authorise the payment of donations by the Company to any pension fund established by the Company or any of its Subsidiary companies and to such religious, charitable, public or other bodies, clubs, funds or

associations or Persons as may seem to them advisable or desirable in the interests of the Company.

31. **BOARD COMMITTEES**

- 31.1. The Directors may appoint any number of Board committees and, insofar as is permissible under the Companies Act, delegate to such committees any authority of the Board. The Directors must appoint such Board committees as are required in terms of the Listings Requirements, currently being a remuneration committee, a risk committee and a nominations committee, the composition of which must also comply with the relevant Listings Requirements. Subject to any other applicable requirements, Board committees may include persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors, but such persons shall not be able to vote.
- 31.2. 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.
- 31.3. 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 and the Banks Act.
- 31.4. A member of a Board committee shall cease to hold office as such immediately after she/he becomes Ineligible or Disqualified or is removed by way of a resolution of the Board.
- 31.5. Committees of the Board may consult with or receive advice from any Person.
- 31.6. Subject to the Companies Act and the mandate given by the Board, 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 Directors, and in compliance with the Companies Act.
- 31.7. The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company in accordance with the Listings Requirements, for so long as the Securities of the Company are listed on the JSE Exchange. **[LR 3.84(a)]**

32. **SOCIAL AND ETHICS COMMITTEE**

- 32.1. The Board shall appoint a social and ethics committee in compliance with the Regulations, unless the Company:

32.1.1. is a Subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required on behalf of the Company; or

32.1.2. has been exempted in terms of the Companies Act from having to have a social and ethics committee.

32.2. If a social and ethics committee is appointed, the Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the cost or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

### 33. **STATUTORY RECORDS**

33.1. Any minutes of any meetings of the Directors or of the Company, and of Round Robin Resolutions, if purporting to be signed or executed by the chairperson of such meeting, or by some person present thereat and appointed by the Directors to sign or execute the same in her/his place, or by the chairperson of the next succeeding meeting of the Directors, or by any 2 (two) Directors, shall be receivable as evidence of the matters stated in such minutes.

33.2. Any extract from such minutes, or extract from any Round Robin Resolution, if signed or executed by any Director or by the secretary of the Company or by any duly authorised person acting in the place of the secretary, shall be receivable as evidence of the matters stated in such minutes or extracts.

### 34. **CAPITALISATION**

34.1. The Company in Shareholders Meeting on recommendation of the Directors, or the Directors, may, without limitation to its powers, at any time and from time to time, to the extent permissible in law, pass a resolution to capitalise any amounts or funds including:

34.1.1. any sum forming part of the undivided profits standing to the credit of the Company's reserve fund; or

34.1.2. any sum in the hands of the Company and available for distribution as a dividend and not required for payment or provision of dividends on preference Shares; or

34.1.3. any sum carried to reserve as a result of a sale or revaluation of the assets of the Company or part thereof; or

34.1.4. any sum received by way of premium on the issue of any shares or debentures of the Company.

35. **RESERVE FUND**

The Directors may at any time set aside such sum as they think proper as a reserve fund or an addition thereto. The Directors may divide the reserve fund into such special funds as they think fit and consolidate such special accounts (or any part thereof) into one or more accounts, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the same upon such investments as they may elect, without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not. The reserve fund may be used for any purpose determined by the Board, subject to the Banks Act (and in particular section 70 thereof).

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

36.1. For the purposes of this clause 36, "Director" includes an Alternate Director, a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

36.2. Subject to the Companies Act, the rest of this clause shall not apply to any Director in respect of the following matters and a Director may (after disclosure of his/her interest) attend, participate in, and vote at a Board meeting notwithstanding the Director having a conflict of interests in respect of a decision that may generally affect -

36.2.1. all of the Directors of the Company in their capacity as Directors; or

36.2.2. 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; or

36.2.3. in respect of a proposal to remove that Director from office as contemplated in section 71 of the Companies Act.

36.3. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, 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.

36.4. 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 only 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.

- 36.5. If a Director (whilst the circumstances contemplated in clause 36.2 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 -
- 36.5.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
  - 36.5.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
  - 36.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
  - 36.5.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 36.5.2 or 36.5.3;
  - 36.5.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 36.5.2 or 36.5.3;
  - 36.5.6. while absent from the meeting in terms of this clause 36.5 –
    - 36.5.6.1. 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
    - 36.5.6.2. 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
  - 36.5.7. 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.
- 36.6. 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 Security Holders entitled to vote (if the matter is being referred to them as a result of the Board not being competent to deal with the matter), 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.
- 36.7. A decision by the Board, or a transaction or agreement approved by the Board, or by the Security Holders (if the matter was referred to them as a result of the Board not being



competent to deal with the matter), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –

36.7.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 36; or

36.7.2. 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.

36.8. Notwithstanding anything in this clause 36, the Company and the Directors shall comply with the provisions of the Companies Act with regard to the disclosure of the interests in contracts or proposed contracts. Subject to any required disclosure and approval -

36.8.1. no Director or intending Director shall be disqualified by her/his office from contracting with the Company, either with regard to such office or as vendor, purchaser or otherwise;

36.8.2. shall any such duly approved contract, in which any Director shall be in any way interested, be or be liable to be avoided solely on the basis that it is concluded with a Director; nor

36.8.3. shall any Director so contracting or being so interested in a duly approved contract be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established.

## 37. **PROCEEDINGS OF DIRECTORS**

37.1. The chairperson or the secretary of the Company or any Director authorised by the Board –

37.1.1. may, at any time, summon a meeting of the Directors; and

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

37.2. 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 to those who are absent from the Republic for the time being.

37.3. If all of the Directors –

37.3.1. acknowledge actual receipt of the notice;

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

37.3.3. 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.

37.4. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

37.5. Unless otherwise resolved by the Board, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A Board meeting may be conducted by Electronic Communication and/or one or more Directors may participate in a Board meeting 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.

37.6. The quorum for a Board meeting is a majority of Directors.

37.7. Subject to clause 37.8, the Board may elect a chairperson of their meetings, and a deputy chairman and/or any vice chairman, and determine the period for which they, respectively, are to hold office (not exceeding 1 (one) year). 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. The Directors may at any time revoke such appointment. **[LR: Sch. 10.16(i)]**

37.8. The chairperson elected by the Board (as contemplated in clause 37.7) shall not be - **[BA Reg41(3) and (4)]**

37.8.1. an employee of the Company, or any Bank in respect of which the Company is registered as a Controlling Company; or

37.8.2. a member of the Audit Committee of the Company, or any Bank in respect of which the Company is registered as a Controlling Company.

37.9. 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.

37.10. In the case of a tied vote, the chairperson shall have a second or casting vote in addition to her/his deliberative vote, provided that if the quorum of Directors is 2 (two), the chairperson shall not be permitted to have a casting vote if only 2 (two) Directors are present at the meeting of Directors. **[LR: Sch. 10.16(i)]**

- 37.11. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 37.11.1. any declaration given by notice or made by a Director as required by clause 36 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*); and
  - 37.11.2. every resolution adopted by the Board.
- 37.12. Resolutions adopted by the Board –
- 37.12.1. must be dated and sequentially numbered; and
  - 37.12.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 37.13. 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 the adoption of that resolution, as the case may be.
- 37.14. A resolution of Directors (a **“Round Robin Resolution”**) shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that -
- 37.14.1. each Director has received notice of the matter to be decided upon; and
  - 37.14.2. such resolution is adopted by way of Written consent, given in person or by Electronic Communication, of a majority of 75% (seventy five percent) of the Directors. **[LR: Sch. 10.16(j)]**
- 37.15. Such a Round Robin Resolution shall be deemed to have been passed on the date upon which it was signed or executed by the last Director required to sign or execute it. Where it states a date as being the date of its signature by any Director, that document shall be *prima facie* evidence that it was signed or executed by that Director on that date. **[LR: Sch. 10.16(j)]**
- 37.16. A meeting of the Directors at which the quorum requirements are met shall be competent to exercise all or any of the authorities, powers and discretion, provided by or under this MOI or the Regulations, of the Company for the time being vested in or exercisable by the Directors generally.

## 38. **PRESCRIBED OFFICERS**

- 38.1. No person shall hold office as a Prescribed Officer, if she/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 her/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 her/him being a Prescribed Officer, nor act in such office, nor undertake any such functions, unless the order of court so permits.

38.2. A Prescribed Officer shall cease to hold office as such immediately after she/he becomes Ineligible or Disqualified in terms of the Companies Act.

## 39. INDEMNITY

39.1. For the purposes of this clause 39, "Director" includes:

39.1.1. a former Director and an Alternate Director; and

39.1.2. a Prescribed Officer or a person who is a member of a committee of the Board or of the Audit Committee,

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

39.2. The Company may –

39.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence, unless the conviction was based on strict liability;

39.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

39.2.3. directly or indirectly indemnify a Director for –

39.2.3.1. any liability, other than in respect of –

39.2.3.1.1. any liability arising in terms of sections 77(3)(a), (b) or (c) of the Companies Act, or from wilful misconduct, or wilful breach of trust on the part of the Director; or

39.2.3.1.2. any fine contemplated in clause 39.2.1;

39.2.3.2. any expenses contemplated in clause 39.2.2, irrespective of whether it has advanced those expenses, if the proceedings –

39.2.3.2.1. are abandoned or exculpate the Director; or

39.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of the Companies Act.

39.3. The Company may purchase insurance to protect –

39.3.1. a Director against any liability or expenses permitted in terms of the Companies Act ( section 78(7)(a)); or

39.3.2. the Company against any contingency including but not limited to –

39.3.2.1. any expenses –

39.3.2.1.1. that the Company is permitted to advance in accordance with clause 39.2.2; or

39.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 39.2.3.2; or

39.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 39.2.3.1.

39.4. The Company is entitled to claim restitution from a Director or a Director 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 the Companies Act.

#### 40. **APPOINTMENT OF SECRETARY**

40.1. The Board must appoint the secretary from time to time, who –

40.1.1. shall be a permanent resident of the Republic and remain so while serving as secretary; and

40.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and

40.1.3. may be a Juristic Person, subject to the following –

40.1.3.1. every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified; and

40.1.3.2. at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 40.1.1 and 40.1.2.

- 40.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 40.1.3.
- 40.3. If at any time a Juristic Person or partnership holds office as company secretary of the Company –
- 40.3.1. the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 40.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
  - 40.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 40.1.3, until the Company has received a notice contemplated in clause 40.3.1; and
  - 40.3.3. any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 40.1.3 at the time of that action.
- 40.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice, or less than that with the prior Written approval of the Board.
- 40.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

#### 41. **DISTRIBUTIONS**

- 41.1. Subject to clause 41.10 in regard to a Distribution of capital, and the restrictions in the Banks Act (particularly section 70), the Company may make Distributions from time to time taking into account the rights of the different classes of Shareholders, provided that
- 41.1.1. such Distribution –

- 41.1.1.1. is pursuant to an existing legal obligation of the Company, or a court order; or
- 41.1.1.2. has been authorised by the Board, by resolution;
- 41.1.2. such Distribution shall be made in accordance with the Listings Requirements, which at the time of adoption of this clause require sanction by Ordinary Resolution, except in the case of –
  - 41.1.2.1. a *pro rata* payment to all Shareholders of a particular class of Shares (except a Distribution which results in Shareholders holding Shares in an unlisted entity which requires the sanction of an Ordinary Resolution); or
  - 41.1.2.2. cash dividends paid out of retained income; or
  - 41.1.2.3. capitalisation issues or scrip dividends (as defined in the Listings Requirements); **[LR: 5.85 & Sch. 10.7]**
- 41.1.3. such Distribution is authorised in accordance with section 48 of the Companies Act in respect of the repurchase of Shares by the Company;
- 41.1.4. it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;
- 41.1.5. the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;
- 41.1.6. such Distribution is fully completed within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 41.1.5, failing which it must again comply with the requirements of clauses 41.1.4 and 41.1.5; and
- 41.1.7. if it is a Distribution of capital, that the Company shall not oblige the recipient to subscribe such capital again. **[LR: Sch. 10.8]**
- 41.2. Before incurring any debt or other obligation for the benefit of any Security Holders, the Company must comply with the requirements in clause 41.1.
- 41.3. Dividends declared by the Board to the Ordinary Shareholders shall be distributed *pro rata* to the number of Ordinary Shares held by each Ordinary Shareholder.

- 41.4. If a Security Holder has provided the Company with banking details (together with such proof that the account is the Security Holder's account, as may be required by the Board) for the purpose of the payment of any Distributions due by the Company to the Security Holder in respect of any Securities held or owned by the Security Holder, then the Company may (but shall not be obliged to do so) pay such Distributions due to the Security Holder by way of an electronic transfer of the funds into the bank account provided. Where a Security Holder has provided bank account details to the Company for the purpose of payments in respect of Securities held or owned by the Security Holder, then:
- 41.4.1. the Security Holder shall be deemed to warrant that the details are true, correct and complete and hereby indemnifies and holds the Company harmless against any claims, losses, damages or expenses incurred or suffered as a result of or in connection with any breach of the warranty; and
  - 41.4.2. any electronic transfer of funds by the Company into the provided bank account shall be deemed to be a payment by the Company to the Security Holder and the Company shall be deemed to have discharged the Company's liability in respect of any Distribution or other payment due to the holder or owner of the Securities upon transfer of an amount equal to the Distribution or other payment to the Security Holder into the provided bank account.
- 41.5. The Board may require all the Security Holders of a particular class of Securities to provide the details of a bank account with a recognised bank (together with such proof that the account is the Security Holder's account, as may be required by the Board) for the purposes of paying Distributions and any other payments due in respect of the relevant class of Security Holder and may withhold payment of any Distribution until such time as the required details and proof have been provided.
- 41.6. No notice of change of address or change in banking details, or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 41.1, 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.
- 41.7. All unclaimed dividends, or other Distributions as contemplated in this clause, shall not bear interest against the Company and may be invested or otherwise be made use of by the Directors for the benefit of the Company until claimed, provided that all monies due to Shareholders must be held by the Company in trust indefinitely, but subject to the laws of prescription. Further, any such monies held in trust in respect of which the claims have not prescribed, shall be paid into the Guardians fund upon the Company's winding-up or deregistration. Any monies that were due to Security Holders remaining unclaimed in respect of which the claims of the relevant Security Holders have prescribed shall be forfeited by



resolution of the Directors for the benefit of the Company and may be dealt with by the Directors or its assigns as they deem fit. **[LR: Sch. 10.17(c)]**

- 41.8. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.
- 41.9. The Directors may resolve that any Distribution or other payment made to all or any Security Holders whose registered addresses or bank accounts are outside the Republic or who have given Written instructions requesting payment at addresses or into bank accounts outside the Republic, shall (subject to any Exchange Control Regulations in force at that time) be paid in such other currency or currencies as may be stipulated by the Directors. The Directors may also stipulate the date (hereinafter referred to as "the **Currency Conversion Date**") upon which, and a provisional rate of exchange at which, the currency of the Republic shall be converted into such other currency or currencies, provided that the currency conversion shall be within a period of 30 (thirty) days prior to the date of payment. If, in the opinion of the Directors, there is no material difference between the rate(s) of exchange ruling on the Currency Conversion Date and the provisional rate(s) of exchange stipulated by the Directors then the currency of the Republic shall be converted at such provisional rate(s). If, in the opinion of the Directors, there is a material difference, then the currency of the Republic shall be converted into such other currency or currencies at the rate(s) of exchange ruling on the Currency Conversion Date, or at a rate or rates of exchange which, in the opinion of the Directors, is/are not materially different. Any subsequent rise or fall of rate(s) of exchange determined as above shall be disregarded.
- 41.10. Subject to the provisions of the Companies Act, the provisions of the Banks Act, the prior written approval of the Registrar of Banks and the Listings Requirements, the Company may from time to time, in any manner whatsoever, reduce its issued Share capital, stated capital, any Share premium account and any capital redemption reserve fund and, in particular, without derogating from the generality of the power hereby conferred, may cancel any paid-up Share capital which has been lost or is not represented by available assets or may pay off any paid-up Share capital which is in excess of the requirements of the Company. **[LR: Sch. 10.9(c)]**
- 41.11. The Company may cease, subject to the provisions of this MOI, to send any cheque, warrant or order by post, or by Electronic Communication, for any Distribution on Securities which is normally paid in that manner, if in respect of at least 3 (three) consecutive Distributions payable on those Securities the cheque, warrant, or order has been returned undelivered or remains uncashed, but shall recommence sending cheques, warrants or orders in respect of Distributions payable on those Securities if the Security Holder or Person entitled by

transmission claims the arrears of the Distributions and does not inform or instruct the Company to pay future Distributions in some other way.

#### 42. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *ejusdem generis*) any other document (whether Material or immaterial) sent through the post, Electronic Communication, or any other manner, to the registered address of any Security Holder, or to any other address requested by the Security Holder.

#### 43. **NOTICES**

43.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Security Holder or holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by telegram, telex, fax, Electronic Communication or any other method permissible under the Companies Act. The Company must give notice of any Shareholders Meeting to each Person entitled to vote at such Shareholders Meeting who has elected to receive such notice, other than proxies. **[LR: Sch. 10.11(e)]**

43.2. Any Security Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –

43.2.1. 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

43.2.2. confirms that same can be conveniently printed by the Security Holder / holder of Beneficial Interests within a reasonable time and at a reasonable cost.

43.3. Without limitation to clause 43.1 or clause 43.2, the Company may publish, provide and/or delivers notice and/or documents in the manner contemplated in section 6(10) and section 6(11) of the Companies Act.

43.4. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall, where applicable to a method of delivery regulated by Table CR3, be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the Regulations (which is included as **Schedule 3** for ease of reference but which does not form part of this MOI other than for purposes of information).

43.5. 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, the method of calculation of the period as set out in clause 1.14 shall be applied, in respect of both Business Days and non-Business Days.

- 43.6. Subject to the Regulations, any notices sent by the Company by non-registered post shall be deemed to have been received on the 7<sup>th</sup> (seventh) day after which the letter, envelope or wrapper containing the same is posted and, in proving such service, it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and posted.
- 43.7. Notices to Shareholders shall, to the extent required, also be served on the Registrar of Banks and the JSE in any permitted manner. **[LR: Sch. 10.11(f)]**
- 43.8. A Security Holder or Person entitled to Securities (or her/his 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 Security Holder or Person entitled to the Securities, notwithstanding that the Security Holder or Person entitled to Securities may then have been deceased 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 not having been 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.
- 43.9. If joint Security 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 Securities Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Security Holders of, or Persons entitled to, or otherwise interested in, the Securities.
- 43.10. As regards the signature of an Electronic Communication by a Security 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 Security Holder indicating in the Electronic Communication that it is the Security Holder's intention to use the Electronic Communication as the medium to indicate the Security Holder's approval of the information in, or the Security Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Security Holder sending it in the body of the Electronic Communication.

43.11. Every Person who, by operation of law, transfer, or other means whatsoever, becomes entitled to any Security, shall be bound by every notice in respect of such Security, which, prior to her/his/its name and address being entered on the Securities Register, would have been given to the Person from whom she/he/it derives her/his/its title to such Security.

#### 44. **REPURCHASES OF SECURITIES**

44.1. The Company is authorised to repurchase its own Securities, subject to compliance with clause 41 (*Distributions*) of this MOI, section 46 and section 48 of the Companies Act, the Listings Requirements, and the Banks Act (particularly section 70 thereof), and without limitation, including any Shares in any Related Company. **[LR: Sch. 10.9(b)]**

44.2. Any Subsidiary of the Company, other than a Bank, shall be entitled to acquire Shares in the Company subject to the limitations in the Companies Act.

#### 45. **RIGHT TO EXPROPRIATE SECURITIES**

Subject to the requirements of the Companies Act, the Listings Requirements and the Banks Act, any Security Holders, third party and/or the Company shall be entitled at any time and from time to time to (with the requisite approvals) expropriate the Securities of any Security Holders for purposes of the implementation of a scheme of arrangement as contemplated in section 114 of the Companies Act, an odd-lot offer (as contemplated in clause 12 (*Odd Lot Offers*)), a Merger or Amalgamation as contemplated in section 113 of the Companies Act, or a “squeeze out” in terms of section 124 of the Companies Act.

#### 46. **WINDING-UP**

46.1. Subject to the powers of the Liquidator in law, if the Company is wound-up whether voluntarily or compulsorily the assets remaining after payment of the liabilities of the Company and the costs of winding-up (including liquidation) shall be distributed amongst the Ordinary Shareholders in proportion to the number of fully paid up Shares respectively held by them, subject to the rights of any Security Holders to whom Securities have been issued on special conditions or with preferential rights in the event of the winding-up of the Company.

46.2. In a winding-up, the whole any part of the residual assets of the Company (whether or not those assets consist of property of one kind or different kinds and including any Shares or Securities held in any other companies) may, with the sanction of a Special Resolution, be paid to the Shareholders *in specie* or kind, or may, with the same sanction, be vested in trustees for the benefit of the Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

#### 47. PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH CUMULATIVE REDEEMABLE PREFERENCE SHARES

The preferences, rights, limitations and other terms set out in this clause **47** shall be associated with the **1 000 000** cumulative redeemable preference shares of the Issuer referred to in clause 47.1.43.

##### 47.1. Definitions

In this clause **47**, unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall have corresponding meanings:

- 47.1.1. **Accumulated Preference Dividends** bears the meaning specified in clause 47.5.4.1 (*Accumulated Preference Dividends*);
- 47.1.2. **Additional Amounts** bears the meaning specified in clause 47.7.1;
- 47.1.3. **Additional Preference Dividend** bears the meaning specified in clause 47.5.3;
- 47.1.4. **Administration Agent** means the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche or Class of Preference Shares, another entity as Administration Agent, in which event that other entity shall act as a Administration Agent in respect of that particular Tranche or Class of Preference Shares;
- 47.1.5. **Applicable Law** means any law (including statutory, common or customary law), statute, constitution, decree, treaty, regulation, judgment, directive, by-law, order, other legislative measure, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court;
- 47.1.6. **Applicable Procedures** the rules and operating procedures from time to time of the Administration Agent;
- 47.1.7. **Applicable Redemption Amount** means in relation to a Tranche of Preference Shares, the Final Redemption Amount, the Early Redemption Amount or such other amount in the nature of a redemption amount, as appropriate, as may be specified in, or determined in accordance with the provisions of, the applicable Authorising Resolution relating to that Tranche;
- 47.1.8. **Applicable Redemption Date** in relation to a Tranche of Preference Shares, the Final Redemption Date or the relevant Early Redemption Date, as applicable;

- 47.1.9. **Authorisation** means any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, registration, agreement, certificate, permit and/or authority or any exemption from any of the aforesaid, by, with **or from any** authority;
- 47.1.10. **Authorising Resolution** means in respect of each Tranche of Preference Shares, a resolution of the Board:
- 47.1.10.1. determining a distinguishing title for the Preference Shares in that Tranche of Preference Shares;
- 47.1.10.2. determining the Commercial Terms of that Tranche of Preference Shares; and
- 47.1.10.3. authorising the issue of that Tranche of Preference Shares;
- 47.1.11. **Banks Act** means the Banks Act, 1990;
- 47.1.12. **Board** means the board of directors of the Issuer from time to time;
- 47.1.13. **Business Day** means any day (other than a Saturday, Sunday or an official public holiday in South Africa within the meaning of the Public Holidays Act, 1994);
- 47.1.14. **Class** means a Tranche of Preference Shares together with any further Tranche or Tranches of Preference Shares which are:
- 47.1.14.1. expressed in the Authorising Resolution to form part of the same Class as another Tranche of Preference Shares, and
- 47.1.14.2. identical in all respects (including as to listing) except for their respective Issue Dates and/or Issue Prices;
- 47.1.15. **Certificated Shares** means Preference Shares represented by a paper share certificate or other physical document(s) of title, which shares have not been surrendered for Dematerialization;
- 47.1.16. **Class of Preference Shareholder** means the holders of a Class of Preference Shares or, where appropriate, the holders of different Classes of Preference Shares;
- 47.1.17. **Commercial Terms** means in respect of each Tranche of Preference Shares:
- 47.1.17.1. the Issue Date;

- 47.1.17.2. the Issue Price;
  - 47.1.17.3. the Dividend Rate;
  - 47.1.17.4. the Scheduled Dividend Date;
  - 47.1.17.5. the Final Redemption Date;
  - 47.1.17.6. details of the Administration Agent;
  - 47.1.17.7. applicability of Additional Preference Dividends; and
  - 47.1.17.8. applicability of Penalty Preference Dividends;
- 47.1.18. **Deliver** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 43 (*Notices*) and the Companies Act;
- 47.1.19. **Dematerialised Shares** means Preference Shares which have been dematerialised;
- 47.1.20. **Dematerialisation** the process by which certificated shares are converted to or held in an electronic form as uncertificated shares and recorded in the subregister of Preference Shareholders maintained by the Administration Agent;
- 47.1.21. **Dividend Date** means, for the purposes of the calculation of the Scheduled Preference Dividends in respect of each Preference Share, the last day of each calendar month occurring after the Subscription Date of such Preference Share;
- 47.1.22. **Dividend Payment Date** means each Scheduled Dividend Date, each Additional Dividend Date, each Penalty Dividend Date and each Final Dividend Date;
- 47.1.23. **Dividend Period** means, in respect of each Preference Share and for the purposes of the calculation of the Scheduled Preference Dividends in respect of such Preference Share, each period commencing on a Dividend Date and ending on the next Dividend Date (both days inclusive); provided that:
- 47.1.23.1. the first Dividend Period shall be the period from the Subscription Date of such Preference Share until the first Dividend Date occurring thereafter (both days inclusive); and
  - 47.1.23.2. the final Dividend Period shall be the period from the Dividend Date immediately preceding the Final Dividend Date until the Final Dividend Date (both days inclusive);

- 47.1.24. **Dividend Rate** means in relation to a Tranche of Preference Shares, the dividend rate as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.1.25. **Dividends Tax** means the Dividends Tax as contemplated in, Part VIII of Chapter II of the Income Tax Act;
- 47.1.26. **Early Redemption Date** means, in relation to a Preference Share:
- 47.1.26.1. a Voluntary Redemption Date; or
- 47.1.26.2. the date on which the Issuer is obliged to redeem that Preference Share in accordance with clause 47.9.7 (*Consequences of Redemption Events*);
- 47.1.27. **Early Redemption Notice** bears the meaning specified in clause 47.9.7 (*Consequences of Redemption Events*);
- 47.1.28. **Final Dividend Date** means, in relation to any Preference Share, the date on which it is redeemed by the Issuer;
- 47.1.29. **Final Redemption Amount** means in relation to a Tranche of Preference Shares, the amount payable in respect of each Preference Share in the Tranche upon final redemption thereof, as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.1.30. **Final Redemption Date** means in relation to a Tranche of Preference Shares, the date as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.1.31. **Issue Date** means, in respect of each Preference Share, the date on which the Issuer issues that Preference Share to the Subscribers;
- 47.1.32. **Issuer** means the Company;
- 47.1.33. **Issue Price** means, in relation to a Preference Share, the price at which such Preference Share is issued, as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.1.34. **Other Shares** means any shares of any class of the Issuer (other than the Preference Shares);
- 47.1.35. **Outstanding Preference Shares Obligations** means, at any time and without double counting, an amount equal to the aggregate of:
- 47.1.35.1. the Issue Price of each Unredeemed Preference Share at that time;



- 47.1.35.2. any outstanding Scheduled Preference Dividends at that time;
- 47.1.35.3. any outstanding Additional Preference Dividends at that time;
- 47.1.35.4. any Penalty Preference Dividends at that time;
- 47.1.35.5. any Additional Amounts; and
- 47.1.35.6. any other amount due and payable and unpaid by the Issuer in accordance with the Preference Share Terms at that time;
- 47.1.36. **Payment Day** means any day which is a Business Day and upon which a payment is due by the Issuer in respect of a Tranche of Preference Shares;
- 47.1.37. **Person** means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;
- 47.1.38. **Penalty Preference Dividends** has the meaning specified in clause 47.5.2 (*Penalty Preference Dividends*);
- 47.1.39. **Penalty Rate** means the Dividend Rate plus 2% (two percent);
- 47.1.40. **Preference Dividends** means the Additional Preference Dividends, the Penalty Preference Dividends, the Scheduled Preference Dividends and Accumulated Preference Dividends;
- 47.1.41. **Preference Shareholder** means a registered holder of Preference Shares as recorded in the Preference Share Register and **Preference Shareholders** means, as the context requires, all of them;
- 47.1.42. **Preference Share Register** means the register of Preference Shareholders of the Issuer;
- 47.1.43. **Preference Shares** means cumulative redeemable non-participating preference shares of the Issuer issued or to be issued by the Issuer, the terms of which are set out in these Preference Share Terms and the applicable Authorising Resolution, and **Preference Share** means, as the context requires, any one of them;
- 47.1.44. **Preference Share Terms** means the preferences, rights, limitations, privileges and other terms of the Preference Shares as set out in this clause 47;
- 47.1.45. **R or Rand** means the lawful currency of South Africa;

- 47.1.46. **Redemption Amount** means, in respect of each Preference Share, an amount equal to its Issue Price;
- 47.1.47. **Redemption Date** means, in relation to a Preference Share, the Early Redemption Date or the Final Redemption Date (as applicable);
- 47.1.48. **Redemption Event** means any one or more of the events, circumstances or occurrences specified as such in clause 47.9.6 (*Redemption Events*);
- 47.1.49. **Representative** means a Person duly authorised to act on behalf of a Preference Shareholder, who may be regarded by the Issuer, the Administration Agent (all acting in good faith) as being duly authorised based upon the tacit or express representation thereof by such Representative, in the absence of express notice to the contrary from such Preference Shareholder;
- 47.1.50. **Scheduled Dividend Date** means in relation to a Tranche of Preference Shares, the date as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.1.51. **Scheduled Preference Dividend** bears the meaning specified in clause 47.5.1.1;
- 47.1.52. **South Africa** means the Republic of South Africa;
- 47.1.53. **Subscription Date** means, in respect of each Preference Share, the date on which the Issue Price is paid by the holder of such Preference Shares in accordance with these Preference Share Terms and the Applicable Procedures;
- 47.1.54. **Special Resolution** means a resolution adopted with the support of at least a 75% (seventy five percent) majority of the voting rights exercised on that resolution;
- 47.1.55. **Specified Office** means the registered address of the Issuer or the Administration Agent, as the case may be, as specified in the Authorising Resolution or such other address as the Issuer or the relevant agent, as the case may be, may specify by notice to the Preference Shareholders which change of address shall in each case be notified to the Preference Shareholders in accordance with clause 43 (*Notices*);
- 47.1.56. **Tax** means all and any taxes and levies of whatever nature, including income tax, capital gains tax, dividend tax, VAT, value extraction tax, stamp duties, STT, levies, assessments, imposts, deductions, charges and withholdings whatsoever

in terms of any tax legislation, and includes all penalties, fines, additional tax or interest payable as a consequence of any failure or delay in paying any Taxes;

- 47.1.57. **Tranche** means in relation to any particular Class of Preference Shares, all Preference Shares which are identical in all respects and in respect of which the same terms and conditions apply;
- 47.1.58. **Transfer Form** means the written form for the transfer of a Preference Share, in the form approved by the Administration Agent and signed by the transferor and transferee;
- 47.1.59. **Unredeemed Preference Shares** means, at any time, any Preference Shares which have not been redeemed by the Issuer at that time in accordance with the Preference Share Terms and the Authorising Resolution;
- 47.1.60. **Voluntary Redemption Date** bears the meaning specified in clause 47.9.2.1.1.2; and
- 47.1.61. **Voluntary Redemption Notice** bears the meaning specified in clause 47.9.2.1.1.

## 47.2. Interpretation

- 47.2.1. In these Preference Share Terms:
- 47.2.1.1. if an expression is stated in clause 47.1 (*Definitions*) to have the meaning given in the applicable Authorising Resolution, but the applicable Authorising Resolution gives no such meaning or specifies that such expression is “not applicable” then such expression is not applicable to the relevant Tranche of Preference Shares;
- 47.2.1.2. any reference to any statute, regulation or other legislation will be a reference to that statute, regulation or other legislation as at the Issue Date and as amended, re-enacted or replaced and substituted from time to time;
- 47.2.1.3. any reference to “Currency” or “currency” means the lawful currency from time to time of a country.
- 47.2.2. Unless inconsistent with the context or save where the contrary is expressly specified in the Preference Share Terms:
- 47.2.2.1. words denoting the singular only will include the plural also and vice versa, words denoting one gender only will include the other genders

and words denoting persons only will include firms and corporations and vice versa;

- 47.2.2.2. the use of the word “including” followed by a specific example/s will not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule will not be applied in the interpretation of such general wording or such specific example/s. Such references to “including” and “in particular” will not be construed restrictively but will mean “including, without prejudice to the generality of the foregoing” and “in particular, but without prejudice to the generality of the foregoing” respectively;
  - 47.2.2.3. any reference to days (other than a reference to Business Days), months or years will be a reference to calendar days, months or years, as the case may be;
  - 47.2.2.4. subject to clause 47.10.6, where any number of days is to be calculated from a particular day, such number shall be calculated as inclusive of the first day and exclusive of the last day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the immediately preceding day which is a Business Day.
  - 47.2.2.5. If any provision in a definition in the Preference Share Terms is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of the Preference Share Terms.
- 47.2.3. Headings and sub-headings in the Preference Share Terms are inserted for convenience only.
- 47.2.3.1. Where any term is defined within a particular clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in the Preference Share Terms.
  - 47.2.3.2. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof shall not be applied in the interpretation of the Preference Share Terms.

### 47.3. Issue of Preference Shares

Each Tranche of Preference Shares will, subject to clause 47.20 (*Preference Shares and the Companies Act*):

- 47.3.1. be redeemable and be issued with an Applicable Redemption Date which falls more than three years after the Issue Date, as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.3.2. be issued as fully paid up shares in the Issuer;
- 47.3.3. be issued in accordance with the Companies Act and the Issuer's Memorandum of Incorporation;
- 47.3.4. be issued at such Issue Price as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.3.5. accrue at a Dividend Rate as may be determined by the Issuer in the applicable Authorising Resolution;
- 47.3.6. be cumulative; and
- 47.3.7. have the ranking set out in clause 47.4 (*Ranking*).

#### 47.4. Ranking

##### 47.4.1. The Preference Shares rank:

###### 47.4.1.1. equally among themselves with respect to:

47.4.1.1.1. the payment of dividends by the Issuer;  
and

47.4.1.1.2. the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise;

###### 47.4.1.2. in priority to the rights of all Other Shares with respect to:

47.4.1.2.1. the payment of dividends by the Issuer;  
and

47.4.1.2.2. the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise.

47.4.2. The Preference Shares do not confer on the Preference Shareholders the right to participate in the profits or assets of the Issuer except as set out in the Preference Share Terms and the applicable Authorising Resolutions.

#### 47.5. Dividend Rights of the Preference Shares

The Preference Shareholders will be entitled to receive the cumulative preferential cash dividends to be determined and paid in accordance with the provisions of this clause 47.5.

##### 47.5.1. Scheduled Preference Dividends

47.5.1.1. Each Preference Share shall have associated with it the right of the Preference Shareholder to receive, during the period from (and including) the Issue Date to (but excluding) the Redemption Date, a cumulative preferential cash dividend (each, a **Scheduled Preference Dividend**) which will accrue in respect of such Preference Share for each Dividend Period in accordance with the following formula:

$$SPD = [(IP + APD) \times ND \times DR] \div 365$$

where:

SPD = the Scheduled Preference Dividend payable on each Preference Share to be calculated, expressed in Rand;

IP = the Issue Price of that Preference Share;

APD = the aggregate amount of the Scheduled Preference Dividend that has accrued in respect of that Preference Share in accordance with this clause 47.5.1.1 during all preceding Dividend Periods and which has not been paid in accordance with clause 47.5.1.2;

ND = subject to clause 47.5.1.2, the number of days in that Dividend Period; and

DR = the Dividend Rate.

47.5.1.2. On each Scheduled Dividend Date, the Company shall be obliged to pay, in respect of each Preference Share, the Scheduled Preference

Dividend that has accrued in accordance with clause 47.5.1.1 as at such Scheduled Dividend Date.

47.5.1.3. On the Final Dividend Date, the Company shall be obliged to pay, in respect of each Preference Share being redeemed, the Scheduled Preference Dividend that has accrued in accordance with clause 47.5.1.1 and which has not otherwise been paid in accordance with clause 47.5.1.2.

47.5.1.4. Each Scheduled Preference Dividend shall for the purposes of calculation:

47.5.1.4.1. accrue on a daily basis during the period of calculation;

47.5.1.4.2. be compounded monthly in arrears;

47.5.1.4.3. be calculated on the actual number of days elapsed and on the basis of a 365 (three hundred and sixty-five) day year irrespective of whether the applicable year is a leap year; and

47.5.1.4.4. be determined inclusive of the first day and exclusive of the last day of the period for which it is determined and if such period would otherwise end on a day which is not a Business Day that period shall instead end on the immediately preceding day which is a Business Day.

#### 47.5.2. Penalty Preference Dividends

47.5.2.1. If the Issuer fails to pay a Scheduled Preference Dividend in respect of a Preference Share on the relevant Scheduled Dividend Date, the Issuer shall, in addition to the unpaid Scheduled Preference Dividends, declare and pay a cumulative preferential cash dividend (the **Penalty Preference Dividend**) calculated on the unpaid Scheduled Preference Dividends in respect of each such Preference Share at the Penalty Dividend Rate to the holder of such Preference Share calculated at the Penalty Rate calculated with effect from the due date thereof to the earlier of the date of payment by the Issuer of

such unpaid Scheduled Preference Dividends or the Applicable Redemption Date (if applicable).

47.5.2.2. Each Penalty Preference Dividend shall for the purposes of calculation:

47.5.2.2.1. accrue on a daily basis during the period of calculation;

47.5.2.2.2. be compounded monthly in arrears;

47.5.2.2.3. be calculated on the actual number of days elapsed and on the basis of a 365 (three hundred and sixty-five) day year irrespective of whether the applicable year is a leap year; and

47.5.2.2.4. be determined inclusive of the first day and exclusive of the last day of the period for which it is determined and if such period would otherwise end on a day which is not a Business Day that period shall instead end on the immediately preceding day which is a Business Day.

47.5.3. Additional Preference Dividends

If the rate of Dividends Tax increases from 15% (fifteen percent), the Issuer shall pay to each Preference Shareholder on each Scheduled Dividend Date, a cumulative preferential cash dividend (the **Additional Preference Dividend**), such that the Preference Shareholder will receive on an after-tax basis, an amount equal to the Scheduled Preference Dividend that would have been payable were it not for the increase in the rate of Dividends Tax.

47.5.4. Accumulated Preference Dividends

47.5.4.1. The Preference Dividends are cumulative and, to the extent that all or any part of a Preference Dividend has accrued or has become payable in accordance with these Preference Share Terms, the Issuer shall be liable to pay, and the Preference Shareholders shall be entitled to be paid, by no later than the Redemption Date, all Preference Dividends that have accrued or become payable in relation to the Preference Shares in accordance with these



Preference Share Terms and which have not been paid on the applicable Dividend Payment Dates (**Accumulated Preference Dividends**).

47.5.4.2. Failure to satisfy the requirements of section 46 of the Companies Act at any time when any Preference Dividend is due to be paid under the Preference Share Terms shall not relieve the Issuer of its obligation to pay such Preference Dividend at any time when it is lawfully able to do so.

47.5.5. Payment of Preference Dividends

47.5.5.1. Each Preference Dividend is due and payable and shall be paid in cash on its Dividend Payment Date in accordance with the provisions of clause 47.10 (*Payment Mechanics*).

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

47.6. Right of the Preference Shares on liquidation, dissolution or winding-up

Each Preference Share shall have associated with it the right of the Preference Shareholder to receive, in the event of the liquidation, dissolution or winding-up of the Issuer, a preferent right in priority to the rights of all Other Shares, to a return of capital in an amount equal to the Outstanding Preference Shares Obligations in respect of such Preference Share calculated on the date on which payment of that return of capital is made by the Issuer to the holder of such Preference Share.

47.7. Additional Amounts

If there is any change in Applicable Law or the introduction of any new Applicable Law that results in a Preference Shareholder being required to pay an amount of South African income tax (calculated at the rate of normal tax payable by South African companies at the relevant time) on any Preference Dividend, the Issuer shall pay to each Preference Shareholder an amount equal to such income tax (the **Additional Amount**), such that the Preference Shareholder will receive after such income tax, an amount equal to that Preference Dividend, provided that:

47.7.1. the Preference Shareholder is required to deliver to the Issuer a copy of its tax assessment showing that an amount of income tax is payable on the Preference Dividend that would not otherwise be payable other than as a result of a change in Applicable Law or the introduction of any new Applicable Law;

47.7.2. the Preference Shareholder claims the Additional Amount and delivers the assessment referred in clause 47.7.1 within 60 days from the occurrence of the change in Applicable Law or the introduction of any new Applicable Law.

#### 47.8. Transfer Tax

The Issuer is not liable for any Taxes that may arise as a result of the transfer of any Preference Share.

#### 47.9. Redemption

##### 47.9.1. Final Redemption

The Issuer shall be obliged to redeem all Unredeemed Preference Shares in each Class on the Final Redemption Date applicable to that Class.

##### 47.9.2. Voluntary Redemption

47.9.2.1. The Issuer shall, at any time, be entitled (but not obliged), to voluntarily redeem the Unredeemed Preference Shares in any Class, provided that:

47.9.2.1.1. the Issuer shall advise the applicable Class of Preference Shareholders of its election to voluntarily redeem all or any of the Unredeemed Preference Shares in such Class by written notice (each, a **Voluntary Redemption Notice**), which it may give at any time, which Voluntary Redemption Notice shall set out:

47.9.2.1.1.1. the number of Preference Shares to be redeemed; and

47.9.2.1.1.2. the date on which such Preference Shares are to be redeemed (the **Voluntary Redemption Date**);

47.9.2.1.2. the Preference Shares held by each Preference Shareholder in a Class shall be redeemed in the proportion (rounded down) that the Preference Shares held by that Preference Shareholder in that Class bears to the total number of Unredeemed Preference Shares held by all the Preference Shareholders in that Class.

47.9.3. Redemption upon the occurrence of a Redemption Event

If a Preference Shareholder delivers an Early Redemption Notice in accordance with clause 47.9.7 (*Consequences of Redemption Events*), the Issuer shall be obliged to redeem all Unredeemed Preference Shares on the Early Redemption Date.

47.9.4. Procedure for Redemptions

47.9.4.1. Subject to the provisions of Applicable Law:

47.9.4.1.1. the Issuer shall, on the applicable Redemption Date, pay, in respect of each Preference Share being redeemed, all unpaid Preference Dividends; and

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

47.9.5. Purchases

The Issuer or any of its subsidiaries may, at any time, subject to the Companies Act, purchase Preference Shares at any price in the open market or otherwise.

47.9.6. Redemption Events

Each of the events set out in this clause 47.9.6 is a Redemption Event (whether or not caused by any reason whatsoever outside of the control of the Issuer or any other person).

47.9.6.1. Non-Payment

The failure by the Issuer to pay any Preference Dividend on its Dividend Payment Date for any reason whatsoever and such failure is not remedied within 3 (three) Business Days of receipt of written notice from a Preference Shareholder calling upon the Issuer to remedy such failure.

47.9.6.2. Non-Redemption

The failure by the Issuer for any reason whatsoever to redeem the Preference Shares on the relevant Redemption Date and such failure is not remedied within 5 (five) Business Days of receipt of written notice from a Preference Shareholder calling upon the Issuer to remedy such failure.

#### 47.9.7. Consequences of Redemption Events

Upon the occurrence of a Redemption Event, a Preference Shareholder shall be entitled, on written notice (an **Early Redemption Notice**) to the Issuer, to require the Issuer to redeem all of the Unredeemed Preference Shares held by such Preference Shareholder on the expiry of such notice period.

#### 47.10. Payment Mechanics

##### 47.10.1. General

47.10.1.1. Only Preference Shareholders named in the Preference Share Register at 17h00 (South Africa time) on the date on which an amount accrues under the Preference Share Terms shall be entitled to payment of amounts due and payable in respect of Preference Shares.

47.10.1.2. All payments of all amounts (whether in respect of dividends or otherwise) due and payable in respect of any Preference Shares shall be made by the Issuer (where the Issuer itself acts as Administration Agent) or the Administration Agent on behalf of the Issuer (where the Issuer has appointed a third party to act as Administration Agent), as the case may be, on the terms and conditions of an agency agreement (if any) and this clause 47.10.

47.10.1.3. All references in this clause 47.10 to *Administration Agent* shall be construed as references to the Issuer (where the Issuer itself acts as Administration Agent) or the Administration Agent on behalf of the Issuer (where the Issuer has appointed a third party entity to act as Administration Agent), as the case may be.

47.10.1.4. Payments will be subject in all cases to any fiscal or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of clause 47.8 (*Transfer Taxes*).

##### 47.10.2. Payment of all amounts due and payable in respect of Preference Shares

47.10.2.1. The Issuer shall pay all amounts due and payable in respect of any registered Preference Shares in immediately available and freely transferable funds, in Rands, by electronic funds transfer to the bank account of the Administration Agent, which in turn will transfer such

funds, to the registered Preference Shareholder of such Preference Shares.

47.10.2.2. Neither the Issuer nor the Administration Agent shall be responsible for the loss in transmission of any such funds, and payment of any amount into the bank accounts referred to in clause 47.10.2.1, in accordance with clause 47.10.2.1, shall be satisfaction *pro tanto*, to the extent of such amount, of the Issuer's obligations to the Preference Shareholders under the relevant Preference Shares and the Preference Share Terms.

47.10.3. Surrender of Certificated Shares

47.10.3.1. Payments of the Applicable Redemption Amount in respect of any Preference Share(s) which is/are represented by Certificated Shares shall be made to the Preference Shareholder(s) of such Preference Share(s) only if, prior to the date on which the relevant Tranche of Preference Shares are redeemed, such Certificated Shares shall have been surrendered to the Administration Agent at its Specified Office.

47.10.3.2. If the relevant Certificated Share is not surrendered to the Administration Agent at its Specified Office in accordance with this clause 47.10.3, the Applicable Redemption Amount payable to the Preference Shareholder of the Preference Share(s) represented by that Certificated Share shall be retained by the Administration Agent for such Preference Shareholder, at the latter's risk, until that Certificated Share shall have been surrendered to the Administration Agent at its Specified Office, and such Preference Shareholder will not be entitled to any dividends and/or other payments in respect of any delay in payment occasioned as a result of such failure to surrender such Certificated Share.

47.10.4. Method of Payment

47.10.4.1. Payments of dividends and the Applicable Redemption Amount will be made in Rands by electronic funds transfer.

47.10.4.2. Payments will be subject in all cases to any taxation or other laws, directives and regulations applicable thereto in the place of payment, but subject to the provisions of clause 47.8 (*Transfer Taxes*).

47.10.5. Surrender of share certificates

47.10.5.1. No payment in respect of the final redemption of a Preference Share shall be made until 10 (ten) days after the date on which the Certificated Shares to be redeemed have been surrendered to the Administration Agent.

47.10.5.2. Documents required to be presented and/or surrendered to the Administration Agent in accordance with these Preference Share Terms shall be so presented and/or surrendered at the office of the Administration Agent.

47.10.5.3. Holders of Uncertificated Preference Shares are not required to present and/or surrender any documents of title.

#### 47.10.6. Business Days

47.10.6.1. Any payment which is due to be made on a day that is not a Business Day shall be made on the preceding Business Day, unless if as a result of such adjustment any redemption of a Preference Share will occur before 3 (three) years and 1 (one) day after its Issue Date in which event the relevant day for payment shall be the next succeeding Business Day.

47.10.6.2. During any extension of the due date for payment under the Preference Shares Terms the Scheduled Preference Dividends continue to accrue at the rate payable on the original due date.

#### 47.10.7. Currency of Account

Rands is the currency of account and payment for any sum due from the Issuer under the Preference Shares Terms.

### 47.11. Exchange of Dematerialised Share And Replacement of Certificated Shares

#### 47.11.1. Exchange of Dematerialised Share

47.11.1.1. The holder of a Dematerialised Share may, in terms of the Applicable Procedures, by written notice to the Administration Agent, request that such Dematerialised Share be exchanged for a Certificated Share (the **Exchange Notice**). The Exchange Notice shall specify (a) the name, address and bank account details of the holder of the Dematerialised Share and (b) the day on which such Dematerialised Share is to be exchanged for a Certificated Share; provided that such day shall be a Business Day and shall fall not less than 30 (thirty) days after the day on which such Exchange Notice is given.

47.11.1.2. The Administration Agent will, as soon as is practicable but within 14 (fourteen) days after receiving such notice, in accordance with the Applicable Procedures, procure that a Certificated Share is prepared, authenticated and made available for delivery, on a Business Day falling within the aforementioned 14 (fourteen) day period, to the applicable Preference Shareholder in respect of the conversion at the Specified Office of the Administration Agent.

47.11.2. Replacement

If any Certificated Share is worn out, mutilated, defaced, stolen, destroyed or lost it may be replaced at the Specified Office of the Administration Agent, on payment by the claimant of such costs and expenses as may be incurred in connection therewith and the provision of such indemnity as the issuer and the Administration Agent may reasonably require. Mutilated or defaced Certificated Shares must be surrendered at the Specified Office of the Administration Agent before replacements will be issued.

47.11.3. Death and sequestration or liquidation of Preference Shareholder

Any Person becoming entitled to Preference Shares in consequence of the death, sequestration or liquidation of the holder of such Preference Shares may, upon producing evidence to the satisfaction of the Issuer that he holds the position in respect of which he proposes to act under this clause 47.11.3 or of his title as the Issuer and the Administration Agent shall require, be registered himself as the holder of such Preference Shares or, subject to the Applicable Procedures, this clause 47.11.3 and clause 47.12 (Transfer of Preference Shares), may transfer such Preference Shares. The Issuer and (if applicable) the Administration Agent shall be entitled to retain any amount payable upon the Preference Shares to which any Person is so entitled until such Person shall be registered as aforesaid or shall duly transfer the Preference Shares.

47.11.4. Costs

The costs and expenses of the printing, issue and delivery of each Certificated Share and all Taxes and governmental charges or insurance charges that may be imposed in relation to such Certificated Share and/or the printing, issue and delivery of such Certificated Share shall be borne by the Issuer.

47.12. Transfer of Preference Shares

47.12.1. Transfer of Dematerialised Shares

47.12.1.1. Dematerialised Shares may be transferred only in accordance with the Applicable Procedures through the Administration Agent.

47.12.1.2. Transfers of Dematerialised Shares to and from Preference Shareholders occur by way of electronic book entry in the securities accounts maintained by the Administration Agent, in accordance with the Applicable Procedures.

47.12.2. Transfer of Certificated Shares

47.12.2.1. In order for any transfer of Certificated Shares to be recorded in the Preference Share Register, and for such transfer to be recognised by the Issuer:

47.12.2.1.1. the transfer of such Certificated Shares must be embodied in a Transfer Form;

47.12.2.1.2. the Transfer Form must be signed by the registered Preference Shareholder of such Certificated Shares and the transferee, or any authorised representatives of that registered Preference Shareholder or transferee;

47.12.2.1.3. the Transfer Form must be delivered to the Administration Agent at its Specified Office together with the Certificated Shares for cancellation.

47.12.2.2. Subject to this clause 47.12.2, the Administration Agent will, within 3 (three) Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any Applicable Law and/or Applicable Procedures), record the transfer of Certificated Shares in the Preference Share Register, and authenticate and deliver to the transferee at the Administration Agent's Specified Office or, at the risk of the transferee, send by mail to such address as the transferee may request, a new certificate in respect of the Certificated Shares transferred.

47.12.2.3. Where a Preference Shareholder has transferred a portion only of the Certificated Shares represented by a certificate, the Administration Agent will authenticate and deliver to such Preference Shareholder at the Administration Agent's Specified Office or, at the risk of such Preference Shareholder, send by mail to such address as such Preference Shareholder may request, at the risk of such Preference Shareholder, a new certificate representing the balance of the Certificated Shares held by such Preference Shareholder.



- 47.12.2.4. The transferor of any Certificated Shares will be deemed to remain the owner thereof until the transferee is registered in the Preference Share Register as the holder thereof.
- 47.12.2.5. Before any transfer of Certificated Shares is registered in the Preference Share Register, all relevant transfer Taxes (if any) must have been paid by the transferor and/or the transferee and such evidence must be furnished as the Issuer and the Administration Agent may reasonably require as to the identity and title of the transferor and the transferee.
- 47.12.2.6. If a transfer of any Certificated Shares is registered in the Preference Share Register, the Transfer Form and cancelled certificate in respect of the transferred Certificated Shares will be retained by the Administration Agent.
- 47.12.2.7. The Administration Agent will, within 3 (three) Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any applicable taxation or other laws, regulations or Applicable Procedures), authenticate and deliver to the transferee (at the risk of the transferee) a new certificate in respect of the Certificated Shares transferred.

#### 47.13. Preference Share Register

- 47.13.1. The Preference Share Register shall be kept at the Specified Offices of the Administration Agent. The Preference Share Register shall reflect the number of Preference Shares at any given time and the date upon which each of the Preference Shareholders was registered as such. The Preference Share Register shall contain the name, address, and bank account details of the Preference Shareholders of Preference Shares. The Preference Share Register shall set out the Issue Price of the Preference Shares issued to such Preference Shareholders and shall show the date of such issue. The Preference Share Register shall show the serial number of share certificates issued in respect of any Preference Shares. The Preference Share Register shall be open for inspection during the normal business hours of the Issuer to any Preference Shareholder or any Person authorised in writing by any Preference Shareholder. The Administration Agent shall not be obliged to record any transfer while the Preference Share Register is closed. The Administration Agent shall not be bound to enter any trust into the Preference Share Register or to take notice of any or to accede to any trust executed, whether express or implied, to which any Preference Share may be subject.

47.13.2. The Administration Agent shall alter the Preference Share Register in respect of any change of name, address or bank account number of any of the Preference Shareholders of which it is notified in accordance with these Preference Share Terms.

47.13.3. Except as provided for in these Preference Share Terms or as required by law, in respect of Preference Shares, the Issuer will only recognise a Preference Shareholder as the owner of the Preference Shares registered in that Preference Shareholder's name as per the Preference Share Register.

#### 47.14. Administration Agent

47.14.1. Any third party appointed by the Issuer as Administration Agent and/or shall act solely as the agent of the Issuer and does not assume any obligation towards or relationship of agency or trust for or with any Preference Shareholders.

47.14.2. If the Issuer elects to appoint another entity (not being the Issuer) as Administration Agent, that other entity, on execution of an appropriate agency agreement or an appropriate accession letter to any agency agreement, as the case may be, shall serve in that capacity in respect of the Preference Shares. The Issuer shall notify the Preference Shareholders (in the manner set out in clause 47.15 (*Notices*) of any such appointment.

47.14.3. The Issuer is entitled to vary or terminate the appointment of the Administration Agent and/or appoint additional or other agents and/or approve any change in the specified office through which any such agent acts, provided that there will at all times be an Administration Agent. The Administration Agent acts solely as the agent of the Issuer and does not assume any obligation towards or relationship of agency or trust for or with any Preference Shareholders.

#### 47.15. Notices

47.15.1. By the Issuer

##### 47.15.1.1. Service of Notice

47.15.1.1.1. Subject to clause 47.15.1.1.2 and 47.15.1.3, any notice or document, including a security certificate, may be served on or delivered to any Preference Shareholder by the Issuer by electronic mail at his electronic mail address or by sending it by post in a pre-paid envelope addressed to such Preference Shareholder at his registered address, supplied by

him to the Issuer as his address for the service of notices, or by delivering it to such address addressed as aforesaid.

47.15.1.1.2. Any notice, document or information (including a Certificated Share) which is sent or supplied by the Issuer in hard copy form, or in electronic form, and which is properly addressed shall, where required to be delivered for any purpose contemplated in the Companies Act and/or the Companies Regulations, be deemed to have been Delivered to the intended recipient on the date and at the time determined in accordance with Table CR3 in the Companies Regulations. The Issuer shall however not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Companies Regulations.

47.15.1.1.3. The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate any action taken at the relevant meeting or other proceeding.

#### 47.15.1.2. Deceased and Insolvent Preference Shareholders

A Person entitled to a security in consequence of the death or insolvency of a Preference Shareholder or otherwise by operation of law, upon supplying to the Issuer such evidence as the Board may reasonably require to show his title to that Preference Share, and upon supplying also an address within the South Africa for the service of notices, shall be entitled to have served upon or delivered to him at such address any notice or document to which the said Preference Shareholder would have been entitled, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested, whether jointly with or as claiming through or under him, in that Preference Share. Save as aforesaid any notice or document delivered or sent by post to or left at the address of any Preference Shareholder in pursuance of the Issuer's Memorandum of Incorporation shall, notwithstanding that such Preference Shareholder be then dead or insolvent or in liquidation, and whether

or not the Issuer has notice of his death or insolvency or liquidation, be deemed to have been duly served or delivered in respect of any Preference Share registered in the name of such Preference Shareholder as sole or first-named joint Preference Shareholder.

#### 47.15.1.3. Electronic Communication

47.15.1.3.1. Any Preference Shareholder may notify the Issuer of an e-mail address or cellphone number for the purpose of his receiving electronic communications from the Issuer, and having done so shall be deemed to have agreed to receive by electronic communication notices and other documents from the Issuer at his e-mail address or cellphone number, and the Issuer may satisfy its obligation to send him any notice or other document by using electronic communication to give notices and other documents or notices of availability of the foregoing to him.

47.15.1.3.2. Any amendment or revocation of a notification given to the Issuer under this clause 47.15.1.3 shall only take effect if in writing, signed by the Preference Shareholder and on actual receipt by the Issuer thereof.

47.15.1.3.3. An electronic communication shall not be treated as received by the Issuer if it is rejected by computer virus protection arrangements.

47.15.1.3.4. If the Issuer receives actual notice that a failure of delivery of an electronic communication to a Preference Shareholder has occurred, and then receives actual notice that subsequent attempts to resend the original communication have also failed, the Issuer shall send a hard copy of the communication by post to the Preference Shareholder's registered address within 48 hours of the Issuer receiving the notice of the original failure of delivery.

#### 47.15.1.4. Statutory Requirements as to notices

Nothing in clause 47.15.1.1 to 47.15.1.3 shall affect any requirement of the Companies Act, the Banks Act, the Applicable Procedures and/or Applicable Law, as the case may be, that any particular offer, notice or other document be served in any particular manner.

47.15.2. Notice by the Preference Shareholders

A notice to be given by any Preference Shareholder to the Issuer shall be in writing and given by lodging (either by hand delivery or posting by registered mail) that notice, together with a certified copy of the relevant Certificated Share at the office of the Administration Agent specified in the applicable Authorising Resolution. For so long as any of the Preference Shares are issued in uncertificated form, notice may be given by any holder of a Dematerialised Share via the Administration Agent in accordance with the Applicable Procedures, in such manner as the Issuer and the Administration Agent may approve for this purpose. Such notices shall be deemed to have been received by the Issuer on the date and at the time determined in accordance with Table CR3 in the Companies Regulations.

47.16. Voting Rights

47.16.1. No Preference Share shall have associated with it any general voting right at any shareholders meeting of the Issuer other than an irrevocable right of the Preference Shareholders of any Class of Preference Shares to vote on any proposal to amend the Preference Share Terms associated with that Class of Preference Shares.

47.16.2. Provided that where any amendment to the Preference Share Terms is a proposed amendment to the Preference Share Terms and/or the Issuer's Memorandum of Incorporation which affects or relates to all Preference Shares in issue at that time, then such amendment shall not be effective unless it is approved by Special Resolution of all Preference Shareholders and for such purpose all of the holders of Preference Shares shall be treated as a single class and each Preference Share shall have associated with it one general voting right for the purposes of such Special Resolution. Where any proposed amendment to the Preference Share Terms is a proposed amendment to the Preference Share Terms or the Issuer's Memorandum of Incorporation, which affects or relates to a Class of Preference Shareholders only, then such amendment shall not be effective unless it is approved by Special Resolution of the affected Class of Preference Shareholders.

47.17. Meetings of Preference Shareholders

47.17.1. Convening of meetings

The Issuer may at any time convene a meeting of all Preference Shareholders or holders of any Class of Preference Shares, and shall be obliged to do so upon the request in writing of Preference Shareholders holding not less than 10 percent of the aggregate Outstanding Preference Share Obligations of all Preference Shares or Preference Shares in that Class, as the case may be. Should the Issuer fail to requisition a meeting within 15 (fifteen) Business Days of such a request being Delivered to the Specified Office of the Issuer, the Preference Shareholders requesting such a meeting may convene such meeting by written notice to the Issuer and the relevant Preference Shareholders to which such meeting applies in accordance with clause 47.15(*Notices*). A meeting so convened will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer.

47.17.2. Notice of meetings

47.17.2.1. Any meeting of all Preference Shareholders or holders of any Class of Preference Shares shall be called by at least 15 (fifteen) Business Days' notice after Delivery by email or short message service by the Issuer to all Preference Shareholders entitled to vote or otherwise entitled to receive notice and the Administration Agent. The period of notice shall in each case be exclusive of the day on which the notice is Delivered or deemed to be Delivered in accordance with the Preference Share Terms, the Companies Act and Companies Regulations and inclusive of the day on which the relevant meeting is to be held. A meeting of all Preference Shareholders or holders of any Class of Preference Shares, notwithstanding that it has been called by a shorter notice than that specified above, shall be deemed to have been duly called if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda (i) is present at the meeting; and (ii) votes to waive the required minimum notice of the meeting.

47.17.2.2. A requisition notice by Preference Shareholders requesting a meeting of Preference Shareholders pursuant to clause 47.17.1 may consist of several documents in like form, each signed by one or more requisitioning Preference Shareholders. Such a requisition notice will be delivered to the Specified Offices of the Issuer.

47.17.3. Contents of notice of meetings of Preference Shareholders

47.17.3.1. Every notice calling a meeting of Preference Shareholders must be in writing and shall specify, in addition to any other information prescribed by the Companies Act, the Banks Act and/or Applicable

Procedures, the place, the day and the hour of the meeting and there shall appear, with reasonable prominence in every such notice a statement that a Preference Shareholder entitled to attend and vote is entitled to appoint a proxy or proxies to attend, speak and vote instead of him on a poll or a show of hands and that a proxy need not be a Preference Shareholder of the Issuer.

47.17.3.2. The notice shall specify the general or specific purpose of the meeting.

47.17.3.3. For the purposes of determining which persons are entitled to attend or vote at a meeting and how many votes such person may cast, the Issuer or the Administration Agent, as the case may be, shall specify in the notice of the meeting, the record date by which a person must be entered on the Preference Share Register in order to have the right to participate in and vote at such meeting.

#### 47.17.4. Quorum

47.17.4.1. Subject to the provisions of clause 47.17.4.3, no business shall be transacted at any meeting of Preference Shareholders or Class of Preference Shareholders, as the case may be, unless a quorum is present. The quorum necessary for the commencement of a meeting of Preference Shareholders or Class of Preference Shareholders shall be sufficient persons present in person or represented by Representative or by proxy holding in aggregate not less than 25% (twenty five percent) of the aggregate Outstanding Preference Shares Obligation of all Preference Shares or Preference Shares in the relevant Class of Preference Shares, as the case may be, provided that the minimum number of three such persons must be present.

47.17.4.2. A matter to be decided at a meeting of Preference Shareholders or Class of Preference Shareholders, as the case may be, may not begin to be considered unless those who fulfilled the quorum requirements of clause 47.17.4.1, continue to be present.

47.17.4.3. If within five minutes from the time appointed for a meeting of Preference Shareholders or Class of Preference Shareholders, as the case may be, or such longer interval not exceeding one hundred and twenty minutes as the chairperson of the meeting may think fit to allow a quorum is not present, or if during the meeting a quorum

ceases to be present, the meeting shall stand adjourned to such day, time and place being at least 10 days after the original meeting date; as may have been specified for the purpose in the notice convening the meeting or, if not so specified, as the chairperson of the meeting may determine, subject to the provisions of clause 47.17.6 (*Adjournment of meetings*).

47.17.5. Quorum at any meeting for passing a Special Resolution

The quorum at any meeting for passing a Special Resolution, shall be three or more Preference Shareholders of that Class present or represented by proxies or Representatives and holding or representing in the aggregate a clear majority of the aggregate Outstanding Preference Shares Obligation of the Preference Shares held by the applicable Class. A Special Resolution passed at any meeting of the holders of Preference Shares of that Class will be binding on all holders of Preference Shares, whether or not they are present at the meeting. No amendment to or modification of the Preference Share Terms may be effected without the written agreement of the Issuer.

47.17.6. Adjournment of meetings

47.17.6.1. The chairperson of any meeting of Preference Shareholders or Class of Preference Shareholders, as the case may be, at which a quorum is present may with the consent of the meeting, and shall if so directed by the meeting (such consent or direction being given by a motion supported by persons entitled to exercise, in aggregate, a majority of Preference Shareholders present or represented by proxies or Representatives and holding or representing in the aggregate a clear majority of the aggregate Outstanding Preference Shares Obligation of all the Preference Shares or Preference Shares held by the applicable Class) adjourn the meeting from time to time and from place to place to a day not earlier than 7 (seven) days and not later than 21 (twenty-one) days after the date of the meeting, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Subject to clause 47.17.6.2, notice of the adjourned meeting shall be given in the like manner as in the case of the original meeting.

47.17.6.2. Unless required under the Companies Act, the Banks Act, the Applicable Procedures or Applicable Law, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.



#### 47.17.7. Participation

The following may attend and speak at a meeting:

- 47.17.7.1. Preference Shareholders present, by Representative or by proxy provided that no such Person shall be entitled to attend and speak (or vote) unless he provides proof acceptable to the Issuer that he is a Preference Shareholder, its Representative or proxy if so required by the Issuer to do so;
- 47.17.7.2. any officer or duly appointed representative of the Issuer and every other Person authorised in writing by the Issuer provided that such Person shall not be entitled to vote, other than as a proxy or Representative;
- 47.17.7.3. the legal counsel to the Issuer;
- 47.17.7.4. the Administration Agent;
- 47.17.7.5. any other Person approved by the Preference Shareholders at such meeting; and
- 47.17.7.6. every director or duly appointed representative of the Issuer and every other Person authorised in writing by the Issuer may attend and speak at a meeting of Preference Shareholders, but shall not be entitled to vote, other than as a proxy or Representative.

#### 47.17.8. Poll

- 47.17.8.1. At any meeting all resolutions, and any proposed amendment thereto, put to the vote of the meeting shall be decided on a poll unless the chairperson determines, subject to clauses 47.17.8.2 and 47.17.8.3, that such resolution, and any proposed amendments thereto, shall be decided on a show of hands.
- 47.17.8.2. If, pursuant to clause 47.17.8.1, the chairperson of the meeting has determined that a resolution, and any proposed amendments thereto, shall be decided on a show of hands, before, or on the declaration of the result of such a vote, a poll may be demanded by:
  - 47.17.8.2.1. not less than 5 (five) Preference Shareholders in person or by proxy and entitled to vote, or

- 47.17.8.2.2. a Preference Shareholder or Preference Shareholders present in person or by Representative or by proxy and representing not less than one-tenth of the aggregate Outstanding Preference Shares Obligation of the Preference Shares of all Preference Shareholders having the right to vote at the meeting; or
- 47.17.8.2.3. the chairperson of the meeting,

provided that no poll may be demanded on a resolution for the election of the chairperson of a meeting.

- 47.17.8.3. A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 47.17.8.4. A poll shall be taken in such manner, including the use of ballot or voting papers or tickets, as the chairperson of the meeting may direct, and the result of the poll shall be deemed to be the resolution of the meeting to which the poll relates. The chairperson of the meeting may, and if so directed by the meeting shall, appoint scrutineers, who need not be Preference Shareholders, and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 47.17.8.5. On a poll, votes may be given either personally or by Representative or by Proxy and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 47.17.8.6. A poll in relation to a question of adjournment shall be taken forthwith. A poll in relation to any other question shall be taken either at the meeting or at such subsequent time not being more than 30 (thirty) days from the date of the meeting and place as the chairperson of the meeting may direct. Any poll may, as the chairperson of the meeting shall direct, close at different times for different Classes of Preference Shareholders. No notice need be given of a poll not taken immediately. The taking of a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question to which the poll relates.

#### 47.17.9. Votes

47.17.9.1. Subject to clause 47.17.3.3, the provisions of the Banks Act and any special rights or restrictions as to voting attached by or in accordance with the Issuer's Memorandum of Incorporation to any Class of Preference Shares, every Preference Shareholder present in Person, by Representative or by proxy and who provided proof acceptable to the Issuer of his entitlement to vote, if so required by the Issuer, shall have (i) on a show of hands, one vote; or (ii) on a poll, one vote for each Preference Share held or represented by him.

47.17.9.2. In the case of a voting tie, the chairperson shall have a casting vote.

47.17.9.3. Unless the form of proxy states otherwise, a Representative or proxy shall not be obliged to exercise all the votes which he is entitled or cast all the votes which he exercises in the same way.

47.17.9.4. A majority shall be required to ordinarily pass a resolution of Preference Shareholders.

#### 47.18. Modification

Subject to the Companies Act and the Companies Regulations, the Issuer may effect, without the consent of the relevant Class of Preference Shareholders, any modification of the Preference Share Terms in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the Preference Share Terms, by publishing a notice of the alteration, in any manner required or permitted by the Issuer's Memorandum of Incorporation or the rules of the Issuer and filing a notice of the alteration with the Companies and Intellectual Property Commission. Any such modification shall be binding on the relevant Class of Preference Shareholders. For the avoidance of doubt, the exercise by the Issuer of its rights under clause 47.14 (*Administration Agent*) shall not constitute a modification of these Preference Share Terms.

#### 47.19. Further Issues

The Issuer shall be at liberty from time to time without the consent of the Preference Shareholders to create and issue further Preference Shares (the **Additional Preference Shares**) having terms and conditions which are identical as any of the other Preference Shares already issued (the **Existing Preference Shares**) or the same in all respects save for their respective Issue Prices and Issue Dates, so that the Additional Preference Shares shall be (i) consolidated to form a single Class with the Existing Preference Shares and (ii) rank *pari passu* in all respects with the Existing Preference Shares.

#### 47.20. Preference Shares And The Companies Act

47.20.1. Notwithstanding anything to the contrary contained in these Preference Share Terms and, (i) the Issuer, (ii) each Tranche of Preference Shares, and (iii) each

of the Preference Shareholders, shall be subject to all of the applicable provisions of the Companies Act including, without limiting the generality of the foregoing, sections 37 and 46 of the Companies Act (the **Applicable Provisions**).

47.20.2. For the purpose of the Preference Shares and in relation to (i) the Issuer, (ii) each Tranche of Preference Shares, and (iii) each of the Preference Shareholders:

47.20.2.1. the Applicable Provisions are deemed to be incorporated by reference into these Preference Share Terms; and

47.20.2.2. to the extent that there is any conflict or inconsistency between the Applicable Provisions and any of these Preference Share Terms, the Applicable Provisions shall prevail; and

47.20.2.3. to the extent that, in consequence of such conflict, the Applicable Provisions replace, amend, or supplement any of these Preference Share Terms, any reference to *Preference Share Terms* shall be deemed to include these Preference Share Terms as so replaced, amended or supplemented.

47.21. Severability

Should any of the applicable Preference Share Terms be, or become, invalid, the validity of the remaining applicable Preference Share Terms shall not be affected in any way.

#### 48. **PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ASSOCIATED WITH THE NON-REDEEMABLE, NON-CUMULATIVE, NON-PARTICIPATING PERPETUAL PREFERENCE SHARES (THE "A PREFERENCE SHARES")**

The following are the preferences, rights, limitations and other terms which attach to the ~~200,000~~ 1,000,000 "A" non-redeemable, non-cumulative, non-participating, perpetual preference shares in the capital of the Company.

##### 48.1 **Definitions**

In this clause 48, unless the context dictates otherwise, the words and expressions set forth below shall have the following meanings and cognate expressions shall have corresponding meanings:

48.1.1 "**Additional Amounts**" has the meaning given to this term in clause 48.6;

48.1.2 "**Additional A Preference Shares**" has the meaning given to this term in clause 48.19.1;

48.1.3 "**Administration Agent**" means the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche of A Preference Shares, another entity as

Administration Agent, in which event that other entity shall act as an Administration Agent in respect of that particular Tranche of A Preference Shares;

- 48.1.4 "**Applicable Law**" means any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, or any directive, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the persons to whom it is addressed or applied) of any government, supranational, local government, statutory, regulatory, self-regulatory or similar body, authority or court, as amended, replaced, re-enacted, restated or reinterpreted;
- 48.1.5 "**Applicable Procedures**" means the rules and operating procedures from time to time of the Administration Agent;
- 48.1.6 "**Applicable Provisions**" has the meaning given to this term in clause 48.20.1;
- 48.1.7 "**Authorisation**" means any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, registration, agreement, certificate, permit and/or authority or any exemption from any of the aforesaid, by, with or from any authority;
- 48.1.8 "**Authorising Resolution**" means, in respect of each Tranche of A Preference Shares, a resolution of the Board:
- 48.1.8.1 determining a distinguishing designation the A Preference Shares to be issued in that Tranche of A Preference Shares;
  - 48.1.8.2 determining the Commercial Terms of that Tranche of A Preference Shares; and
  - 48.1.8.3 authorising the issue of that Tranche of A Preference Shares;
- 48.1.9 "**Basel III Accord**" means the documents entitled "Basel Committee on Banking Supervision – Basel III: A global regulatory framework for more resilient banks and banking systems – December 2010 (rev June 2011)" and "Basel Committee on Banking Supervision – Basel III: International Framework for liquidity risk measurements, standards and monitoring – December 2010 [(rev June 2011)]" published by the Basel Committee on Banking Supervision on 16 December 2010, as supplemented and/or amended from time to time;
- 48.1.10 "**Capital Regulations**" means, at any time, any: (i) legislation (including the Banks Act and/or any statutory bail-in option under South African law) then in effect in the Republic, (ii) regulations (including the Regulations Relating to Banks) then in effect in the Republic, (iii) the Circulars (including, without limitation, Circular C6/2014), Guidance Notes (including, without limitation, Guidance Note 06/2017) and Directives then in effect in the Republic issued by the Prudential Authority, which legislation, regulations, Circulars, Guidance Notes and Directives relate to and/or provide for the implementation of the Basel III Accord in the Republic;
- 48.1.11 "**Class**" means, when used in relation to A Preference Shares, a Tranche of A Preference Shares (alone or with any Tranche or Tranches of A Preference Shares previously classified by the Board) that:
- 48.1.11.1 are identical in all respects (including but not limited to the Dividend Rate), except that their Issue Dates and/or Issue Prices may differ;
  - 48.1.11.2 have been classified by the Board as belonging to a single class (as contemplated by section 37(1) of the Companies Act); and

- 48.1.11.3 have been given a numerical designation by the Board (reflecting the order in which the first Tranche of A Preference Shares so designated were classified by the Board, e.g. Class "A1" Preference Shares) to distinguish the Tranche from Tranches of A Preference Shares that are not identical in all respects;
- 48.1.12 "**Certificated Share**" means an A Preference Share represented by a paper share certificate or other physical document(s) of title, which share has not been surrendered for Dematerialization;
- 48.1.13 "**A Preference Shareholder**" means, in respect of a Preference Share, the registered holder of such Preference Share in the A Preference Share Register from time to time and "**Preference Shareholders**" mean, as the context required, all of them;
- 48.1.14 "**A Preference Share Register**" means the register of A Preference Shareholders of the Issuer;
- 48.1.15 "**A Preference Share Terms**" means the preferences, rights, privileges and other terms of the Preference Shares as set out in this clause 48;
- 48.1.16 "**Commercial Terms**" means, in respect of each Tranche of A Preference Shares:
- 48.1.16.1 the Issue Date;
  - 48.1.16.2 the Issue Price;
  - 48.1.16.3 the Dividend Rate;
  - 48.1.16.4 the Scheduled Dividend Date; and
  - 48.1.16.5 details of the Administration Agent;
- 48.1.17 "**Cumulative Redeemable Preference Shares**" means the 1,000,000 (one million) cumulative, redeemable preference shares in the issued share capital of the Company, having the rights and privileges that are set out in clause 47 of the MOI;
- 48.1.18 "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 43 (*Notices*), clause 48.15 (*Notices*) of these A Preference Share Terms and the Companies Act;
- 48.1.19 "**Dematerialised Shares**" means A Preference Shares which have been dematerialised;
- 48.1.20 "**Dematerialisation**" the process by which certificated shares are converted to or held in an electronic form as uncertificated shares and recorded in the sub-register of A Preference Shareholders maintained by the Administration Agent;
- 48.1.21 "**Dividend Payment Date**" means each Scheduled Dividend Date and each Final Dividend Date;
- 48.1.22 "**Dividend Period**" means, in respect of each A Preference Share and for the purposes of the calculation of the Scheduled Preference Dividends in respect of such A Preference Share, each period commencing on a Scheduled Dividend Date and ending on the next Scheduled Dividend Date (both days inclusive); provided that:
- 48.1.22.1 the first Dividend Period shall be the period from the Subscription Date of such A Preference Share until the first Scheduled Dividend Date occurring thereafter (both days inclusive); and

- 48.1.22.2 the final Dividend Period shall be the period from the Scheduled Dividend Date immediately preceding the Final Dividend Date until the Final Dividend Date (both days inclusive);
- 48.1.23 "**Dividend Rate**" means, in relation to a Tranche of A Preference Shares, the dividend rate as may be determined by the Issuer in the applicable Authorising Resolution, being a floating rate determined with reference to the Reference Rate;
- 48.1.24 "**Dividends Tax**" means the Dividends Tax as contemplated in, Part VIII of Chapter II of the Income Tax Act;
- 48.1.25 "**Equity Share**" means an Ordinary Share or any other security issued by the Company and expressed (in accordance with its terms) to rank after the A Preference Shares;
- 48.1.26 "**Existing A Preference Shares**" has the meaning given to this term in Clause 48.19.1;
- 48.1.27 "**Final Dividend Date**" means, in relation to any A Preference Share, the date on which it is redeemed by the Issuer, but excluding any date on which any A Preference Share is redeemed pursuant to a Trigger Event;
- 48.1.28 "**Issue Date**" means, in respect of each A Preference Share, the date on which the Issuer issues that A Preference Share to the Subscribers;
- 48.1.29 "**Issuer**" means the Company;
- 48.1.30 "**Issue Price**" means, in relation to any Tranche of A Preference Shares, the price at which such A Preference Share is issued, as may be determined by the Issuer in the applicable Authorising Resolution;
- 48.1.31 "**Issuer Redemption Event**" means, in relation to any Tranche of A Preference Shares, a decision by the Board of the Issuer to redeem all the A Preference Shares in that Tranche, provided that:
- 48.1.31.1 the proposed Redemption Date is at least 5 (five) years and 1 (one) day after the Issue Date of the A Preference Shares in that Tranche;
- 48.1.31.2 the Issuer has obtained the prior written approval of the Prudential Authority for the proposed redemption;
- 48.1.31.3 the Issuer has not created (and does not create) any expectation that it will redeem the A Preference Shares in that Tranche;
- 48.1.31.4 the Issuer:
- 48.1.31.4.1 will, concurrently with the redemption of the A Preference Shares in that Tranche, issue replacement securities that will, once issued: (i) constitute capital of a similar or better quality (determined with reference to the requirements of the Regulations Relating to Banks) than the A Preference Shares in that Tranche; and (ii) be sustainable for the income capacity of the Issuer; or
- 48.1.31.4.2 has demonstrated, to the satisfaction of the Prudential Authority, that the Issuer's Regulatory Capital (determined with reference to the requirements of the Regulations Relating to Banks) will be well above the specified minimum requirements (determined with reference to the requirements of the Regulations Relating to Banks)

after the proposed redemption of the A Preference Shares in that Tranche has taken place;

- 48.1.32 **"Other Preference Share"** means the Cumulative Redeemable Preference Shares or any other security issued by the Company and expressed (in accordance with its terms) to rank in priority to the A Preference Shares;
- 48.1.33 **"Outstanding A Preference Share Obligations"** means, at any time and without double counting, an amount equal to the aggregate of:
- 48.1.33.1 the issue Price of each Unredeemed A Preference Share at that time;
  - 48.1.33.2 any outstanding Scheduled Preference Dividends at that time;
  - 48.1.33.3 any Additional Amounts; and
  - 48.1.33.4 any other amount due and payable and unpaid by the Issuer in accordance with the A Preference Share Terms at that time;
- 48.1.34 **"Preference Dividends"** means the Scheduled Preference Dividends;
- 48.1.35 **"Prudential Authority"** means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act, 2017 or such other governmental authority in the Republic (if any) as will have the responsibility for making decisions relating to the declaration of a bank as being non-viable;
- 48.1.36 **"Rand", "R" or "ZAR"** means South African Rand;
- 48.1.37 **"Redemption Amount"** means, in respect of each A Preference Share, an amount equal to its Issue Price;
- 48.1.38 **"Redemption Date"** means, in relation to an A Preference Share, the date on which the Issuer redeems that A Preference Share in accordance with these A Preference Share Terms;
- 48.1.39 **"Redemption Event"** means an Issuer Redemption Event, a Regulatory Event or a Tax Event;
- 48.1.40 **"Reference Rate"** means the publicly quoted basic rate (nominal annual compounded in arrear) at which Nedbank Limited lends on overdraft;
- 48.1.41 **"Regulations Relating to Banks"** means the Regulations Relating to Banks promulgated under the Banks Act published as Government Notice No. 297 in Government Gazette No. 40002, dated 20 May 2016, as supplemented and/or amended from time to time;
- 48.1.42 **"Regulatory Capital"** means, as applicable, Tier 2 Capital or Additional Tier 1 Capital, each as defined in the Banks Act;
- 48.1.43 **"Regulatory Change"** means, in relation to a Tranche of A Preference Shares: (i) a change in or amendment to the Capital Regulations; or (ii) any change in the application of or official or generally published guidance or interpretation of the Capital Regulations by the Prudential Authority and/or the South African courts, which change or amendment becomes, or would become, effective on or after the Issue Date of that Tranche of A Preference Shares;
- 48.1.44 **"Regulatory Event"** means an event that is deemed to have occurred in relation to a Tranche of A Preference Shares if, as a result of any Regulatory Change, the whole or any part of the aggregate Issue Price of that Tranche of A Preference Shares is excluded from qualifying as Regulatory Capital of the Issuer or Nedbank Limited on a solo and/or consolidated basis and the Prudential Authority has notified the Issuer (either specifically or generally in conjunction with other banks and/or controlling companies) in writing of the relevant amendment or change and, for the



avoidance of doubt, a Regulatory Event shall be deemed to have occurred in relation to a Tranche of A Preference Shares if all or part of the aggregate Issue Price of that Tranche of A Preference Shares is excluded from qualifying as Regulatory Capital by reason of any grandfathering or transitional provisions in the applicable Capital Regulations;

- 48.1.45 "**Representative**" means a person duly authorised to act on behalf of a Preference Shareholder, who may be regarded by the Issuer, the Administration Agent (all acting in good faith) as being duly authorised based upon the tacit or express representation thereof by such Representative, in the absence of express notice to the contrary from such Preference Shareholder;
- 48.1.46 "**Scheduled Dividend Date**" means in relation to a Tranche of A Preference Shares, each date as may be determined by the Issuer in the applicable Authorising Resolution;
- 48.1.47 "**Scheduled Preference Dividend**" has the meaning given to this term in clause 48.5.1.1;
- 48.1.48 "**Specified Office**" the registered address of the Issuer or the Administration Agent, as the case may be, as specified in the Authorising Resolution or such other address as the Issuer or the relevant agent, as the case may be, may specify by notice to the A Preference Shareholders which change of address shall in each case be notified to the A Preference Shareholders in accordance with clause 43 (*Notices*) and clause 48.15 (*Notices*);
- 48.1.49 "**Subscription Date**" means, in respect of each A Preference Share, the date on which the Issue Price is paid by the holder of such A Preference Share in accordance with these A Preference Share Terms and the Applicable Procedures;
- 48.1.50 "**Trigger Event**" means the occurrence of a "trigger event" specified in writing by the Prudential Authority (as contemplated in Regulation 38(11)(b)(i) and Regulation 38(12)(a)(i), respectively, of the Regulations Relating to Banks), provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:
- 48.1.50.1 a decision that a Write Off, without which the Issuer would become non-viable, is necessary, as determined by the Prudential Authority; or
- 48.1.50.2 the decision to make a public sector injection of capital, or equivalent support, without which the Issuer would have become non-viable, as determined by the Prudential Authority,
- in each case, as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) and sub-paragraph (iii) of the proviso to Regulation 38(12)(a)(i), respectively, of the Regulations Relating to Banks;
- 48.1.51 "**Tax**" means all and any taxes and levies of whatever nature, including income tax, capital gains tax, dividend tax, VAT, value extraction tax, stamp duties, Securities Transfer Tax, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties, fines, additional tax or interest payable as a consequence of any failure or delay in paying any Taxes;
- 48.1.52 "**Tax Event**" means, in relation to any Tranche of A Preference Shares, an event pursuant to which the Issuer has paid or will pay or would on the next Dividend Payment Date be required to pay an Additional Amount;
- 48.1.53 "**Tranche**" means in relation to any particular Class of A Preference Shares, all A Preference Shares in that Class which are identical in all respects, in respect of which the same terms and conditions apply and which are issued on the same Issue Date;

- 48.1.54 "**Transfer Form**" means the written form for the transfer of an A Preference Share, in the form approved by the Administration Agent and signed by the transferor and transferee;
- 48.1.55 "**Unredeemed A Preference Share**" means, at any time, any Preference Share which has not:
- 48.1.55.1 been redeemed by the Issuer at that time in accordance with the A Preference Share Terms and the Authorising Resolution; or
  - 48.1.55.2 Written-Off;
- 48.1.56 "**VAT**" means value added tax imposed in terms of the Value-Added Tax Act, 1991 or any similar tax imposed in place thereof from time to time;
- 48.1.57 "**Voluntary Redemption Date**" has the meaning give to this term in clause 48.9.1.2;
- 48.1.58 "**Voluntary Redemption Notice**" has the meaning give to this term in clause 48.9.1; and
- 48.1.59 "**Write Off**" means, in relation to a Tranche of A Preference Shares, that the Issuer's obligations to the holders of that Tranche of A Preference Shares (including its obligation to pay the Redemption Amount) is extinguished in whole or in part.

## 48.2 Interpretation

- 48.2.1 In these A Preference Share Terms:
- 48.2.1.1 if an expression is stated in clause 48.1 (*Definitions*) to have the meaning given in the applicable Authorising Resolution, but the applicable Authorising Resolution gives no such meaning or specifies that such expression is "not applicable" then such expression is not applicable to the relevant Tranche of A Preference Shares;
  - 48.2.1.2 any reference to any statute, regulation or other legislation will be a reference to that statute, regulation or other legislation as at the Issue Date and as amended, re-enacted or replaced and substituted from time to time;
  - 48.2.1.3 any reference to "Currency" or "currency" means the lawful currency from time to time of a country.
- 48.2.2 Unless inconsistent with the context or save where the contrary is expressly specified in the A Preference Share Terms:
- 48.2.2.1 words denoting the singular only will include the plural also and vice versa, words denoting one gender only will include the other genders and words denoting persons only will include firms and corporations and vice versa;
  - 48.2.2.2 the use of the word "including" followed by a specific example/s will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example/s. Such references to "Including" and "in particular" will not be construed restrictively but will mean "including, without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing" respectively;
  - 48.2.2.3 any reference to days (other than a reference to business days), months or years will be a reference to calendar days, months or years, as the case may be;

- 48.2.2.4 subject to clause 48.10.6, where any number of days is to be calculated from a particular day, such number shall be calculated as inclusive of the first day and exclusive of the last day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the immediately preceding day which is a business day.
- 48.2.2.5 If any provision in a definition in the A Preference Share Terms is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of the A Preference Share Terms.
- 48.2.3 Headings and sub-headings in the A Preference Share Terms are inserted for convenience only.
- 48.2.3.1 Where any term is defined within a particular article, that term shall bear the meaning ascribed to it in that article wherever it is used in the A Preference Share Terms.
- 48.2.3.2 The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof shall not be applied in the interpretation of the A Preference Share Terms.

#### 48.3 Issue of A Preference Shares

Each Tranche of A Preference Shares will, subject to clause 48.20 (*A Preference Shares and the Companies Act*):

- 48.3.1 be perpetual and non-redeemable, except that the Company may elect to redeem any or all of the A Preference Shares pursuant to the occurrence of a Redemption Event;
- 48.3.2 be issued as fully paid up shares in the Issuer;
- 48.3.3 be issued in accordance with the Companies Act and the Issuer's MOI;
- 48.3.4 be issued at such Issue Price as may be determined by the Issuer in the applicable Authorising Resolution;
- 48.3.5 accrue at a Dividend Rate as may be determined by the Issuer in the applicable Authorising Resolution;
- 48.3.6 be non-cumulative; and
- 48.3.7 have the ranking set out in clause 48.4 (*Ranking*).

#### 48.4 Ranking

- 48.4.1 The A Preference Shares rank:
- 48.4.1.1 equally among themselves and any other securities expressed (in accordance with its terms) to rank *pari passu* with the A Preference Shares with respect to:
- 48.4.1.1.1 the payment of dividends by the Issuer; and
- 48.4.1.1.2 the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise;

- 48.4.1.2 in priority to the rights of all Equity Shares with respect to:
- 48.4.1.2.1 the payment of dividends by the Issuer; and
  - 48.4.1.2.2 the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise; and
- 48.4.1.3 after the Other Preference Shares with respect to:
- 48.4.1.3.1 the payment of dividends by the Issuer; and
  - 48.4.1.3.2 the distribution of the assets of the Issuer in the event of the liquidation, dissolution or winding up of the Issuer, whether voluntary or involuntary, or any other distribution of the assets of the Issuer whether for the purpose of winding up its affairs or otherwise.

48.4.2 The A Preference Shares do not confer on the A Preference Shareholders the right to participate in the profits or assets of the Issuer except as set out in the A Preference Share Terms and the applicable Authorising Resolutions.

## 48.5 Dividend Rights of the A Preference Shares

The A Preference Shareholders will be entitled to receive the non-cumulative preferential cash dividends to be determined and paid in accordance with the provisions of this clause.

### 48.5.1 Scheduled Preference Dividends

- 48.5.1.1 Each A Preference Share shall confer on the holder thereof the right to receive out of the profits that the Company has determined to distribute, in priority to any payment of dividends to the holders of any Equity Shares, a non-cumulative preferential cash dividend (each, a "**Scheduled Preference Dividend**") which will accrue in respect of such A Preference Share for each Dividend Period in accordance with the following formula:

$$SPD = (IP \times ND \times DR) \div 365,$$

where:

SPD = the Scheduled Preference Dividend payable on each A Preference Share to be calculated, expressed in Rand;

IP = the Issue Price of that A Preference Share;

ND = subject to clause 48.5.1.2, the number of days in that Dividend Period; and

DR = the Dividend Rate.

- 48.5.1.2 If a Preference Dividend is declared in respect of a Scheduled Dividend Date or the Final Dividend Date, the Company shall be

obliged to pay the Scheduled Preference Dividend or Final Dividend (as applicable) that has accrued in accordance with clause 48.5.1.1 in respect of each A Preference Share as at such Scheduled Dividend Date or Final Dividend Date (as applicable). For the avoidance of doubt, following the declaration of a Preference Dividend, payment thereof may be cancelled by a resolution of the Board on any date up to and including its Dividend Payment Date and no Event of Default or other breach under these A Preference Share Terms shall occur pursuant to such cancellation and the Company shall, subject to Applicable Laws, have access to such retained amounts to meet its obligations to other creditors as they fall due.

- 48.5.1.3 Each Scheduled Preference Dividend shall for the purposes of calculation:
- 48.5.1.3.1 accrue on a daily basis during the period of calculation;
  - 48.5.1.3.2 be compounded monthly in arrears;
  - 48.5.1.3.3 be calculated on the actual number of days to be calculated on the actual number of days elapsed and on the basis of a 365 (three hundred and sixty-five) day year irrespective of whether the applicable year is a leap year; and
  - 48.5.1.3.4 be determined inclusive of the first day and exclusive of the last day of the period for which it is determined and if such period would otherwise end on a day which is not a business day.
- 48.5.1.4 If a Preference Dividend is not declared or paid by the Company in respect of any Dividend Period, the Preference Dividend will not accumulate and will accordingly never become payable by the Company, whether in preference to payments of any other class of shares in the Company or otherwise. A failure by the Company to declare Preference Dividends shall not constitute an Event of Default or other breach of the Company's obligations under these A Preference Share Terms and no A Preference Shareholder shall have any claim against the Company in respect of such failure.
- 48.5.1.5 A failure by the Company to declare Preference Dividends shall not impose any restriction on the Company, except that the Company shall not, in any Dividend Period in which it does not declare or in which it cancels the payment of any Preference Dividend, be permitted to declare or pay any dividends to any holder of Equity Shares or any other securities issued by the Company and expressed (in accordance with its terms) to rank after (or be otherwise subordinated to) the A Preference Shares in any respect.

#### 48.5.2 Payment of Preference Dividends

- 48.5.2.1 Each Preference Dividend is due and payable and shall be paid in cash on its Dividend Payment Date in accordance with the provisions of clause 48.10 (*Payment Mechanics*).

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

#### **48.6 Additional Amounts**

If there is any change in Applicable Law or the introduction of any new Applicable Law that results in an A Preference Shareholder being required to pay an amount of South African income tax (calculated at the rate of normal tax payable by South African companies at the relevant time) on any Preference Dividend, the Issuer shall pay to each A Preference Shareholder on each Dividend Payment Date, in addition to each Preference Dividend, an amount equal to such income tax (the "**Additional Amount**"), such that the A Preference Shareholder will receive after such income tax has been paid, an amount equal to that Preference Dividend that would have been received, but for the change in Applicable Law or the introduction of new Applicable Law.

#### **48.7 Right of the A Preference Shares on liquidation, dissolution or winding-up**

48.7.1 Each A Preference Share shall have associated with it the right of the A Preference Shareholder to receive, in the event of the liquidation, dissolution or winding-up of the Issuer, a preferent right in priority to the rights of all Equity Shares, to a return of capital in an amount equal to the Outstanding A Preference Share Obligations in respect of such A Preference Share calculated on the date on which payment of that return of capital is made by the Issuer to the holder of such A Preference Share.

48.7.2 Save as set out in clause 48.5 and clause 48.6 above and this clause 48.7, an A Preference Shareholder shall not be entitled to any further participation in the profits or assets of the Company, nor on a winding up of the Company to any surplus assets of the Company.

#### **48.8 Transfer Tax**

The Issuer is not liable for any Taxes that may arise as a result of the transfer of any A Preference Share.

#### **48.9 Redemption**

The A Preference Shares are perpetual and shall not be redeemable, except pursuant to the occurrence of the specific events, and subject to the specific terms of this clause 48.9.

##### **48.9.1 Redemption pursuant to an Issuer Redemption Event, Regulatory Event or Tax Event**

The Issuer shall, at any time after the occurrence of a Redemption Event in relation to any Tranche of A Preference Shares, be entitled (but not obliged), to voluntarily redeem all the Unredeemed A Preference Shares comprising that Tranche of A Preference Shares, provided that the Issuer shall advise the holders of the applicable Tranche of A Preference Shares of: (i) the occurrence of the relevant Redemption Event(s); and (ii) its election to voluntarily redeem all the Unredeemed A Preference Shares in the relevant Tranche of A Preference Shares by written notice

(each, a "**Voluntary Redemption Notice**"), which it may give at any time, which Voluntary Redemption Notice shall set out:

- 48.9.1.1 the A Preference Shares to be redeemed; and
- 48.9.1.2 the date on which such A Preference Shares are to be redeemed (the "**Voluntary Redemption Date**");

#### **48.9.2 No other redemptions**

- 48.9.2.1 The Issuer shall not be entitled to redeem any A Preference Shares otherwise than pursuant clause 48.9.1.
- 48.9.2.2 No A Preference Shareholder shall be entitled to request or demand the redemption of any A Preference Shares.

#### **48.9.3 Procedure for Redemptions**

Subject to the provisions of Applicable Law:

- 48.9.3.1 the Issuer shall, on the applicable Redemption Date, pay, in respect of each A Preference Share being redeemed, all Preference Dividends that have been declared but not paid (if any); and
- 48.9.3.2 the Issuer shall, on the applicable Redemption Date, redeem the relevant A Preference Shares for, and by paying, the aggregate Redemption Amount in respect of all of the A Preference Shares being redeemed.

#### **48.9.4 Purchases**

Except where it does so as a Participant or otherwise as an agent for another person who holds the beneficial interest in an A Preference Share, neither the Issuer nor any of its subsidiaries may, at any time, purchase any A Preference Share, whether in the open market or otherwise.

#### **48.9.5 Redemption pursuant the occurrence of a Redemption Event**

- 48.9.5.1 If the Prudential Authority notifies the Issuer in writing that a Trigger Event has occurred, the Issuer shall (as soon as practicable) notify the A Preference Shareholders of the occurrence of the Trigger event in accordance with clause 43 (*Notices*), clause 48.15 (*Notices*) of these A Preference Share Terms, the Companies Act and any other Applicable Laws.
- 48.9.5.2 Unless the Prudential Authority has notified the Issuer that it will take (or it is in the process of determining whether to take) alternative action that will result in the Issuer being viable again (as contemplated under the Regulations Relating to Banks), the Issuer shall, in its election:
  - 48.9.5.2.1 Write Off all or such part of its obligations to the A Preference Shareholders as the Prudential Authority (in its discretion) determined;
  - 48.9.5.2.2 take such other action in relation to the A Preference Shares as may be required by the Prudential Authority under the Regulations Relating to Banks.

- 48.9.5.2.3 The A Preference Shares will, immediately upon Write Off (in whole) be automatically redeemed and returned to the authorised (but unissued) share capital of the Company.

#### **48.9.6 Event of Default**

Each of the events set out in this clause 48.9.6 is a Redemption Event (whether or not caused by any reason whatsoever outside of the control of the Issuer or any other person).

##### **48.9.6.1 Non-Payment after declaration of Preference Dividend**

The failure by the Issuer to pay any Preference Dividend that has been declared and that has not been cancelled, within 7 (seven) days after its Dividend Payment Date.

##### **48.9.6.2 Non-Redemption**

The failure by the Issuer for any reason whatsoever to pay the Redemption Amount within 7 (seven) days of a Voluntary Redemption Date.

#### **48.9.7 Consequences of Redemption Events**

- 48.9.7.1 Upon the occurrence of an Event of Default each A Preference Shareholder may, subject to clause 48.9.7.2 below, at its discretion and without further notice, institute proceedings for the winding-up of the Issuer and/or prove in any winding up of the Issuer.
- 48.9.7.2 The holders of the A Preference Shares may not enforce any payment obligation of the Company under or arising from the A Preference Shares, including (without limitation) any damages awarded for breach of any obligations of the Company under or arising from the A Preference Shares other than by exercising the right (subject to Applicable Laws) to institute proceedings for, or proving claims in, the winding up of the Company.

#### **48.10 Payment Mechanics**

##### **48.10.1 General**

- 48.10.1.1 Only A Preference Shareholders named in the A Preference Share Register at 17h00 (South Africa time) on the date on which an amount accrues under the A Preference Share Terms shall be entitled to payment of amounts due and payable in respect of A Preference Shares.
- 48.10.1.2 All payments of all amounts (whether in respect of dividends or otherwise) due and payable in respect of any A Preference Shares shall be made by the Issuer (where the Issuer itself acts as Administration Agent) or the Administration Agent on behalf of the Issuer (where the Issuer has appointed a third party to act as Administration Agent), as the case may be, on the terms and conditions of an agency agreement (if any) and this clause 48.10.



- 48.10.1.3 All references in this clause 48.10 to *Administration Agent* shall be construed as references to the Issuer (where the Issuer itself acts as Administration Agent) or the Administration Agent on behalf of the Issuer (where the Issuer has appointed a third party entity to act as Administration Agent), as the case may be.
- 48.10.1.4 Payments will be subject in all cases to any fiscal or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of clause 48.8 (*Transfer Taxes*).

#### **48.10.2 Payment of all amounts due and payable in respect of A Preference Shares**

- 48.10.2.1 The Issuer shall pay all amounts due *and* payable in respect of any registered A Preference Shares in immediately available and freely transferable funds, in Rands, by electronic funds transfer to the bank account of the Administration Agent, which in turn will transfer such funds, to the registered A Preference Shareholder of such A Preference Shares.
- 48.10.2.2 Neither the Issuer nor the Administration Agent shall be responsible for the loss in transmission of any such funds, and payment of any amount into the bank accounts referred to in clause 48.10.2.1, in accordance with clause 48.10.2.1, shall be satisfaction *pro Canto*, to the extent of such amount, of the Issuer's obligations to the A Preference Shareholders under the relevant A Preference Shares and the A Preference Share Terms.

#### **48.10.3 Surrender of Certificated Shares**

- 48.10.3.1 Payments of the Redemption Amount in respect of any A Preference Share(s) which is/are represented by Certificated Shares shall be made to the A Preference Shareholder(s) of such A Preference Share(s) only if, prior to the date on which the relevant Tranche of A Preference Shares are redeemed, such Certificated Shares shall have been surrendered to the Administration Agent at its Specified Office.
- 48.10.3.2 If the relevant Certificated Share is not surrendered to the Administration Agent at its Specified Office in accordance with this clause 48.10.3, the Redemption Amount payable to the A Preference Shareholder of the A Preference Share(s) represented by that Certificated Share shall be retained by the Administration Agent for such A Preference Shareholder, at the latter's risk, until that Certificated Share shall have been surrendered to the Administration Agent at its Specified Office, and such A Preference Shareholder will not be entitled to any dividends and/or other payments in respect of any delay in payment occasioned as a result of such failure to surrender such Certificated Share.

#### **48.10.4 Method of Payment**

- 48.10.4.1 Payments of dividends and the Redemption Amount (if applicable) will be made in Rands by electronic funds transfer.
- 48.10.4.2 Payments will be subject in all cases to any taxation or other laws, directives and regulations applicable thereto in the place of payment, but subject to the provisions of clause 48.8 (*Transfer Taxes*).

#### **48.10.5 Surrender of share certificates**

- 48.10.5.1 No payment in respect of the final redemption of an A Preference Share shall be made until 10 (ten) days after the date on which the Certificated Shares to be redeemed have been surrendered to the Administration Agent.
- 48.10.5.2 Documents required to be presented and/or surrendered to the Administration Agent in accordance with these A Preference Share Terms shall be so presented and/or surrendered at the office of the Administration Agent.
- 48.10.5.3 Holders of uncertificated A Preference Shares are not required to present and/or surrender any documents of title.

#### **48.10.6 Business days**

- 48.10.6.1 Any payment which is due to be made on a day that is not a business day shall be made on the preceding business day, unless if as a result of such adjustment any redemption of an A Preference Share will occur before 3 (three) years and 1 (one) day after its Issue Date in which event the relevant day for payment shall be the next succeeding business day.
- 48.10.6.2 During any extension of the due date for payment under the A Preference Shares Terms the Scheduled Preference Dividends continue to accrue at the rate payable on the original due date.

#### **48.10.7 Currency of Account**

Rands is the currency of account and payment for any sum due from the Issuer under the A Preference Shares Terms.

### **48.11 Exchange of Dematerialised Share and Replacement of Certificated Shares**

#### **48.11.1 Exchange of Dematerialised Share**

- 48.11.1.1 The holder of a Dematerialised Share may, in terms of the Applicable Procedures, by written notice to the Administration Agent, request that such Dematerialised Share be exchanged for a Certificated Share (the "**Exchange Notice**"). The Exchange Notice shall specify: (i) the name, address and bank account details of the holder of the Dematerialised Share; and (ii) the day on which such Dematerialised Share is to be exchanged for a Certificated Share; provided that such day shall be a business day and shall fall not less than 30 (thirty) days after the day on which such Exchange Notice is given.
- 48.11.1.2 The Administration Agent will, as soon as is practicable but within 14 (fourteen) days after receiving such notice, in accordance with the Applicable Procedures, procure that a Certificated Share is prepared, authenticated and made available for delivery, on a business day falling within the aforementioned 14 (fourteen) day period, to the applicable A Preference Shareholder in respect of the conversion at the Specified Office of the Administration Agent.

#### **48.11.2 Replacement**

If any Certificated Share is worn out, mutilated, defaced, stolen, destroyed or lost it may be replaced at the Specified Office of the Administration Agent, on payment by the claimant of such costs and expenses as may be incurred in connection therewith

and the provision of such indemnity as the issuer and the Administration Agent may reasonably require. Mutilated or defaced Certificated Shares must be surrendered at the Specified Office of the Administration Agent before replacements will be issued.

#### **48.11.3 Death and sequestration or liquidation of A Preference Shareholder**

Any person becoming entitled to A Preference Shares in consequence of the death, sequestration or liquidation of the holder of such A Preference Shares may, upon producing evidence to the satisfaction of the Issuer that he holds the position in respect of which he proposes to act under this clause 48.11.3 or of his title as the Issuer and the Administration Agent shall require, be registered himself as the holder of such A Preference Shares or, subject to the Applicable Procedures, this clause 48.11.3 and clause 48.12 (*Transfer of A Preference Shares*), may transfer such A Preference Shares. The Issuer and (if applicable) the Administration Agent shall be entitled to retain any amount payable upon the A Preference Shares to which any person is so entitled until such person shall be registered as aforesaid or shall duly transfer the A Preference Shares.

#### **48.11.4 Costs**

The costs and expenses of the printing, issue and delivery of each Certificated Share and all Taxes and governmental charges or insurance charges that may be imposed in relation to such Certificated Share and/or the printing, issue and delivery of such Certificated Share shall be borne by the Issuer.

### **48.12 Transfer of A Preference Shares**

#### **48.12.1 Transfer of Dematerialised Shares**

- 48.12.1.1 Dematerialised Shares may be transferred only in accordance with the Applicable Procedures through the Administration Agent.
- 48.12.1.2 Transfers of Dematerialised Shares to and from A Preference Shareholders occur by way of electronic book entry in the securities accounts maintained by the Administration Agent, in accordance with the Applicable Procedures.

#### **48.12.2 Transfer of Certificated Shares**

- 48.12.2.1 In order for any transfer of Certificated Shares to be recorded in the A Preference Share Register, and for such transfer to be recognised by the Issuer:
  - 48.12.2.1.1 the transfer of such Certificated Shares must be embodied in a Transfer Form;
  - 48.12.2.1.2 the Transfer Form must be signed by the registered A Preference Shareholder of such Certificated Shares and the transferee, or any authorised representatives of that registered A Preference Shareholder or transferee;

- 48.12.2.1.3 the Transfer Form must be delivered to the Administration Agent at its Specified Office together with the Certificated Shares for cancellation.
- 48.12.2.2 Subject to this clause 48.12.2, the Administration Agent will, within 3 (three) business day of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any Applicable Law and/or Applicable Procedures), record the transfer of Certificated Shares in the A Preference Share Register, and authenticate and deliver to the transferee at the Administration Agent's Specified Office or, at the risk of the transferee, send by mail to such address as the transferee may request, a new certificate in respect of the Certificated Shares transferred.
- 48.12.2.2 Where an A Preference Shareholder has transferred a portion only of the Certificated Shares represented by a certificate, the Administration Agent will authenticate and deliver to such A Preference Shareholder at the Administration Agent's Specified Office or, at the risk of such A Preference Shareholder, send by mail to such address as such A Preference Shareholder may request, at the risk of such A Preference Shareholder, a new certificate representing the balance of the Certificated Shares held by such A Preference Shareholder.
- 48.12.2.3 The transferor of any Certificated Shares will be deemed to remain the owner thereof until the transferee is registered in the A Preference Share Register as the holder thereof.
- 48.12.2.4 Before any transfer of Certificated Shares is registered in the A Preference Share Register, all relevant transfer Taxes (if any) must have been paid by the transferor and/or the transferee and such evidence must be furnished as the Issuer and the Administration Agent may reasonably require as to the identity and title of the transferor and the transferee.
- 48.12.2.5 If a transfer of any Certificated Shares is registered in the A Preference Share Register, the Transfer Form and cancelled certificate in respect of the transferred Certificated Shares will be retained by the Administration Agent.
- 48.12.2.6 The Administration Agent will, within 3 (three) business days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any applicable taxation or other laws, regulations or Applicable Procedures), authenticate and deliver to the transferee (at the risk of the transferee) a new certificate in respect of the Certificated Shares transferred.

#### **48.13 A Preference Share Register**

- 48.13.1 The A Preference Share Register shall be kept at the Specified Offices of the Administration Agent. The A Preference Share Register shall reflect the number of A Preference Shares at any given time and the date upon which each of the A Preference Shareholders was registered as such. The A Preference Share Register shall contain the name, address, and bank account details of the A Preference Shareholders of A Preference Shares. The A Preference Share Register shall set out the Issue Price of the A Preference Shares issued to such A Preference Shareholders and shall show the date of such issue. The A Preference Share

Register shall show the serial number of share certificates issued in respect of any A Preference Shares. The A Preference Share Register shall be open for inspection during the normal business hours of the Issuer to any A Preference Shareholder or any person authorised in writing by any A Preference Shareholder. The Administration Agent shall not be obliged to record any transfer while the A Preference Share Register is closed. The Administration Agent shall not be bound to enter any trust into the A Preference Share Register or to take notice of any or to accede to any trust executed, whether express or implied, to which any A Preference Share may be subject.

48.13.2 The Administration Agent shall alter the A Preference Share Register in respect of any change of name, address or bank account number of any of the A Preference Shareholders of which it is notified in accordance with these A Preference Share Terms.

48.13.3 Except as provided for in these A Preference Share Terms or as required by law in respect of A Preference Shares, the Issuer will only recognise an A Preference Shareholder as the owner of the A Preference Shares registered in that A Preference Shareholder's name as per the A Preference Share Register.

#### **48.14 Administration Agent**

48.14.1 Any third party appointed by the Issuer as Administration Agent and/or shall act solely as the agent of the Issuer and does not assume any obligation towards or relationship of agency or trust for or with any A Preference Shareholders.

48.14.2 If the Issuer elects to appoint another entity (not being the Issuer) as Administration Agent, that other entity, on execution of an appropriate agency agreement or an appropriate accession letter to any agency agreement, as the case may be, shall serve in that capacity in respect of the A Preference Shares. The Issuer shall notify the A Preference Shareholders (in the manner set out in clause 48.15 (*Notices*)) of any such appointment.

48.14.3 The Issuer is entitled to vary or terminate the appointment of the Administration Agent and/or appoint additional or other agents and/or approve any change in the specified office through which any such agent acts, provided that there will at all times be an Administration Agent. The Administration Agent acts solely as the agent of the Issuer and does not assume any obligation towards or relationship of agency or trust for or with any A Preference Shareholders.

#### **48.15 Notices**

##### **48.15.1 By the Issuer**

##### **48.15.1.1 Service of Notice**

48.15.1.1.1 Subject to clause 48.15.1.1.2 and 48.15.1.3, any notice or document, including a security certificate, may be served on or delivered to any A Preference Shareholder by the issuer by electronic mail at the electronic mail address held by the Company in respect of the A Preference Shareholder or by sending it by post in a pre-paid envelope addressed to such A Preference Shareholder at his registered address, supplied by him to the Issuer as his address for the service of notices, or by delivering it to such address addressed as aforesaid.

48.15.1.1.2 Any notice, document or information (including a Certificated Share) which is sent or supplied by the Issuer in hard copy form, or in electronic form, and which is properly addressed shall, where required

to be delivered for any purpose contemplated in the Companies Act and/or the Regulations, be deemed to have been Delivered to the intended recipient on the date and at the time determined in accordance with Table CR3 in the Regulations. The Issuer shall however 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.

- 48.15.1.1.3 The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate any action taken at the relevant meeting or other proceeding.

#### **48.15.1.2 Deceased and Insolvent A Preference Shareholders**

A person entitled to a security in consequence of the death or insolvency of an A Preference Shareholder or otherwise by operation of law, upon supplying to the Issuer such evidence as the Board may reasonably require to show his title to that A Preference Share, and upon supplying also an address within the Republic for the service of notices, shall be entitled to have served upon or delivered to him at such address any notice or document to which the said A Preference Shareholder would have been entitled, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested, whether jointly with or as claiming through or under him, in that A Preference Share. Save as aforesaid any notice or document delivered or sent by post to or left at the address of any A Preference Shareholder in pursuance of the Issuer's Memorandum of Incorporation shall, notwithstanding that such A Preference Shareholder be then dead or insolvent or in liquidation, and whether or not the Issuer has notice of his death or insolvency or liquidation, be deemed to have been duly served or delivered in respect of any A Preference Share registered in the name of such A Preference Shareholder as sole or first-named joint A Preference Shareholder.

#### **48.15.1.3 Electronic Communication**

- 48.15.1.3.1 Any A Preference Shareholder may notify the Issuer of an e-mail address or cellphone number for the purpose of his receiving electronic communications from the Issuer, and having done so shall be deemed to have agreed to receive by electronic communication notices and other documents from the Issuer at his e-mail address or cellphone number, and the Issuer may satisfy its obligation to send him any notice or other document

by using electronic communication to give notices and other documents or notices of availability of the foregoing to him.

- 48.15.1.3.2 Any amendment or revocation of a notification given to the Issuer under this clause 48.15.1.3 shall only take effect if in writing, signed by the A Preference Shareholder and on actual receipt by the Issuer thereof.
- 48.15.1.3.3 An electronic communication shall not be treated as received by the Issuer if it is rejected by computer virus protection arrangements.
- 48.15.1.3.4 If the Issuer receives actual notice that a failure of delivery of an electronic communication to an A Preference Shareholder has occurred, and then receives actual notice that subsequent attempts to resend the original communication have also failed, the Issuer shall send a hard copy of the communication by post to the A Preference Shareholder's registered address within 48 hours of the Issuer receiving the notice of the original failure of delivery

#### **48.15.1.4 Statutory Requirements as to notices**

Nothing in clause 48.15.1.1 to 48.15.1.3 shall affect any requirement of the Companies Act, the Banks Act, the Applicable Procedures and/or Applicable Law, as the case may be, that any particular offer, notice or other document be served in any particular manner.

#### **48.15.2 Notice by the A Preference Shareholders**

A notice to be given by any A Preference Shareholder to the Issuer shall be in writing and given by lodging (either by hand delivery or posting by registered mail) that notice, together with a certified copy of the relevant Certificated Share at the office of the Administration Agent specified in the applicable Authorising Resolution. For so long as any of the A Preference Shares are issued in uncertificated form, notice may be given by any holder of a Dematerialised Share via the Administration Agent in accordance with the Applicable Procedures, in such manner as the Issuer and the Administration Agent may approve for this purpose. Such notices shall be deemed to have been received by the Issuer on the date and at the time determined in accordance with Table CR3 in the Regulations.

#### **48.16 Voting Rights**

- 48.16.1 No A Preference Share shall have associated with it any general voting right at any shareholders meeting of the Issuer other than an irrevocable right of the A Preference Shareholders of any Tranche of A Preference Shares to vote on any proposal to amend the A Preference Share Terms associated with that Tranche of A Preference Shares.

48.16.2 Provided that where any amendment to the A Preference Share Terms is a proposed amendment to the A Preference Share Terms and/or the Issuer's MOI which affects or relates to all A Preference Shares in issue at that time, then such amendment shall not be effective unless it is approved by Special Resolution of all A Preference Shareholders and for such purpose all of the holders of A Preference Shares shall be treated as a single class and each A Preference Share shall have associated with it one general voting right for the purposes of such Special Resolution. Where any proposed amendment to the A Preference Share Terms is a proposed amendment to the A Preference Share Terms or the Issuer's MOI, which affects or relates to holders of a particular Tranche of A Preference Shares only, then such amendment shall not be effective unless it is approved by Special Resolution of the holders of the affected Tranche of A Preference Shares.

#### **48.17 Meetings of A Preference Shareholders**

##### **48.17.1 Convening of meetings**

The Issuer may at any time convene a meeting of all A Preference Shareholders or holders of any Tranche of A Preference Shares and shall be obliged to do so upon the request in writing of A Preference Shareholders holding not less than 5% (five percent) of the aggregate Outstanding A Preference Share Obligations of all A Preference Shares or A Preference Shares in that Tranche, as the case may be. Should the Issuer fail to requisition a meeting within 15 (fifteen) business days of such a request being Delivered to the Specified Office of the Issuer, the A Preference Shareholders requesting such a meeting may convene such meeting by written notice to the Issuer and the relevant A Preference Shareholders to which such meeting applies in accordance with clause 48.15 (*Notices*). A meeting so convened will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer.

##### **48.17.2 Notice of meetings**

48.17.2.1 Any meeting of all A Preference Shareholders or holders of any Class of A Preference Shares shall be called by at least 15 (fifteen) business days' notice after Delivery by email or short message service by the Issuer to all A Preference Shareholders entitled to vote or otherwise entitled to receive notice and the Administration Agent. The period of notice shall in each case be exclusive of the day on which the notice is Delivered or deemed to be Delivered in accordance with the A Preference Share Terms, the Companies Act and Regulations and inclusive of the day on which the relevant meeting is to be held. A meeting of all A Preference Shareholders or holders of any Tranche of A Preference Shares, notwithstanding that it has been called by a shorter notice than that specified above, shall be deemed to have been duly called if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda (i) is present at the meeting; and (ii) votes to waive the required minimum notice of the meeting.

48.17.2.2 A requisition notice by A Preference Shareholders requesting a meeting of A Preference Shareholders pursuant to clause 48.17.1 may consist of several documents in like form, each signed by one or more requisitioning A Preference Shareholders. Such a requisition notice will be delivered to the Specified Offices of the Issuer.



### 48.17.3 Contents of notice of meetings of A Preference Shareholders

- 48.17.3.1 Every notice calling a meeting of A Preference Shareholders must be in writing and shall specify, in addition to any other information prescribed by the Companies Act, the Banks Act and/or Applicable Procedures, the place, the day and the hour of the meeting and there shall appear, with reasonable prominence in every such notice a statement that an A Preference Shareholder entitled to attend and vote is entitled to appoint a proxy or proxies to attend, speak and vote instead of him on a poll or a show of hands and that a proxy need not be an A Preference Shareholder of the Issuer.
- 48.17.3.2 The notice shall specify the general or specific purpose of the meeting.
- 48.17.3.3 For the purposes of determining which persons are entitled to attend or vote at a meeting and how many votes such person may cast, the Issuer or the Administration Agent, as the case may be, shall specify in the notice of the meeting, the record date by which a person must be entered on the A Preference Share Register in order to have the right to participate in and vote at such meeting.

### 48.17.4 Quorum

- 48.17.4.1 Subject to the provisions of clause 48.17.4.3, no business shall be transacted at any meeting of A Preference Shareholders or holders of a particular Tranche of A Preference Shares, as the case may be, unless a quorum is present. The quorum necessary for the commencement of a meeting of A Preference Shareholders or holders of a particular Tranche of A Preference Shares shall be sufficient persons present in person or represented by Representative or by proxy holding, in aggregate, not less than 5% (five percent) of the aggregate Outstanding A Preference Share Obligations of all A Preference Shares or A Preference Shares in the relevant Tranche of A Preference Shares, as the case may be, provided that a minimum number of three such persons must be present.
- 48.17.4.2 A matter to be decided at a meeting of A Preference Shareholders or holders of a particular Tranche of A Preference Shares, as the case may be, may not begin to be considered unless those who fulfilled the quorum requirements of clause 48.17.4.1, continue to be present.
- 48.17.4.3 If within five minutes from the time appointed for a meeting of A Preference Shareholders or holders of a particular Tranche of A Preference Shares, as the case may be, or such longer interval not exceeding one hundred and twenty minutes as the chairperson of the meeting may think fit to allow a quorum is not present, or if during the meeting a quorum ceases to be present, the meeting shall stand adjourned to such day, time and place being at least 10 (ten) days after the original meeting date; as may have been specified for the purpose in the notice convening the meeting or, if not so specified, as the chairperson of the meeting may determine, subject to the provisions of clause 48.17.6 (*Adjournment of meetings*).

### 48.17.5 Quorum at any meeting for passing a Special Resolution

The quorum at any meeting for passing a Special Resolution, shall be three or more A Preference Shareholders of that Class present or represented by proxies or Representatives and holding or representing at least 10% (ten percent) of the aggregate Outstanding A Preference Share Obligations of the A Preference Shares held by the applicable Class. A Special Resolution passed at any meeting of the holders of A Preference Shares of that Class will be binding on all holders of A Preference Shares, whether or not they are present at the meeting. No amendment to or modification of the A Preference Share Terms may be effected without the prior written approval of the Issuer.

#### **48.17.6 Adjournment of meetings**

- 48.17.6.1 The chairperson of any meeting of A Preference Shareholders or holders of a particular Tranche of A Preference Shares, as the case may be, at which a quorum is present may with the consent of *the* meeting, and shall if so directed by the meeting (such consent or direction being given by a motion supported by persons entitled to exercise, in aggregate, a majority of A Preference Shareholders present or represented by proxies or Representatives and holding or representing in the aggregate a clear majority of the aggregate Outstanding A Preference Share Obligations of all the A Preference Shares or A Preference Shares held within the applicable Tranche) adjourn the meeting from time to time and from place to place to a day not earlier than 7 (seven) days and not later than 21 (twenty-one) days after the date of the meeting, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Subject to clause 48.17.6.2, notice of the adjourned meeting shall be given in the like manner as in the case of the original meeting.
- 48.17.6.2 Unless required under the Companies Act, the Banks Act, the Applicable Procedures or Applicable Law, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **48.17.7 Participation**

The following persons may attend and speak at a meeting:

- 48.17.7.1 A Preference Shareholders present, by Representative or by proxy provided that no such person shall be entitled to attend and speak (or vote) unless he provides proof acceptable to the Issuer that he is an A Preference Shareholder, its Representative or proxy if required by the Issuer to do so;
- 48.17.7.2 any officer or duly appointed representative of the Issuer and every other person authorised in writing by the Issuer provided that such person shall not be entitled to vote, other than as a proxy or Representative;
- 48.17.7.3 the legal counsel to the Issuer;
- 48.17.7.4 the Administration Agent;

- 48.17.7.5 any other person approved by the A Preference Shareholders at such meeting; and
- 48.17.7.6 every director or duly appointed representative of the Issuer and every other person authorised in writing by the Issuer may attend and speak at a meeting of A Preference Shareholders, but shall not be entitled to vote, other than as a proxy or Representative.

#### 48.17.8 Poll

- 48.17.8.1 At any meeting all resolutions, and any proposed amendment thereto, put to the vote of the meeting shall be decided on a poll unless the chairperson determines, subject to clause 48.17.8.2 and 47.17.8.3, that such resolution, and any proposed amendments thereto, shall be decided on a show of hands.
- 48.17.8.2 If, pursuant to clause 48.17.8.1, the chairperson of the meeting has determined that a resolution, and any proposed amendments thereto, shall be decided on a show of hands, before, or on the declaration of the result of such a vote, a poll may be demanded by:
  - 48.17.8.2.1 not less than 5 (five) A Preference Shareholders in person or by proxy and entitled to vote, or
  - 48.17.8.2.2 an A Preference Shareholder or A Preference Shareholders present in person or by Representative or by proxy and representing not less than one-tenth of the aggregate Outstanding A Preference Share Obligations of the A Preference Shares of all A Preference Shareholders having the right to vote at the meeting; or
  - 48.17.8.2.3 the chairperson of the meeting,

provided that no poll may be demanded on a resolution for the election of the chairperson of a meeting.
- 48.17.8.3 A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 48.17.8.4 A poll shall be taken in such manner, including the use of ballot or voting papers or tickets, as the chairperson of the meeting may direct, and the result of the poll shall be deemed to be the resolution of the meeting to which the poll relates. The chairperson of the meeting may, and if so directed by the meeting shall, appoint scrutineers, who need not be A Preference Shareholders, and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 48.17.8.5 On a poll, votes may be given either personally or by Representative or by Proxy and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 48.17.8.6 A poll in relation to a question of adjournment shall be taken forthwith. A poll in relation to any other question shall be taken either at the meeting or at such subsequent time not being more than 30 (thirty) days from the date of the meeting and place as the

chairperson of the meeting may direct. Any poll may, as the chairperson of the meeting shall direct, close at different times for different Tranches of A Preference Shareholders. No notice need be given of a poll not taken immediately. The taking of a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question to which the poll relates.

#### 48.17.9 Votes

- 48.17.9.1 Subject to clause 48.17.3.3, the provisions of the Banks Act and any special rights or restrictions as to voting attached by or in accordance with the Issuer's MOI to any Tranche of A Preference Shares, every A Preference Shareholder present in person, by Representative or by proxy and who provided proof acceptable to the Issuer of his entitlement to vote, if so required by the Issuer, shall have (i) on a show of hands, one vote; or (ii) on a poll, one vote for each A Preference Share held or represented by him.
- 48.17.9.2 In the case of a voting tie, the chairperson shall have a casting vote.
- 48.17.9.3 Unless the form of proxy states otherwise, a Representative or proxy shall not be obliged to exercise all the votes which he is entitled or cast all the votes which he exercises in the same way.
- 48.17.9.4 A majority of persons present in person or represented by proxies or by Representatives shall be required to ordinarily pass a resolution of A Preference Shareholders.

#### 48.18 Modification

Subject to the Companies Act and the Regulations, the Issuer may effect, without the consent of the holders of a particular Tranche of A Preference Shares, any modification of the A Preference Share Terms in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the A Preference Share Terms, by publishing a notice of the alteration, in any manner required or permitted by the Issuer's MOI or the rules of the Issuer and filing a notice of the alteration with the Companies and Intellectual Property Commission. Any such modification shall be binding on the holders of the relevant Tranche of A Preference Shares. For the avoidance of doubt, the exercise by the Issuer of its rights under clause 48.14 (*Administration Agent*) shall not constitute a modification of these A Preference Share Terms.

#### 48.19 Further Issues

- 48.19.1 The Issuer shall be at liberty from time to time without the consent of the A Preference Shareholders to create and issue further Tranches of A Preference Shares (the "**Additional A Preference Shares**") having preferences, rights, limitations and other terms that are identical to any of the other Tranches of A Preference Shares already issued (the "**Existing A Preference Shares**") in all respects, save for their respective Issue Prices, Issue Dates and/or Dividend Rates. Additional A Preference Shares shall be consolidated and form a single Class with any Existing A Preference Shares with the same Dividend Rate. Additional A Preference Shares, once issued, shall rank *pari passu* in all respects with all the Existing A Preference Shares, whether or not forming a single Class with any Existing A Preference Shares.

48.19.2 No shares in the capital of the Company ranking, as regards rights to dividends or, on a winding-up as regards return of capital, in priority to the A Preference Shares, shall be created or issued, without the prior sanction of a Special Resolution passed at a meeting of the A Preference Shareholders.

#### **48.20 A Preference Shares and the Companies Act**

48.20.1 Notwithstanding anything to the contrary contained in these A Preference Share Terms and, (i) the Issuer, (ii) each Tranche of A Preference Shares, and (iii) each of the A Preference Shareholders, shall be subject to all of the applicable provisions of the Companies Act including, without limiting the generality of the foregoing, sections 37 and 46 of the Companies Act (the "**Applicable Provisions**").

48.20.2 For the purpose of the A Preference Shares and in relation to (i) the Issuer, (ii) each Tranche of A Preference Shares, and (iii) each of the A Preference Shareholders;

48.20.2.1 the Applicable Provisions are deemed to be incorporated by reference into these A Preference Share Terms; and

48.20.2.2 to the extent that there is any conflict or inconsistency between the Applicable Provisions and any of these A Preference Share Terms, the Applicable Provisions shall prevail; and

48.20.2.3 to the extent that, in consequence of such conflict, the Applicable Provisions replace, amend, or supplement any of these A Preference Share Terms, any reference to A Preference Share Terms shall be deemed to include these A Preference Share Terms as so replaced, amended or supplemented.

#### **48.21 Severability**

Should any of the applicable A Preference Share Terms be, or become, invalid, the validity of the remaining applicable A Preference Share Terms shall not be affected in any way.

## 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;<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

<sup>1</sup> Regulation 25(3) contains requirements as to what the accounting records must include.

"**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 2**;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

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

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

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

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

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

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

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

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether—
  - (i) in the form of a dividend;
  - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
  - (iii) as consideration for the acquisition—
    - (aa) by the company of any of its shares, as contemplated in section 48; or

- (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
- (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

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

"**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;

"**general voting rights**" means voting rights that can be exercised generally at a general meeting of the company;

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

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

"**incorporator**", when used—



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

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

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

"**juristic person**" includes—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Schedule 2 – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)**

1. A person is ineligible to be a Director if the Person –
  - 1.1. is a juristic person;
  - 1.2. is an unemancipated minor, or is under a similar legal disability; or
  - 1.3. does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if –
  - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  
  - 2.2. the Person –
    - 2.2.1. is an unrehabilitated insolvent;
  
    - 2.2.2. is prohibited in terms of any public regulation to be a Director;
  
    - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
  
    - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount of R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
      - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
  
      - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
  
      - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

**Schedule 3 – Prescribed methods of delivery in the Regulations**

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
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 the Republic;</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>