

Republic of South Africa

Companies Act No. 71 of 2008 (as amended)

MEMORANDUM OF INCORPORATION FOR A PUBLIC COMPANY

Name of company: K2014176899 (South Africa) Limited

Registration No.: 2014/176899/06

(the "**Company**")

This Memorandum of Incorporation was adopted by Special Resolution passed on _____ 2015, a copy of which was "**Filed**" as contemplated in the Companies Act No. 71 of 2008, as amended, together with the notice of amendment in substitution for the existing standard form CoR15.1B Memorandum of Incorporation.

The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Companies Act No. 71 of 2008, as amended, shall not apply to the Company.

TABLE OF CONTENTS

Clause number and description	Page
PART ONE: INTRODUCTION	5
1. DEFINITIONS.....	5
2. INTERPRETATION	6
PART TWO: NATURE OF THE COMPANY.....	8
3. JURISTIC PERSONALITY	8
4. PUBLIC COMPANY	8
5. POWERS AND CAPACITY OF THE COMPANY	8
6. LIMITATION OF LIABILITY	9
7. AMENDMENT OF THE MOI	9
8. RULES.....	10
PART THREE: CAPITALISATION AND SECURITIES OF THE COMPANY	10
9. SHARE CAPITAL AND VARIATION OF PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS.....	10
10. AUTHORITY TO ISSUE SECURITIES AND OPTIONS TO SUBSCRIBE FOR SECURITIES	11
11. DEBT INSTRUMENTS	12
12. CAPITALISATION ISSUE.....	12
13. REGISTRATION OF SHARES AND OTHER SECURITIES IN THE NAME OF NOMINEES	12
14. TRANSFER OF SECURITIES	12
15. REGISTER, CERTIFICATED SECURITIES AND UNCERTIFICATED SECURITIES	14
16. TRANSMISSION OF SECURITIES BY OPERATION OF LAW.....	16
17. ACQUISITION OF SHARES IN THE COMPANY'S HOLDING COMPANY	17
PART FOUR: SHAREHOLDERS	17
18. SHAREHOLDERS' RIGHT TO INFORMATION.....	17
19. SHAREHOLDERS' AUTHORITY TO ACT	17
20. PROXIES	18
21. RECORD DATE.....	19
PART FIVE: SHAREHOLDERS MEETINGS, VOTING AND RESOLUTIONS.....	20
22. REQUIREMENT TO HOLD A SHAREHOLDERS MEETING	20
23. LOCATION OF SHAREHOLDERS MEETINGS.....	21

24.	NOTICE OF SHAREHOLDERS MEETINGS	21
25.	ELECTRONIC PARTICIPATION IN SHAREHOLDERS MEETINGS	21
26.	VOTING	22
27.	QUORUM FOR SHAREHOLDERS MEETINGS AND ADJOURNMENTS	23
28.	CHAIRPERSON OF SHAREHOLDERS MEETINGS.....	24
29.	SHAREHOLDERS RESOLUTIONS	24
30.	SHAREHOLDERS ACTING OTHER THAN AT A MEETING	25
31.	MEETINGS IN RESPECT OF THE SECURITIES OTHER THAN SHARES.....	25
	PART SIX: AUTHORITY OF THE BOARD, GENERAL POWERS AND LIMITATIONS.....	25
32.	AUTHORITY OF THE BOARD AND GENERAL POWERS	25
33.	EXECUTIVE OFFICERS	26
34.	BORROWING POWERS.....	27
	PART SEVEN: DIRECTORS AND OFFICERS	27
35.	COMPOSITION OF THE BOARD AND ELECTION AND REMOVAL OF DIRECTORS.....	27
36.	VACANCIES ON THE BOARD.....	28
37.	FURTHER ELIGIBILITY OR QUALIFICATION REQUIREMENTS	29
38.	DIRECTORS' MEETINGS	29
39.	DIRECTORS ACTING OTHER THAN AT A MEETING	31
40.	CHAIRPERSON OF THE BOARD	31
41.	DIRECTORS COMPENSATION	32
42.	INDEMNIFICATION OF DIRECTORS.....	32
43.	PERSONAL FINANCIAL INTEREST.....	33
44.	COMMITTEES OF THE BOARD.....	33
45.	COMPANY SECRETARY.....	33
	PART EIGHT: GENERAL PROVISIONS.....	34
46.	DISTRIBUTIONS	34
47.	FINANCIAL ASSISTANCE	35
48.	FINANCIAL YEAR	35
49.	FINANCIAL STATEMENTS AND ACCESS TO FINANCIAL STATEMENTS.....	36
50.	WINDING-UP	36

51. LOSS OF DOCUMENTS 37

52. NOTICES 37

PART ONE: INTRODUCTION

1. DEFINITIONS

In this MOI, –

- 1.1. words and expressions that are defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act. For ease of reading, such terms have been capitalised in this MOI; and
- 1.2. unless otherwise indicated, the following terms shall have the meaning assigned to them hereunder and cognate expressions shall have a corresponding meaning:
 - 1.2.1. "**Banks Act**" means the Banks Act No. 94 of 1990, and includes all Regulations (as amended or restated from time to time) published and promulgated in terms of the said Act;
 - 1.2.2. "**Board**" means the board of Directors of the Company from time to time or, if there is only 1 (one) Director, then that Director;
 - 1.2.3. "**Certificated Securities**" shall have the meaning ascribed thereto in Clause 15.1.1;
 - 1.2.4. "**Companies Act**" or "**Act**" means the Companies Act No. 71 of 2008, and includes all schedules thereto and the Regulations;
 - 1.2.5. "**Company**" means the Company as defined as such on the front page of this MOI;
 - 1.2.6. "**Executive Officer**" shall have the meaning ascribed thereto in Clause 33.1;
 - 1.2.7. "**Filing Date**" means the date on which this MOI is filed with the Commission in accordance with section 16(7);
 - 1.2.8. "**Financial Year**" shall have the meaning ascribed thereto in Clause 48;
 - 1.2.9. "**FMA**" means the Markets Act No. 19 of 2012 (which Act replaced the Securities Services Act No. 36 of 2004), as amended or replaced from time to time;
 - 1.2.10. "**JSE**" means the JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2005/022939/06, licenced as an exchange under the FMA;

- 1.2.11. **"MOI"** or **"Memorandum of Incorporation"** means the memorandum of incorporation of the Company, being this document (and including any annexures hereto), as amended or replaced from time to time;
- 1.2.12. **"Ordinary Share"** means ordinary shares with a par value of R0.01 (one cent) each in the issued share capital of the Company, having the preferences, rights, limitations and other terms set out in Clause 9.2;
- 1.2.13. **"Prescribed Officer"** shall have the meaning given to that term in Regulation 38, and **"Prescribed Officers"** shall have a corresponding meaning;
- 1.2.14. **"Rand"** or **"R"** shall mean the lawful currency of South Africa;
- 1.2.15. **"Registrar"** means the Registrar of Banks appointed as such under and in terms of the Banks Act;
- 1.2.16. **"Regulations"** means regulations published under the Companies Act;
- 1.2.17. **"South Africa"** means the Republic of South Africa;
- 1.2.18. **"Share"** means a share (as defined in the Companies Act) of the Company, and **"Shares"** shall have a corresponding meaning, and includes an Ordinary Share; and
- 1.2.19. **"Uncertificated Securities"** shall have the meaning ascribed thereto in Clause 15.1.2.

2. **INTERPRETATION**

For the purposes of this MOI the following rules of construction shall apply, unless the context requires otherwise -

- 2.1. references to a Shareholder represented by proxy shall include Shareholders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 2.2. the holder of a general or special power of attorney given by a Shareholder shall be entitled to vote, if duly authorised under that power of attorney to attend and take part in the Shareholders' Meetings, whether or not he be himself a Shareholder of the Company. The power of attorney shall be deposited with the Company or handed to the chairperson as contemplated in Clause 20.4.2;
- 2.3. all references to **"section/s"** in this MOI that are not followed by the words *"Banks Act"* refer to the corresponding sections of the Companies Act, unless the context indicates otherwise and all references to **"Clauses"** are to Clauses of this MOI;

- 2.4. references to Shareholders entitled to vote Present At A Meeting or acting in person shall include Juristic Persons represented by duly authorised representative or acting in the manner prescribed in section 57(5);
- 2.5. any reference to "**Present At Such Meeting**" or "**Present At The Meeting**" will be construed in accordance with the definition of "**Present At A Meeting**" in the Companies Act;
- 2.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 2.7. words importing the masculine gender shall include the feminine gender and neuter genders and *vice versa* and words importing persons shall include natural persons, created entities (corporate or unincorporated) and the State and *vice versa*;
- 2.8. words in the singular number shall include the plural, and words in the plural number shall include the singular;
- 2.9. 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 Clause 1;
- 2.10. any reference to an enactment is to that enactment as at the Filing Date and as amended or re-enacted or replaced from time to time and includes any subordinate legislation made from time to time under such enactment;
- 2.11. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Person, notwithstanding that it is only in Clause 1, effect shall be given to it as if it were a substantive provision in the body of the MOI;
- 2.12. 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;
- 2.13. the words "**include**", "**including**", "**in particular**", "**other**" and "**otherwise**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s (and as such the *eiusdem generis* rule shall not apply);
- 2.14. "**in writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any Electronic Communication; and
- 2.15. when a particular number of "**Business Days**" is provided for between the happening of one event and another, the number of days must be calculated by –

- 2.15.1. excluding the day on which the first such event occurs;
- 2.15.2. including the day on or by which the second event is to occur; and
- 2.15.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in Clauses 2.15.1 and 2.15.2 respectively.

PART TWO: NATURE OF THE COMPANY

3. JURISTIC PERSONALITY

The Company was incorporated, as from the date of incorporation as reflected in its registration certificate, as a Public Company in terms of the Companies Act.

4. PUBLIC COMPANY

- 4.1. The Company is a Profit Company.
- 4.2. Subject to the provisions of section 37 and section 42 of the Banks Act –
 - 4.2.1. the Shares and other Securities issued by the Company are freely transferable; and
 - 4.2.2. the Company is entitled to offer its Shares and other Securities to the public.
- 4.3. The Company is not a Private Company, a State-owned Company or a Personal Liability Company, and, accordingly, the Company is classified as a Public Company in accordance with the provisions of section 8(2)(d).
- 4.4. The Company, being a Public Company, is required in terms of section 34(1) to comply with the extended accountability requirements set out in Chapter 3 of the Companies Act.

5. POWERS AND CAPACITY OF THE COMPANY

- 5.1. Save as otherwise set out in this MOI and subject to the provisions of the Banks Act, the Company has all of the powers and capacity of an Individual except to the extent that a Juristic Person is incapable of exercising any such power, or having such capacity.
- 5.2. The main object and main business of the Company is to carry on the business of a bank in terms of the Banks Act. Accordingly, for so long as it is registered and regulated in terms of the Banks Act, any conditions of registration imposed by the Registrar in terms of section 18 of the Banks Act, this MOI and all of its content shall apply subject to, and be interpreted in conjunction with, any applicable provision of the Banks Act, and any notices, instructions and the like issued in terms of the Banks Act which have the power of law, or any lawful directive,

circular or guidance note issued by the Registrar which is binding on the Company in law and to which the Company is subject.

- 5.3. In the event of a conflict or inconsistency between the provisions of this MOI and any provision of the Banks Act, the provisions of the Banks Act shall prevail and this MOI shall be read in all respects subject to the provisions of the Banks Act.
- 5.4. Notwithstanding any registration of the Company as a registered bank, the provisions of the Companies Act shall continue to apply to the Company to the extent to which they are not inconsistent with the Banks Act, subject to the provisions of section 51 of the Banks Act.

6. **LIMITATION OF LIABILITY**

No Person shall, solely by reason of being an Incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company, except to the extent that the Companies Act or this MOI provides otherwise.

7. **AMENDMENT OF THE MOI**

- 7.1. Every provision of this MOI may only be altered or amended –
 - 7.1.1. in compliance with a court order on the basis set out in section 16(1)(a) read with section 16(4); or
 - 7.1.2. by way of a Special Resolution passed in accordance with section 16(1)(c); or
 - 7.1.3. by the Board in accordance with section 17 and section 36(2)(b) (read with Clause 9.4); or
 - 7.1.4. as directed by the Registrar in terms of section 18(2) of the Banks Act,

and in any event only to the extent that the proposed alteration or amendment has, prior to the Filing thereof, been approved in writing by the Registrar as contemplated in, and to the extent required in terms of, the Banks Act.
- 7.2. No provision of this MOI shall be construed or interpreted as prohibiting the amendment of any particular provision of this MOI and, accordingly, the provisions of section 15(2)(c) shall not apply.
- 7.3. The Company must publish a notice of any alteration made to this MOI by the Board in order to correct this MOI in accordance with section 17(1) by delivering notice of the amended MOI to the Shareholders in accordance with the provisions of Clause 52. The Company shall also (i) deliver a notice of the amended MOI to the Registrar in terms of the Banks Act and (ii) File a notice of the alteration in the manner prescribed in the Companies Act.

7.4. The Company may not change its name, or a translation, or shortened form or derivative thereof, without the approval of the Registrar as required by the provisions of section 22 of the Banks Act.

8. **RULES**

The Board shall have the power and authority to make, amend or repeal any Rules relating to the governance of the Company, as contemplated in section 15(3).

PART THREE: CAPITALISATION AND SECURITIES OF THE COMPANY

9. **SHARE CAPITAL AND VARIATION OF PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS**

9.1. Pursuant to section 79(1)(a) of the Banks Act, the Company shall not be authorised to issue shares of no par value or to convert any of its shares into shares of no par value.

9.2. The Company is authorised to issue 2 000 000 000 (two billion) Ordinary Shares of the same class with each Ordinary Share having a par value of R0.01 (one cent). Each such Ordinary Share shall rank *pari passu* with all other Ordinary Shares and, in terms of section 79(3) of the Banks Act, there shall be no differentiation in the Voting Rights attached to any of the Ordinary Shares of the Company. Accordingly, the holder of an Ordinary Share shall be entitled to –

9.2.1. 1 (one) vote for each Ordinary Share held in respect of every matter to be decided on a poll;

9.2.2. vote on any matter to be decided by the Shareholders at any Shareholders Meeting;

9.2.3. vote on any proposal to amend the preferences, rights, limitations and other terms associated with the Ordinary Share;

9.2.4. participate proportionally in any Distribution made by the Company, excluding any payment in lieu of a capitalisation Share and any consideration payable by the Company for any of its own Shares or for the shares of another company within the same group as contemplated in paragraphs (ii) and (iii) of the definitions of Distribution in the Companies Act, whether during the existence of the Company or upon its dissolution; and

9.2.5. subject to Clause 50, receive proportionally the net assets of the Company upon its liquidation.

- 9.3. Each Share issued by the Company shall entitle the holder thereof to vote on any proposal to amend the preferences, rights, limitations or other terms associated with that Share.
- 9.4. Subject to the provisions of this MOI and the Banks Act, the Board will, in accordance with section 36(3), have the power to –
- 9.4.1. increase or decrease the number of authorised Shares of any class of Shares;
 - 9.4.2. reclassify any classified Shares that have been authorised but not issued;
 - 9.4.3. classify any unclassified Shares that have been authorised but not issued; or
 - 9.4.4. determine the preferences, rights, limitations or other terms of Shares.
- 9.5. Without derogating from any other provision to the contrary in this MOI, the Board will not have the power without the prior approval of the Registrar and in accordance with conditions determined by the Registrar in writing to –
- 9.5.1. issue any preference shares, hybrid debt instruments or debt instrument;
 - 9.5.2. convert any of its Shares into preference shares, hybrid debt instrument or debt instruments; or
 - 9.5.3. convert any of its preference shares of a particular class into preference shares of another class,
- that will qualify as common equity tier 1 capital, additional tier 1 capital or tier 2 capital, as the case may be, as contemplated in section 79 of the Banks Act.

10. **AUTHORITY TO ISSUE SECURITIES AND OPTIONS TO SUBSCRIBE FOR SECURITIES**

- 10.1. Subject to the provisions of this MOI, the Companies Act and approval by the Registrar, to the extent that such approval is required in terms of the provisions of section 37, section 42 or any other applicable provision of the Banks Act, the Board shall have the power to issue Shares or other Securities of the Company and options for the allotment or subscription of authorised Shares or other Securities of the Company.
- 10.2. Subject to the provisions of this MOI and the Companies Act, the Board shall be entitled to determine the terms of any trust agreement contemplated in section 40(5)(b) in respect of the issue of Shares.

11. DEBT INSTRUMENTS

- 11.1. Subject to Clause 9.5, the Board shall have the power and authority to authorise the issue by the Company of secured and unsecured debt instruments, including the power and authority to grant any special privileges regarding any secured and unsecured debt instruments to be issued by the Company as set out in section 43(2) and section 43(3) respectively.
- 11.2. The authority of the Board to authorise the Company to issue secured or unsecured debt instruments or grant any special privileges in respect thereof, as set out in section 43(2) and 43(3) respectively, is accordingly only limited and restricted by this MOI as aforesaid.

12. CAPITALISATION ISSUE

- 12.1. The Board shall have the power or authority to approve the issuing of any authorised Shares as capitalisation shares, to issue Shares of one class as capitalisation shares in respect of Shares of another class, and to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation share as set out in section 47(1). Accordingly, the power and authority of the Board is not limited and restricted by this MOI.
- 12.2. The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in section 47(1)(c), unless the Board –
- 12.2.1. has considered the Solvency and Liquidity Test, as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and
- 12.2.2. is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon completion of the Distribution.

13. REGISTRATION OF SHARES AND OTHER SECURITIES IN THE NAME OF NOMINEES

For as long as the Company is regulated in terms of the Banks Act, the Company shall not, without the written approval of the Registrar as contemplated in section 38 of the Banks Act, be entitled to permit Shares or other Securities of the Company to be allotted and issued or held by, and registered in the name of, one person for the Beneficial Interest of another person other than the intended beneficial Shareholder.

14. TRANSFER OF SECURITIES

- 14.1. Subject to the provisions of the Banks Act, the Shares and other Securities issued by the Company are freely transferable in accordance with the procedural requirements for transfer as contemplated in this Clause 14.

14.2. The transfer of ownership of Uncertificated Securities in the Uncertificated Securities Register may only be effected by -

- 14.2.1. a Participant or Central Securities Depository;
- 14.2.2. on receipt of an instruction to transfer sent and properly authorised in terms of the rules of a Central Securities Depository or an order of a court; and
- 14.2.3. in accordance with section 53 and the rules of the Central Securities Depository,

and, in either event, to the extent required, the Company has received a copy of the permission or written approval required to be obtained from the Registrar in respect of the transfer in terms of the Banks Act.

14.3. The transfer of ownership in any Uncertificated Securities must be affected by –

- 14.3.1. debiting the account in the Uncertificated Securities Register from which the transfer is effected; and
- 14.3.2. crediting the account in the Uncertificated Securities Register to which the transfer is effected,

in accordance with the rules of a Central Securities Depository.

14.4. Nothing in this MOI prejudices any power of a Participant or Central Securities Depository, as the case may be, to effect a transfer to a Person to whom the right to any Uncertificated Securities of the Company has been transmitted by operation of law.

14.5. The Company shall not enter into its Securities Register the transfer of any Certificated Securities, unless –

14.5.1. the transfer is evidenced by a proper instrument of transfer signed by or on behalf of the transferor and the transferee, the form of which shall be the common form of transfer or such other form as the Board may approve from time to time, which has been delivered to the Registered Office together with –

14.5.1.1. such proof as the Board may require of the authority of the signatory/ies to that instrument of transfer; and

14.5.1.2. the original certificate (or duplicate certificate issued pursuant to Clause 15.5.5) in respect of the Securities being transferred or, in the absence of such original or duplicate certificate, such other

evidence as the Board may require to prove the title of the transferor or his right to transfer the Securities concerned; or

14.5.2. the transfer was effected by operation of law,

and, in either instance, to the extent required, the Company has received a copy of any permission or written approval required to be obtained from the Registrar in respect of that transfer in terms of the Banks Act.

14.6. An instrument of transfer that complies with the provisions of Clause 14.5.1 shall constitute a “proper instrument of transfer” for the purposes of section 51(6)(a).

14.7. The Board may not decline to register the transfer of any Certificated Securities in terms of a proper instrument of transfer except if and for so long as the transfer in question is (a) not in accordance with the requirements for such transfer, if any, set out in this MOI with regard to the transfer in question; and (b) is in a contravention of the provisions of the Banks Act.

14.8. If the transfer of any Shares is registered by the Company contrary to the provisions of the Banks Act as contemplated in section 41 of the Banks Act, no person shall –

14.8.1. either personally or by proxy granted to any other person, cast a vote attached to; or

14.8.2. receive a Distribution payable on,

any such Share allotted or issued to such person or registered in the name of such person.

15. REGISTER, CERTIFICATED SECURITIES AND UNCERTIFICATED SECURITIES

15.1. The Securities issued by the Company shall either be issued in –

15.1.1. certificated form, being Securities evidenced by certificates (“**Certificated Securities**”) as contemplated in section 49(2)(a); or

15.1.2. uncertificated form, in which case the Company must not issue certificates, evidencing or purporting to evidence title to those Securities, subject to section 49(6) (“**Uncertificated Securities**”).

15.2. Except to the extent that the Companies Act expressly provides otherwise the rights and obligations of the Security holders are not different solely on the basis of their respective Securities being certificated or uncertificated and any provision of this MOI and the Companies Act applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities.

- 15.3. The Company shall establish (or cause to be established) and maintain (or cause to be maintained) a Securities Register in accordance with the provisions of the Companies Act and the Regulations and, to the extent that the form and manner of maintaining the Securities Register is not prescribed, the Board shall determine the form and manner thereof.
- 15.4. The Company shall, as soon as reasonably practicable after issuing any Securities, enter or cause to be entered in its Securities Register, in respect of the class of Securities issued, the information referred to in section 50 and any other applicable provision of the Companies Act and/or the Regulations.
- 15.5. In respect of Certificated Securities:
- 15.5.1. Every certificate evidencing any Certificated Securities of the Company shall comply with the formalities and content prescribed by section 51 and any other applicable provision of the Companies Act and/or the Regulations and may otherwise be in such form as the Board may determine from time to time.
- 15.5.2. The Company shall enter into its Securities Register the transfer of any Certificated Securities, which is effected in accordance with this MOI and shall include in such entry the information required by Section 51(5) and any other applicable provision of the Companies Act and/or the Regulations.
- 15.5.3. Each holder of a Certificated Security shall be entitled to 1 (one) certificate for all of the Securities of a particular class registered in his name, or to several certificates, each for a part of such Securities.
- 15.5.4. Every registered Securities holder shall be entitled to receive initial certificate/s relating to the initial issue or transfer of Securities to the Security holder, free of charge, but for every subsequent certificate/s, the Board may make such reasonable charge as it may from time to time think fit.
- 15.5.5. If a certificate evidencing any Certificated Securities is defaced, lost or destroyed it may be replaced, on such terms as to evidence, indemnity (in respect of any loss of any nature which the Company may incur pursuant to the replacement thereof) and at such reasonable cost as the Directors think fit; and, in the event of the defacement, on the delivery of the old certificate.
- 15.5.6. The substitution or conversion of Certificated Securities to Uncertificated Securities shall occur in accordance with the Companies Act and/or the Regulations, any applicable provision of the FMA and any applicable

requirements or rules of the JSE and the relevant Central Securities Depository or Participant.

15.5.7. The Directors may, in their discretion, record in the Securities Register any Certificated Securities of the Company held by a trust and for whom such Securities are so held.

15.6. In respect of Uncertificated Securities:

15.6.1. If the Company has issued Uncertificated Securities or has issued Securities that have ceased to be Certificated Securities (as contemplated in section 49(5)), a record must be administered and maintained by a Participant or a Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

15.6.1.1. forms part of the Company's Securities Register, and

15.6.1.2. must contain, with respect to all Uncertificated Securities, any detail referred to in Section 50(2)(b), read with the changes required by the context, or determined by the rules of the Central Securities Depository.

15.6.2. The provisions of sections 52 to 55 shall apply to registration, transfer and substitution of and the liability relating to Uncertificated Securities and shall prevail in the case of a conflict between any provision of those sections and any other provision of the Companies Act, any other law, the common law, this MOI or any agreement.

15.6.3. The substitution or conversion of Uncertificated Securities to Certificated Securities shall occur in accordance with the Companies Act and/or the Regulations, any applicable provision of the FMA and any applicable requirements or rules of the JSE and the relevant Central Securities Depository or Participant.

15.7. The Company shall, in terms of section 59 of the Banks Act, furnish the Registrar with a return regarding its Shareholders.

16. **TRANSMISSION OF SECURITIES BY OPERATION OF LAW**

16.1. Subject to the provisions of the Banks Act and to the laws relating to securities transfer tax upon or in respect of the estates of deceased persons and the administration of the estates of insolvent and deceased persons and persons under disability -

- 16.1.1. the parent or guardian or curator of any holder who is a minor;
- 16.1.2. the trustee of an insolvent holder;
- 16.1.3. the liquidator of a body corporate;
- 16.1.4. the tutor or curator of a holder under disability;
- 16.1.5. the executor or administrator of the estate of a deceased holder; or
- 16.1.6. any other person becoming entitled to any Securities held by a holder by any lawful means other than transfer in terms of this MOI,

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

- 16.1.7. to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the holder of the Securities registered in the name of the holder concerned; or
- 16.1.8. herself/himself/itself to be registered as the holder or holder *nomino officii* in respect of those Securities and to make such transfer of those Securities as the holder concerned could have made, but the Directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the holder.

17. **ACQUISITION OF SHARES IN THE COMPANY'S HOLDING COMPANY**

In terms of section 78(1)(a) of the Banks Act, the Company, for so long as it is registered as a bank, may not hold any shares in its Holding Company.

PART FOUR: SHAREHOLDERS

18. **SHAREHOLDERS' RIGHT TO INFORMATION**

Each Shareholder and each Person who holds or has a Beneficial Interest (if permitted by the Registrar and by this MOI) in any Securities issued by the Company will have the information rights set out in section 26 read with Regulation 24, or elsewhere in the Companies Act and this MOI.

19. **SHAREHOLDERS' AUTHORITY TO ACT**

- 19.1. If, at any time, there is only 1 (one) Shareholder, the authority of that Shareholder to exercise any or all of the Voting Rights pertaining to the Company on any matter and at any time without notice or compliance with any other internal formalities, as set out in section

57(2), is not limited or restricted by this MOI and section 59 to section 65 do not apply to the governance of the Company. Accordingly, the provisions of Clause 21 (*Record Date*) and Part Five of this MOI will not apply in such circumstance.

- 19.2. If, at any time, every Shareholder is also a Director, as contemplated in section 57(4), any matter that is required to be referred by the Board to the Shareholders for decision may be decided by the Shareholders at any time after being referred by the Board without notice or compliance with any other internal formalities, and that power is not limited or restricted by this MOI, subject to compliance with the requirements of section 57(4).

20. PROXIES

20.1. Right to be represented by proxy

At any time, a Shareholder may appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to -

- 20.1.1. participate in, and speak and vote at, a Shareholders Meeting on behalf of the Shareholder; or
- 20.1.2. give or withhold written consent on behalf of the Shareholder to a decision contemplated in section 60.

20.2. Representation by concurrent proxies

The rights of a Shareholder to appoint Persons concurrently as proxies is not restricted or limited by this MOI, as more fully contemplated in section 58(3)(a).

20.3. Authority of proxy to delegate

Save for any restriction set out in the instrument appointing the proxy, the authority of a Shareholder's proxy to delegate the proxy's powers to another Person is not limited or restricted by this MOI, as more fully contemplated in section 58(3)(b).

20.4. Requirement to deliver proxy instrument to the Company

- 20.4.1. The requirement that a Shareholder must deliver to the Company, or to any other Person on behalf of the Company, a copy of the instrument appointing a proxy before that proxy may exercise the Shareholder's rights at a Shareholders Meeting is not varied by this MOI, as more fully contemplated in section 58(3)(c).
- 20.4.2. The instrument appointing a proxy shall be deposited at the Registered Office of the Company not less than 48 (forty eight) hours before the time appointed for

the holding of the Shareholders Meeting, or the resumption of an adjourned Shareholders Meeting, at which the Person named therein proposes to vote; provided that any instrument appointing a proxy not deposited within the aforesaid period can be handed to the chairperson of the Shareholders Meeting immediately prior to the commencement of the Shareholders Meeting before the proxy may exercise the Shareholder's rights.

20.5. Deliberative authority of proxy

The authority of a Shareholder's proxy to decide without direction (except to the extent that the instrument appointing a proxy provides otherwise), from the Shareholder whether to exercise, or abstain from exercising any Voting Rights of the Shareholder is not limited or restricted by this MOI, as more fully contemplated in section 58(7).

20.6. Proxy Instrument

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 Shareholder entitled to vote. The Board may determine a standard form of proxy appointment and make it available to Shareholders on request.

20.7. Duration

A proxy appointment remains valid for 1 (one) year after the date on which it was signed or any longer or shorter period expressly set out in the appointment, unless it is revoked in the manner contemplated in section 58(4)(c) or expires earlier as contemplated in section 58(8)(d).

20.8. Validity of Proxy Instrument

A vote given in accordance with the terms of any 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.

21. RECORD DATE

21.1. The Board may, in accordance with the provisions of section 59 and the Regulations, determine and publish a Record Date for the purposes of determining which Shareholders are entitled to –

- 21.1.1. receive a notice of a Shareholders Meeting;
 - 21.1.2. participate in and vote at a Shareholders Meeting;
 - 21.1.3. decide any matter by written consent or by Electronic Communication;
 - 21.1.4. receive a Distribution; or
 - 21.1.5. be allotted or exercise any other rights.
- 21.2. If, at any time, the Board fails to determine a Record Date as contemplated in Clause 21.1, the Record Date for the relevant action or event shall be determined in accordance with section 59(3).
- 21.3. A Company shall publish a notice of a Record Date for any matter in accordance with the provisions of Regulation 37 and deliver notice thereof to the Shareholders in accordance with Clause 52.

PART FIVE: SHAREHOLDERS MEETINGS, VOTING AND RESOLUTIONS

22. REQUIREMENT TO HOLD A SHAREHOLDERS MEETING

- 22.1. The Company will not be required to hold any Shareholders Meeting other than those required by the Companies Act and/or this MOI.
- 22.2. The Company shall convene an Annual General Meeting once in each 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.
- 22.3. To the extent required by the Companies Act, each Annual General Meeting must, at a minimum, provide for the following business to be transacted –
- 22.3.1. the presentation of: (a) the Directors' report; (b) the audited annual financial statements for the immediately preceding Financial Year; and (c) an audit committee report (if required);
 - 22.3.2. the election of Directors to the extent required by the Companies Act and by this MOI;
 - 22.3.3. the appointment of an Auditor for the ensuing Financial Year and, to the extent required by the Companies Act and the Banks Act, an audit committee;
 - 22.3.4. any matter raised by Shareholders, with or without advance notice to the Company.

- 22.4. In accordance with, and as permitted in terms section 61(1), a Shareholders Meeting may be called at any time by: (i) the Board; (ii) any 2 (two) Directors; or (iii) the company secretary of the Company on the requisition of either the Board or any 2 (two) Directors. In addition, and similarly, a resolution may be submitted to be voted on other than at a meeting in terms of section 60 at any time by: (i) the Board; (ii) any 2 (two) Directors; or (iii) the company secretary of the Company on the requisition of either the Board or any 2 (two) Directors.
- 22.5. Subject to section 60, the Company must hold a Shareholders Meeting in the circumstances contemplated in section 61(2).
- 22.6. The reference to 10% (ten percent) in section 61(3) is hereby retained at 10% (ten percent) as contemplated in section 61(4) and, accordingly, the right of Shareholders to demand a meeting, as set out in section 61(3), may be exercised by the holders of at least 10% (ten percent) of the Voting Rights entitled to be exercised in relation to the matter to be considered at the meeting.

23. LOCATION OF SHAREHOLDERS MEETINGS

The Board is authorised to determine the location of any Shareholder Meeting, and this MOI does not limit or restrict the authority of the Company to hold any such meeting in South Africa or in any foreign country, as set out in section 61(9).

24. NOTICE OF SHAREHOLDERS MEETINGS

- 24.1. The Company must deliver a notice of each Shareholders Meeting in the prescribed manner and form to all of the Shareholders of the Company as of the Record Date for the meeting at least 15 (fifteen) Business Days before the meeting is to begin.
- 24.2. The Company may call a Shareholders Meeting with less notice than the aforementioned 15 (fifteen) Business Days, but such a meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda:
- 24.2.1. is Present At The Meeting; and
- 24.2.2. votes to waive the required minimum notice of the meeting.

25. ELECTRONIC PARTICIPATION IN SHAREHOLDERS MEETINGS

- 25.1. This MOI does not limit or restrict 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, as more fully contemplated in section 63(2).

- 25.2. Access to the available medium or means of Electronic Communication is at the expense of the Company.

26. **VOTING**

- 26.1. Subject to section 41 of the Banks Act, voting at a Shareholders' Meeting of the Company shall always be by way of poll and not on a show of hands and, accordingly, any Person who is Present At The Meeting, whether as a Shareholder or as a proxy for a Shareholder, has the number of votes determined in accordance with the Voting Rights associated with the Securities held by that Shareholder.
- 26.2. Without derogating from the provisions of Clause 26.1, a polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:
- 26.2.1. at least 5 (five) Persons having the right to vote on that matter, either as a Shareholder or proxy representing a Shareholder; or
- 26.2.2. a Person who is, or Persons who together are, entitled, as a Shareholder or proxy representing a Shareholder, to exercise at least 10% (ten percent) of the Voting Rights entitled to be voted on that matter; or
- 26.2.3. the chairperson of the Shareholders' Meeting.
- 26.3. Objections as to the admissibility of any vote may only be raised at the meeting or adjourned Shareholders' Meeting at which such vote is 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, if made in good faith, shall be final and conclusive.
- 26.4. A poll shall be taken in such manner as the chairperson of the Shareholders' Meeting directs and the results of the poll shall be deemed to be the resolution of the Shareholders' Meeting at which the poll was demanded. Scrutineers may be appointed to count the votes and to declare the results 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.
- 26.5. Any person entitled to Securities in terms of Clause 16.1 may vote at any Shareholders Meeting in the same manner as if he were the registered holder of that Security; provided that (except where the Directors have previously accepted his right to vote in respect of that Security) at least 24 (twenty four) hours before the time of holding the Shareholders Meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to exercise the right referred to in Clause 16.1. Several executors of a deceased Shareholder

in whose name Securities stand in the Securities Register shall, for the purposes of this Clause, be deemed to be joint holders of those Securities.

27. QUORUM FOR SHAREHOLDERS MEETINGS AND ADJOURNMENTS

27.1. Subject to section 64 and the remaining provisions of this Clause, a –

27.1.1. Shareholders Meeting may not begin until sufficient Persons are Present At The Meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders' Meeting; and

27.1.2. a matter to be decided at the Shareholders' Meeting may not begin to be considered unless sufficient Persons are Present At The Meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.

27.2. Despite the percentage figure contemplated in Clause 27.1, if the Company has more than 2 (two) Shareholders, then for so long as section 64(3) so requires, a Shareholders' Meeting may not begin, or a matter to be debated, unless –

27.2.1. at least 3 (three) Shareholders are Present At The Meeting; and

27.2.2. the requirements of Clause 27.1 are satisfied.

27.3. After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, only for so long as the Shareholders forming part of the quorum are Present At The Meeting for the matter to be considered at the meeting.

27.4. The postponement, adjournment and resulting decreased quorum requirements set out in sections 64(4), 64(5), 64(7) and 64(8) shall apply subject to the following amendments to certain of the Alterable Provisions within those sections -

27.4.1. the period of 'one hour' contemplated in sections 64(4) and 64(5) is hereby substituted with a reference to 30 (thirty) minutes. The chairperson of the Shareholders Meeting shall be entitled to extend the aforesaid 30 (thirty) minute limit in the circumstances contemplated in section 64(5); and

27.4.2. the period of '1 (one) week' contemplated in sections 64(4) is hereby retained as a reference to 'one week'.

- 27.5. A Shareholders Meeting, or the consideration of any matter being debated at a Shareholders Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12), it being recorded that the periods of adjournment set out in section 64(12) will apply without variation.
- 27.6. When a Shareholders Meeting is adjourned as a result of a direction given in terms of the Companies Act, notice of the adjourned Shareholders Meeting shall be given only if prescribed by the Companies Act and then only in the manner prescribed by the Companies Act but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Shareholders Meeting.

28. CHAIRPERSON OF SHAREHOLDERS MEETINGS

- 28.1. The chairperson of the Board, as determined in accordance with Clause 40, shall preside as the chairperson at every Shareholders Meeting.
- 28.2. If there is no chairperson of the Board, or if at any Shareholders Meeting he is not present within 30 (thirty) 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 be entitled to select a Director present to be chairperson of the Shareholders Meeting, or if no Director be present, or if all the Directors present decline to take the chair, the Persons entitled to vote shall be entitled to select one of their number which is present to be chairperson of the Shareholders Meeting.
- 28.3. In the case of an equality of votes, the chairperson of the Shareholders Meeting shall not be entitled to a second or casting vote.

29. SHAREHOLDERS RESOLUTIONS

- 29.1. For an Ordinary Resolution to be approved by Shareholders, it must be supported by more than 50% (fifty percent) of the Voting Rights exercised on the resolution.
- 29.2. For a Special Resolution to be approved by Shareholders, it must be supported by at least 75% (seventy five percent) of the Voting Rights exercised on the resolution.
- 29.3. Except for those matters that require the approval or authority of a Special Resolution in terms of this MOI, section 65(11) or elsewhere in the Companies Act, no other matters that the Company may undertake require the approval or authority of a Special Resolution of the Shareholders.

30. **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 30.1. A resolution that could be voted on at a Shareholders Meeting may instead –
- 30.1.1. be submitted for consideration to the Shareholders entitled to exercise Voting Rights in relation to the resolution; and
 - 30.1.2. voted on in writing by Shareholders entitled to exercise sufficient Voting Rights in relation to the resolution within 20 (twenty) Business Days after the resolution was submitted to them.
- 30.2. A resolution contemplated in Clause 30.1 –
- 30.2.1. will have been adopted if it is supported by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Shareholders Meeting; and
 - 30.2.2. if adopted, has the same effect as if it had been approved by voting at a Shareholders' Meeting.
- 30.3. The resolution may consist of several documents each signed by one or more Shareholders.

31. **MEETINGS IN RESPECT OF THE SECURITIES OTHER THAN SHARES**

Notwithstanding anything to the contrary contained in this Part 4 entitled "Shareholders", the requirements for convening and holding meetings in respect of the Securities other than Shares, including notices, notice periods, requisition rights, quorum provisions, adjournment, proxies, voting rights and voting percentages for adoption of resolutions, shall be in accordance with the specific terms and conditions set out in the document(s) in terms of which such Securities are issued, insofar as such terms and conditions amend the relevant provisions of the Companies Act and to the extent such amendments are permissible in terms of the Companies Act.

PART SIX: AUTHORITY OF THE BOARD, GENERAL POWERS AND LIMITATIONS

32. **AUTHORITY OF THE BOARD AND GENERAL POWERS**

- 32.1. The business and affairs of the Company will be managed by or under the direction of the Board, which will have the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act, this MOI or the Banks Act places limits and/or restrictions on the powers and functions of the Company.
- 32.2. Without derogating from the provisions of Clause 44, the Directors shall have the power from time to time to delegate or allocate to any one of their members or to any other Person,

whether in South Africa or not, such of the powers as are vested in the Directors pursuant to the Companies Act (including any and every other statute or ordinance from time to time in force concerning companies and necessarily affecting the Company) or under this MOI, as they may deem fit.

- 32.3. If, at any time, there is only 1 (one) Director, that Director may exercise any power and perform any function of the Board at any time, without notice or compliance with any other internal formalities, as set out in section 57(3), and that power is not limited or restricted by this MOI and sections 71(3) to (7), 73 and 74 do not apply to the governance of the Company. Accordingly, the provisions of Clause 38 and Clause 39 will not apply in such circumstance.

33. **EXECUTIVE OFFICERS**

- 33.1. Subject to the provisions of section 60 of the Banks Act, the Directors may from time to time appoint one or more of the Directors as the chief executive officer or executive officer or manager ("**Executive Officers**") for such period and at such remuneration and generally on such terms as they think fit and may revoke such appointment.
- 33.2. Any Executive Officer shall cease to be eligible to continue to be employed in such capacity by the Company and the Directors shall revoke or terminate any such appointment if the Registrar objects to the continued employment of such Executive Officer as contemplated in section 60(6)(a) of the Banks Act and the termination of the Executive Officer's employment is confirmed by the Arbitrator as contemplated in section 60(6)(i) of the Banks Act.
- 33.3. The Directors may from time to time entrust to and confer upon any of the Executive Officers 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 fit; 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 such powers. An Executive Officer 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 him by the Directors in terms hereof he shall be deemed to derive such powers directly from this Clause 33.3.
- 33.4. The Company shall give the Registrar written notice of the nomination of any individual for appointment as an Executive Officer, which notice shall reach the Registrar at least 30 (thirty) days prior to the proposed date of appointment, together with the prescribed information in respect of the nominee.

34. **BORROWING POWERS**

Subject to the provisions of the Banks Act, the Directors may, from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums for the purposes of the Company.

PART SEVEN: DIRECTORS AND OFFICERS

35. **COMPOSITION OF THE BOARD AND ELECTION AND REMOVAL OF DIRECTORS**

- 35.1. Subject to the provisions of section 60(3) of the Banks Act, the Board shall comprise at least 5 (five) Directors in addition to the minimum number of Directors that the Company must have to satisfy any requirement, whether in terms of the Companies Act, this MOI or the Banks Act, to appoint any statutory committees, including, an audit committee or a social and ethics committee.
- 35.2. Nothing in this MOI shall limit the election of an equal number of Alternate Directors to each such Director elected to the Board in accordance with the provisions of this Clause 35.
- 35.3. No person will have the right to effect the direct appointment of one or more Directors, as contemplated in section 66(4)(a)(i).
- 35.4. Subject to Clause 35.11, all of the Directors (including Alternate Directors) will be elected by Ordinary Resolution of the Shareholders at any Shareholders Meetings or at the Annual General Meeting, as the case may be.
- 35.5. The provisions of section 68(2) will apply to the election of Directors, provided that a Director may be elected in accordance with section 60(3).
- 35.6. Each Alternate Director shall be entitled to act as a Director in the absence of the Director for whom he is an Alternate Director. A person may be elected as an Alternate Director to more than 1 (one) Director. Where a person has been elected as an Alternate Director to more than 1 (one) Director or where an Alternate Director is also a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 35.7. The Company may not permit an individual to serve as a Director or Alternate Director if such person is ineligible, disqualified or otherwise prohibited in terms of the Companies Act or if that person's directorship would contravene this MOI or any of the provisions of the Companies Act or the Banks Act or if that individual is not fit and proper to hold the office of a Director of a registered bank in accordance with the provisions of the Banks Act.
- 35.8. No election of a Director or Alternate Director shall take effect until he has delivered to the Company, a written consent to serve, as contemplated in section 66(7)(b).

- 35.9. Each individual elected as a Director (including an Alternate Directors) shall furnish the Company, in writing, with a postal address, physical address, facsimile number and email address at which notices of Directors meetings may be given to him.
- 35.10. There will no *ex officio* Directors, as contemplated in section 66(4)(a)(ii).
- 35.11. Provided that at least 50% (fifty percent) of all of the Directors (including Alternate Directors) are at all times elected by Shareholders as contemplated in section 66(4)(b), the Board may, subject to section 60(3) of the Banks Act, appoint an individual who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Clause 35.11, within the period and in the manner contemplated in section 70(3), and, during that period, any individual so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company.
- 35.12. The Company shall give the Registrar written notice of the nomination of any individual for appointment as a Director, which notice shall reach the Registrar at least 30 (thirty) days prior to the proposed date of appointment, together with the prescribed information in respect of the nominee.

36. **VACANCIES ON THE BOARD**

- 36.1. Each Director of the Company shall serve, as contemplated in section 68(1), indefinitely or until:
- 36.1.1. he resigns by written notice to the Company;
 - 36.1.2. any of the circumstances contemplated in section 69 and/or section 70 arise;
 - 36.1.3. he is removed in terms of section 71; and/or
 - 36.1.4. he ceases, is otherwise removed or becomes ineligible or disqualified in accordance with any provisions of this MOI.
- 36.2. Section 70 will apply to any vacancy on the Board that may arise from time to time.
- 36.3. An Alternate Director shall cease to be an Alternate Director if -
- 36.3.1. on the happening of any event, if he were a Director, would cause him to cease to hold the office of a Director;
 - 36.3.2. the Director to whom he is an Alternate Director ceases for any reason to be a Director, provided that if an Alternate Director has been appointed as an Alternate Director to more than 1 (one) Director such Alternate Director shall

cease to be an Alternate Director when the last Director for whom he is an Alternate Director ceases to be a Director.

37. **FURTHER ELIGIBILITY OR QUALIFICATION REQUIREMENTS**

- 37.1. In addition to the grounds of eligibility and disqualification of Directors as contemplated in section 69, a Director shall cease to be eligible to continue to act as a Director of the Company if the Registrar objects to the appointment or employment of a Director as contemplated in section 60(6)(a) of the Banks Act and the termination of the continued appointment or employment of such Director is confirmed by the Arbitrator as contemplated in section 60(6)(i) of the Banks Act.
- 37.2. Subject to Clause 37.1, there are no eligibility requirements or qualifications prescribed by the Company in this MOI for a person to become or serve as a Director in addition to those set out in section 69.
- 37.3. For the purposes of this Clause 37, "*Director*" includes an Alternate Director, and a Prescribed Officer or 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 as more fully contemplated in section 69(1) and, for the purposes of the Banks Act, a reference to "*Director*" for the purposes of this Clause 37, applies only to executive and non-executive Directors.

38. **DIRECTORS' MEETINGS**

- 38.1. The Directors may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think fit, provided that the Board shall hold not less than 4 (four) Directors' meeting each Financial Year.
- 38.2. A meeting of the Board, as set out in section 73(1)(b), must be requisitioned if such a meeting is requested by –
- 38.2.1. at least 25% (twenty five percent) of the Directors, in the case of a Board that has at least 12 (twelve) members; or
- 38.2.2. any 2 (two) Directors in any other case,
- or the company secretary of the Company on the requisition of the Directors contemplated in Clause 38.2.1 or 38.2.2.
- 38.3. This MOI does not restrict or limit the authority of the Board to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as more fully contemplated in section 73(3). A resolution passed during the

course of such proceedings shall be valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

38.4. Subject to Clause 38.5, no Directors meeting may be convened without notice to all of the Directors. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or any form of Electronic Communication.

38.5. Notwithstanding anything to the contrary contained in this MOI, if all Directors of the Company –

38.5.1. acknowledge actual receipt of notice;

38.5.2. are Present At A Meeting; or

38.5.3. 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.

38.6. Subject to Clause 38.7, a quorum for any Directors' meeting shall be a majority of Directors present or represented as such meeting.

38.7. If, within 30 (thirty) minutes from the time appointed for a Directors' meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week (or, if that day is not a Business Day, to the next Business Day) at the same time and place (or, if such place not be available, at such other place in the same city as the Directors present at the initial meeting may appoint), and all the Directors shall be notified in writing of the date, time and place of the adjourned meeting at least 3 (three) Business Days before the date of the adjourned meeting, provided that where those Directors present determine that matters on the agenda are matters which require urgent consideration, the meeting shall stand adjourned to such date and time as they may determine (and they shall be required to give prior written notice, to those Directors who were not present, of the date and the time as soon as possible but in any event at least 24 (twenty-four) hours before the adjourned meeting). If, at such adjourned meeting, a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting, the Directors (or their alternates) then present shall constitute a quorum. The agenda for any adjourned meeting shall be the same agenda as for the meeting which was originally scheduled.

38.8. A Directors' meeting shall continue to be quorate notwithstanding that any one or more Directors taken into account for purposes of achieving a quorum might thereafter cease to be Present At The Meeting, provided that no matter may be raised or dealt with at any such

Directors' meeting, at which a quorum was present at the start of the Directors' meeting, unless the same forms the subject matter of the agenda for such Directors' meeting.

38.9. Each Director elected to the Board shall have 1 (one) vote on all matters to be decided by the Directors as contemplated in section 73(5)(c).

38.10. A majority of the votes cast on a resolution is sufficient to approve that resolution.

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

38.11.1. any declaration given by notice or made by a Director, as required by section 75;

38.11.2. every resolution adopted by the Board.

38.12. Resolutions adopted by the Board –

38.12.1. must be dated and sequentially numbered; and

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

38.13. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

39. **DIRECTORS ACTING OTHER THAN AT A MEETING**

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

40. **CHAIRPERSON OF THE BOARD**

40.1. The Board shall be entitled to appoint any Director to preside as the chairperson of Directors' meetings and to determine the period for which he shall hold office. If at any Directors' meeting the chairperson is not present within 30 (thirty) minutes after the time appointed for holding it, the Directors present may choose one of their number to be the chairperson of the meeting.

- 40.2. In the case of a tied vote, (i) the chairperson at any Directors meeting may cast a deciding vote, if the said chairperson did not initially have or cast a vote or (ii) the matter being voted on fails, in any other case, as contemplated in section 73(5)(e).

41. **DIRECTORS COMPENSATION**

- 41.1. The Company may pay remuneration to its Directors for their services as Directors only in accordance with a Special Resolution approved within the previous 2 (two) years as more fully contemplated in section 66(8) and (9).
- 41.2. For the avoidance of doubt, it is recorded that this Clause 41 does not apply to remuneration paid to any Director for their services as employees of the Company.
- 41.3. A Director may be employed in any other capacity in the Company or as a Director or employee of a company controlled by, or itself a subsidiary of, the Company, and, in such event, his appointment and remuneration in respect of such other office shall be determined by the Company.
- 41.4. Each Director (including an Alternate Director) may be paid their travelling and other expenses, properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Directors or of committees thereof; and, if any Director is required to perform extra services, to devote special attention to the business of the Company, to reside abroad or be specifically occupied about the Company's business, he may be entitled to receive such remuneration as is determined by the Company, which may be either in addition to or in substitution for any other remuneration payable.

42. **INDEMNIFICATION OF DIRECTORS**

- 42.1. The Company is authorised to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as more fully contemplated in section 78(4).
- 42.2. The Company is authorised to indemnify a Director in respect of liability, as more fully contemplated in section 78(5).
- 42.3. The Company is authorised to purchase insurance to protect the Company or a Director, as more fully contemplated in section 78(7).
- 42.4. For the purposes of this Clause 42, "Director" includes a former Director and an Alternate Director and a Prescribed Officer or 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, as more fully contemplated in section 78(1).

43. PERSONAL FINANCIAL INTEREST

- 43.1. Each Director shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a Related Person to them) have a Personal Financial Interest in any matter to be considered by the Board.
- 43.2. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director (or any person who is a Related Person to them), subject to the provisions of section 75.
- 43.3. For the purposes of this Clause 43, "*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, as more fully contemplated in section 75(1).

44. COMMITTEES OF THE BOARD

- 44.1. The Board may appoint any number of committees of Directors and may delegate to any committee any of the authority of the Board, as more fully contemplated in section 72(1)(a) and (b). Except to the extent contemplated in this MOI or a resolution establishing a committee provides otherwise, the committee may include Persons who are not Directors, as more fully contemplated in section 72(2)(a), but any such Person must not be ineligible or disqualified to be a Director in terms of section 69 and no such Person has a vote on a matter to be decided by the committee.
- 44.2. Except to the extent contemplated in this MOI or a resolution establishing a committee provides otherwise, the committee may consult with or receive advice from any Person and has the full authority of the Board in respect of any matter referred to it, as more fully contemplated in section 72(2)(b) and (c).
- 44.3. If and for so long as it is required to do so in terms of the Companies Act (unless the Company is exempted from doing so by the Companies Tribunal) or the Banks Act (unless otherwise exempted from doing so by the Registrar), the Company shall appoint all such prescribed committees, including, an audit committee, a risk and capital maintenance committee, a Directors' affairs committee and/or a remuneration committee.

45. COMPANY SECRETARY

The Company shall appoint a company secretary in the manner and for the purposes set out in Part B of Chapter 3 of the Companies Act.

PART EIGHT: GENERAL PROVISIONS**46. DISTRIBUTIONS**

- 46.1. Subject to the provisions of the Banks Act, the Company may make Distributions from time to time, provided that –
- 46.1.1. any such Distribution is pursuant to legal obligations of the Company, or a court order; or
 - 46.1.2. the Board, by resolution, has authorised the Distribution; and
 - 46.1.3. it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution; and
 - 46.1.4. the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution.
- 46.2. If the Distribution contemplated in a particular Board resolution contemplated in Clause 46.1.4, court order or existing legal obligation has not been completed within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in Clause 46.1.4, or after a fresh acknowledgement being made in terms of this Clause, as the case may be –
- 46.2.1. the Board must reconsider the Solvency and Liquidity Test with respect to the remaining Distribution to be made pursuant to the original resolution, order or obligation; and
 - 46.2.2. despite any law, order or agreement to the contrary, the Company must not proceed with or continue with any such Distribution unless the Board adopts a further resolution contemplated in Clause 46.1.4.
- 46.3. The Company may transmit any Distributions or other monies by electronic bank transfer to such bank account as the Shareholder may have notified to the Company in writing for this purpose. The Company shall not be responsible for any loss in transmission. A Distribution may also be paid in any other way determined by the Board, and if the directives of the Board in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.

- 46.4. No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares or other Securities of the Company in respect of which such Distribution is payable.
- 46.5. The Board shall, for the purposes of facilitating the winding-up or deregistration of the Company before the date of any forfeiture, be entitled to delegate the liability for the payment of any Distributions or other monies to any Shareholder in respect of unclaimed Distributions or other unclaimed monies to any one of the Company's bankers from time to time, payment of which has not been forfeited in terms of the foregoing.
- 46.6. All unclaimed Distributions shall be held by the Company in trust until lawfully claimed, subject to the laws of prescription. The Directors may at any time annul any forfeiture of unclaimed Distributions as a result of the operation of prescription upon such conditions (if any) as they think fit.
47. **FINANCIAL ASSISTANCE**
- 47.1. **Financial assistance for the subscription for or purchase of Securities**
- Subject to the provisions of the Banks Act and particularly the limits imposed in terms of sections 76 and 77 of the Banks Act, the Board may, as contemplated in section 44 and subject to the requirements of that section, authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise, to any Person for the purpose of, or in connection with, the subscription for any option, or any Securities, issued or to be issued by the Company or a Related or Inter-related Company, or for the purchase of any such Securities.
- 47.2. **Financial assistance to Directors, Prescribed Officers and Related or Inter-related company or corporation**
- Subject to the provisions of the Banks Act and particularly the limits imposed in terms of sections 76 and 77 of the Banks Act, the Board may, as contemplated in section 45 and subject to the requirements of that section, authorise the Company to provide direct or indirect financial assistance to a Director or Prescribed Officer of the Company or of a Related or Inter-related Company, or to a Related or Inter-related Company or corporation, or to a member of a Related or Inter-related corporation, or to a Person related to any such Company, corporation, Director, Prescribed Officer or member.
48. **FINANCIAL YEAR**
- The financial year of the Company is the 12 (twelve) month period ending on September each year (the "**Financial Year**").

49. **FINANCIAL STATEMENTS AND ACCESS TO FINANCIAL STATEMENTS**

- 49.1. The Company shall prepare annual financial statements in accordance with the Companies Act and the Regulations and shall have those annual financial statements audited as soon as possible after the end of each Financial Year, but in any event within 6 (six) months thereafter or such shorter period as may be appropriate to provide the required notice of an Annual General Meeting ("**Audited AFS**").
- 49.2. The Company shall appoint an Auditor at its Annual General Meeting in accordance with Part C of Chapter 3 of the Companies Act.
- 49.3. Without derogating from Clause 49.2, the Auditors shall be appointed, approved and their duties regulated in accordance with and subject to the provisions of the Banks Act.
- 49.4. A copy of the Audited AFS or a summary thereof prepared in accordance with section 29(3) shall be distributed to all Shareholders in accordance with Clause 52 as soon as possible after those Audited AFS have been approved by the Board but in any event no later than the first Shareholders' Meeting after the Audited AFS have been approved by the Board as required by section 30(3) and at least 15 (fifteen) business days before the date of the Annual General Meeting of the Company at which such Audited AFS will be presented.
- 49.5. In addition to the rights set out in Clause 18, a Person who holds or has a Beneficial Interest (to the extent permitted by this MOI) in any Securities issued by the Company, are entitled -
- 49.5.1. without demand to receive a notice of the publication of any Audited AFS of the Company required by the Companies Act, setting out the steps required to obtain a copy of the statements; and
- 49.5.2. on demand to receive without charge one copy of any Audited AFS of the Company required by the Companies Act.

50. **WINDING-UP**

- 50.1. Subject to section 68 of the Banks Act, if the Company shall be wound up the liquidator may, with any sanction required by the Companies Act or any other applicable legislation, divide amongst the holder of any Securities *in specie* or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such values as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between such holders or different classes of holders. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the holders of any Securities or any of them as the liquidator shall think fit, but so that no such holder shall

be compelled to accept any Shares or other Securities or other assets whereon there is any liability.

50.2. The provisions of section 68 of the Banks Act shall apply to the winding-up of the Company.

51. **LOSS OF DOCUMENTS**

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

52. **NOTICES**

52.1. All notices and/or documents intended or required to be given by the Company to any Shareholder or Director or other Person, as the case may be, shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.

52.2. Each Shareholder and Director shall –

52.2.1. notify the Company in writing of a postal address, which address will be his registered address for the purposes of receiving written notices from the Company by post;

52.2.2. notify the Company in writing of a physical address, which address will be his registered address for the purposes of receiving written notices from the Company by hand; and/or

52.2.3. unless otherwise agreed with the Company, notify in writing to the Company an e-mail address and facsimile number, which address will be his address for the purposes of receiving notices by way of Electronic Communication.

52.3. Save to the extent that any of the following provisions of this Clause 52.3 may be in conflict with any provision contained in the Companies Act, any notice or a copy of any document sent by the Company to any Person (including a Shareholder or Director) by –

52.3.1. registered post to the last known address shall be deemed to have been delivered 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;

52.3.2. telefax, if the Person has a fax number, shall be deemed to have been delivered on the date and at the time recorded by the telefax receiver, unless there is

conclusive evidence that it was delivered on a different date or at a different time. A notice or document delivered by fax shall be sent in accordance with Regulation 7(4);

52.3.3. electronic mail, if the Person has an address for receiving electronic mail, shall be deemed to have been delivered on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time. A notice or document delivered by electronic mail shall be sent in accordance with Regulation 7(4); and

52.3.4. by ordinary post to the last known address shall be deemed to have been delivered on the 7th (seventh) day following the day on which the notice or document was posted, and in proving the giving of the notice or document sent by post it shall be sufficient to provide that the letter or envelope containing the notice or document was properly addressed and put into the post office.

52.4. Any Shareholder or Director notifying the Company of an address for the purposes of receiving Electronic Communication from the Company shall be deemed to have agreed to receive documents and notices by Electronic Communication.

52.5. As regards the signature of an Electronic Communication, it shall be in such form as the Directors may require to demonstrate that the document or notice is genuine.

52.6. For the purposes of this MOI, the reference to "**sent**", "**delivered**" or "**in writing**" of any notice and/or other documents shall include, to the extent applicable in terms of the Companies Act, the use of Electronic Communications and publication on a website in accordance with any applicable provisions of the Companies Act or other applicable legislation, rules or requirements.

52.7. Notwithstanding anything to the contrary contained in this section entitled "Notices", the requirements and the procedure for the giving of notices to the holders of Securities other than Shareholders shall be in accordance with the specific terms and conditions set out in the document(s) in terms of which such Securities are issued, insofar as such terms and conditions amend the relevant provisions of the Companies Act and to the extent such amendments are permissible in terms of the Companies Act.