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**CERTIFICATE OF INCORPORATION**

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Registrasienommer van Maatskappy/Registration No. of Company

93 01411/07

Sertifikaat van Inlywing  
van 'n Maatskappy met 'n aandelekapitaal  
Certificate of Incorporation  
of a Company having a share capital

Hierby word gesertifiseer dat/This is to certify that

INVESTMENT FACILITY COMPANY ONE HUNDRED AND THIRTEEN (PROPRIETARY) LIMITED

vandag ingelyf is kragtens die Maatskappywet, 1973 (Wet 61 van 1973), en dat die Maatskappy 'n maatskappy is met 'n aandelekapitaal.


was this day incorporated under the Companies Act, 1973 (Act 61 of 1973), and that the Company is a company having a share capital.

Geteken en geseël te Pretoria op hede die/Signed and sealed at Pretoria this

17<sup>th</sup> dag van/day of MARCH Eenduisend Negehonderd/

One Thousand Nine Hundred and Ninety three

CERTIFIED A TRUE COPY OF THE ORIGINAL DOCUMENT  
GEWAARMERK 'N JUISTE AFSCRIF VAN DIE OORSPRONKLIKE  
DOKUMENT

  
REGISTRAR OF COMPANIES  
REGISTRATEUR VAN MAATSKAPPYE

DATE/DATUM.....19980324

  
Registrateur van Maatskappye/Registrar of Companies

Seël van die Registrasiekantoor vir Maatskappye.  
Seal of Companies Registration Office.

Hierdie sertifikaat is nie geldig nie, tensy geseël deur die seël van die Registrasiekantoor vir Maatskappye.  
This certificate is not valid unless sealed by the seal of the Companies Registration Office.

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**CERTIFICATE TO COMMENCE BUSINESS**

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MAATSKAPPYWET, 1973  
COMPANIES ACT, 1973

SERTIFIKAAT OM MET BESIGHEID TE BEGIN  
CERTIFICATE TO COMMENCE BUSINESS

(Artikel 172)

(Section 172)

Registrasienuommer van Maatskappy Registration No. of Company  93 01411/07
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Ek sertifiseer hierby dat I hereby certify that INVESTMENT FACILITY COMPANY ONE HUNDRED AND THIRTEEN (PROPRIETARY) LIMITED

wat ingelyf is op die which was incorporated on the 17<sup>th</sup>

dag van day of MARCH Eenduisend Negehonderd One Thousand Nine Hundred and Ninety three

voldoen het aan die vereistes van artikel 172 van die Wet, en met ingang van vandag geregtig is om met besigheid te begin.  
has complied with the requirements of Section 172 of the Act and is with effect from this day entitled to commence business.

Geteken en geseël te PRETORIA op hede die Signed and sealed at PRETORIA this 17<sup>th</sup>

dag van day of MARCH Eenduisend Negehonderd One Thousand Nine Hundred and Ninety three

MOET DEUR DIE MAATSKAPPY VOLTOOI WORD

TO BE COMPLETED BY COMPANY

SERTIFIKAAT OM MET BESIGNHEID TE BEGIN, GEDATEER  
CERTIFICATE TO COMMENCE BUSINESS DATED

HIERMEE  
HEREWITH

NAAM VAN  
MAATSKAPPY  
NAME OF  
COMPANY  
  
POSADRES  
POSTAL  
ADDRESS

INVESTMENT FACILITY COMPANY ONE HUNDRED AND THIRTEEN (PROPRIETARY) LIMITED
c/o Bell Dewar & Hall
P O Box 4284
Johannesburg, 2000

Datumstempel van Registrasielkantoor vir REGISTRATEUR VAN MAATSKAPPE Date Stamp of Registrar's Office PRIVAATSAK X428 PRIVATE BAG Office  11 -03-1993  PRETORIA 0001 REGISTRAR OF COMPANIES
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**CERTIFICATES OF CHANGE OF NAME**

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Original

Registration No. of company/Registrasienommer van maatskappy  
93/01411/07

Certificate of change  
of name of company  
Sertifikaat van verandering  
van naam van maatskappy

This is to certify that/Hierby word gesertifiseer dat

INVESTMENT FACILITY COMPANY ONE HUNDRED AND THIRTEEN (PTY) LIMITED

has changed its name by SPECIAL RESOLUTION and is now called  
sy naam verander het by SPESIALE BESLUIT en nou genoem word

MOBILE TELEPHONE NETWORKS HOLDINGS (PTY) LIMITED

and that the new name has this day been entered in the Register of Companies.  
en dat die nuwe naam op hierdie dag in die Register van Maatskappye aangeteken is.

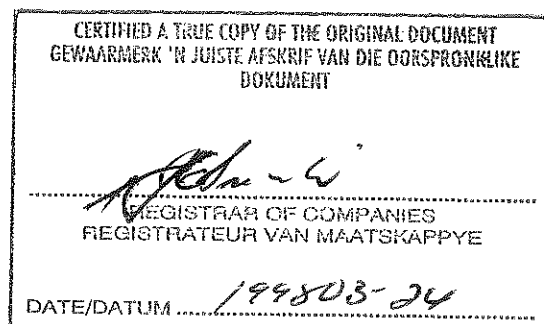
Signed and sealed at Pretoria, this/Geteken en geseël te Pretoria op hede die 7

day of/dag van June

One Thousand Nine Hundred and/Eenduisend Negehonderd Ninet Three

Registrar of Companies/Registrateur van Maatskappye

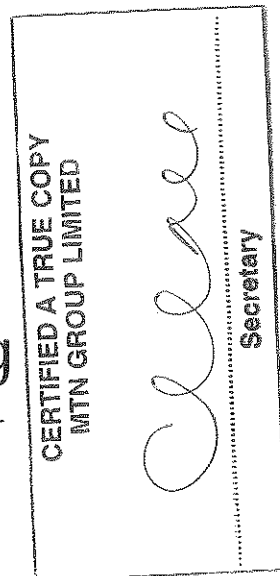
Seal of Companies Registration Office  
Seël van Registrateur van Maatskappye



Registration No. of company/Registrasienuommer van maatskappy  
93/01411/07

# Certificate of change of name of company

## Sertifikaat van verandering van naam van maatskappy



This is to certify that/Hierby word gesertifiseer dat

INVESTMENT FACILITY COMPANY ONE HUNDRED AND THIRTEEN (PTY) LIMITED

has changed its name by SPECIAL RESOLUTION and is now called  
sy naam verander het by SPESIALE BESLUIT en nou genoem word

MOBILE TELEPHONE NETWORKS HOLDINGS (PTY) LIMITED

and that the new name has this day been entered in the Register of Companies.  
en dat die nuwe naam op hierdie dag in die Register van Maatskappye aangeteken is.

Signed and sealed at Pretoria, this/Geteken en geseël te Pretoria op hede die 7

day of/dag van June

One Thousand Nine Hundred and/Eenduisend Negehonderd Ninety Three  
M/Hanmer

Certificate of change of name dated 2/6/93 herewith  
Hierby sertifikaat van verandering van naam gedateer

Name of Company INVESTMENT FACILITY COMPANY ONE  
Naam van maatskappy HUNDRED AND THIRTEEN (PTY) LTD  
Postal Address P O BOX 9481  
Posadres JOHANNESBURG, 2000

TE/BS/D/STAT/93APR323

Date stamp of companies Registration Office  
Registrar of Companies  
Datumstempel van registrasiekantoor vir  
Maatskappye  
Registrateur van Maatskappye.

1993-06-07

PRETORIA 0001  
REGISTRAR OF COMPANIES

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**MEMORANDUM OF INCORPORATION**

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THE COMPANIES ACT, 71 OF 2008

(AS AMENDED)

**MEMORANDUM OF INCORPORATION**

**OF**

**MOBILE TELEPHONE NETWORKS HOLDINGS LIMITED**

(Registration Number 1993/001411/07)

This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act 2008, as amended.

The long standard form of MOI for a Profit Company (Form CoR.15.1.B), as amended from time to time, shall not apply to the Company.

This MOI was adopted by Special Resolution in terms of section 16(1)(c) of the Companies Act passed by the Shareholders of the Company on 02 March 2016 in substitution for the then existing memorandum of incorporation of the Company.

## DEFINITIONS AND INTERPRETATION

1. In this MOI -

1.1. unless the context otherwise requires, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

<b>WORDS</b>	<b>MEANINGS</b>
<b>“Company”</b>	Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/07) or by whatever other name it may be known from time to time.
<b>“Companies Act”</b>	The Companies Act, 2008, as amended or any legislation which replaces it.
<b>“Deliver”</b>	Deliver in the manner in which the Company is entitled to give notice or deliver documents or other communications in accordance with clauses 126 to 133 of this MOI and the Companies Act and Regulations, and shall, where permitted by the Companies Act, include delivery of an abridged document together with instructions as to how the recipient may obtain an unabridged version of such document.
<b>“Electronic Address”</b>	In regard to Electronic Communication, any email or other electronic address furnished to the Company by or on behalf of a Holder.
<b>“Financial Markets Act”</b>	The Financial Markets Act, 2012, as amended or any legislation which replaces it.
<b>“Holder”</b>	The registered holder of Securities in the Company.
<b>“Ineligible or Disqualified”</b>	Ineligible or disqualified as contemplated in the Companies Act (a list of which is in <b>Annexure B</b> for easy reference but which does not form part of this MOI for purposes of interpretation).
<b>“JSE”</b>	The exchange operated by JSE Limited, (Registration No. 2005/022939/06) (or any other name by which it may be known in the future) or its successor body.

<b>“MOI”</b>	This Memorandum of Incorporation as now framed or as from time to time altered by Special Resolution or (subject to the provisions of clause 6) otherwise as may be permitted pursuant to the provisions of the Companies Act.
<b>“Ordinary Shares”</b>	The ordinary Shares as contemplated in clause 8.
<b>“Regulations”</b>	Regulations published pursuant to the Companies Act from time to time.
<b>“Shares”</b>	The shares in the share capital of the Company.
<b>“Uncertificated Securities”</b>	Securities as defined in the Financial Markets Act which are by virtue of the Companies Act transferable without a Written instrument and are not evidenced by a certificate.
<b>“Writing” or “Written”</b>	Legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as Electronic Communication and delivery of a data storage device containing Electronic Communication, but as regards any Holder, only to the extent that such Holder has notified the Company of an Electronic Address.

- 1.2. references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.3. references to Holders entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by a duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.4. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.5. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.6. words -
  - 1.6.1. in the singular number shall include the plural number, and words in the plural shall include the singular;
  - 1.6.2. importing the masculine gender shall include the feminine and neuter genders; and
  - 1.6.3. importing persons shall include created entities (corporate or not);

- 1.7. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.8. if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.9. words that are defined in the Companies Act (which are contained in **Annexure A** for easy reference, but which do not form part of this MOI for purposes of interpretation), 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 of the JSE. For ease of reading, such terms have also been capitalised in this MOI (in addition to the definitions set out in clause 1.1);
- 1.10. the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11. reference to an enactment is to that enactment as at the date of Filing of this MOI and as amended, re-enacted or substituted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date of Filing of this MOI, and as amended, re-enacted or substituted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment, re-enactment or substitution, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.12. this MOI may not frustrate or relieve the Company's direct or indirect Holding Company in any way from compliance with the listings requirements of the JSE, to the extent such requirements apply to it. Accordingly, if any provision is at any time in conflict with the applicable listings requirements of the JSE, the Holders agree to effect an appropriate amendment hereto to eliminate such conflict; and
- 1.13. a Holder shall cease to be bound by this MOI from the date on which he validly ceases to hold any Securities in the Company. For the avoidance of doubt, the termination of the binding nature of this MOI with respect to such Holder shall not affect any of its existing or

contingent obligations and liabilities which arose prior to the termination of the binding nature of the MOI in relation to that Holder, including any antecedent breach of any undertaking, representations or warranties given by such Holder, or which may accrue thereafter in respect of any act or omission which occurred prior to such termination.

#### **CALCULATION OF BUSINESS DAYS**

2. When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by -
  - 2.1. excluding the day on which the first such event occurs;
  - 2.2. including the day on or by which the second event is to occur; and
  - 2.3. excluding any official public holiday in the Republic of South Africa, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

#### **THE COMPANY IS A PUBLIC COMPANY**

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

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

4. The Company has the powers and capacity of an Individual and is not subject to any restrictive provisions or special conditions. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.
5. Without in any way limiting the Company's powers and capacity:
  - 5.1. it is recorded that the Company's primary business is to raise money through the issue of Securities and/or Shareholder loans, for the purposes of investing in its Subsidiaries and lending of money to its Subsidiaries, its Holding Company, fellow Subsidiaries of its Holding Company and joint venture entities or associates of [MTN Group Limited] and its Group of Companies, and any Related or Inter-Related Persons (if any) of the foregoing, and to acquire and hold such debt with its investments in its Subsidiaries; and
  - 5.2. notwithstanding any implication in this MOI to the contrary, but subject to any mandatory provisions of the Companies Act, the Board's power to authorise the provision by the Company of financial assistance under sections 44(2) and 45(2) of the Companies Act, or otherwise, is not limited in any way.

## AMENDMENTS TO THE MOI

6. Subject to the provisions of the Companies Act, save for -
- 6.1. correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI and for complying with any applicable requirements of the Companies Act when debentures and other debt instruments are created and/or issued, which the Board is empowered to do; and
  - 6.2. amendments of the MOI effected in compliance with a court order in the manner contemplated in section 16(1)(a), read with section 16(4), of the Companies Act,
- all other amendments of the MOI shall be effected in accordance with section 16(1)(c) of the Companies Act and must be approved by a Special Resolution passed by the Holders of the Ordinary Shares, which shall include but not be limited to -
- 6.3. the creation of any class of Shares;
  - 6.4. the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
  - 6.5. the conversion of one class of Shares into one or more other classes;
  - 6.6. an increase in the number of the Company's authorised equity Securities of a class;
  - 6.7. a consolidation of the Company's equity Securities;
  - 6.8. a sub-division of the Company's equity Securities; and/or
  - 6.9. the change of the Company's name.

## MAKING OF RULES

7. The Board shall have the capacity to make, amend or repeal any rules relating to the governance of the Company in respect of matters that are not addressed in the Companies Act or in this MOI, as contemplated in section 15(3) of the Companies Act.

## AUTHORISED SECURITIES OF THE COMPANY AND ALLOTMENT AND ISSUE THEREOF

8. Until this MOI is amended in accordance with the requirements of the Companies Act to provide otherwise, the Company is authorised to issue no more than 1.500 000 000 Ordinary Shares with a par value of R0,0001 (one cent) each (which includes Ordinary Shares already issued at any time), which shall -

- 8.1. have Voting Rights in respect of every matter that may be decided by voting (for which purposes, on a vote by poll, every Person entitled to vote who is Present at the Meeting shall have 1 (one) vote per issued Ordinary Share); and
  - 8.2. rank after all other classes of Shares in the Company which do not rank *pari passu* with the Ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation.
9. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.
10. All Securities of a class shall rank *pari passu* in all respects. Save for any voting provisions applicable to debt Securities in issue from time to time, no rights, privileges or conditions for the time being attached to any class of Securities, nor any interests of that class of Securities may (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied in any manner adverse to the Holders of that class of Securities, nor may any variations be made to the rights, privileges, conditions or interests of any class of Securities, such that the interests of another class of Securities is adversely affected, unless the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that adversely affected class has been obtained, or a Special Resolution sanctioning the variation has been passed by the Holders of that adversely affected class of Securities with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the Special Resolution at a separate meeting of the Holders of that class of Securities. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that –
- 10.1. the necessary quorum shall be the Holders of that class present in person, or represented by proxy and holding at least 25% (twenty five percent) of the Voting Rights that are entitled to be Exercised in respect of the resolution required to be passed for the variation of the relevant rights, privileges and/or conditions;
  - 10.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 10.1 is not present, those Persons entitled to vote who are Present at the Meeting shall be a quorum.

#### **AUTHORITY TO ISSUE SECURITIES**

11. The Board shall have the power to issue authorised Shares, subject to the Board having or obtaining any approvals and/or authorisations as may be required under the Companies Act.
12. The Board may issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act.

13. Save as provided in clause 14, the Board shall have the power and authority to authorise the issue by the Company of Securities (other than Shares), including the authority and power to authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2) of the Companies Act.
14. The authority of the Board to grant special privileges associated with any secured or unsecured debt instruments to be issued by the Company which instruments are listed on JSE, as contemplated in section 43(3) of the Companies Act, is prohibited unless approved by the JSE. Unless otherwise required by law, any listed secured or unsecured debt instruments to be issued by the Company must be freely transferable and fully paid up according to the terms and conditions of the debt instrument.

#### **CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER**

15. The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or 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, the subscriber shall, subject to the Companies Act and unless otherwise agreed with the Company, be entitled to elect whether all or part of the Securities offered to him shall be in certificated or uncertificated form. Each original certificate issued to a Holder in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue. If a certificate for Securities or share warrants to bearer is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit and (in the case of defacement) on delivery of the old Securities certificate of share warrant to bearer to the Company.
16. The Company shall maintain a Securities Register in accordance with the prescribed standards, which Securities Register shall reflect –
  - 16.1. the number of Securities authorised and the number available to be issued and the date of authorisation;
  - 16.2. the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;
  - 16.3. the number of Securities of a class that are held in uncertificated form;
  - 16.4. 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;



- 16.5. 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;
  - 16.6. details of any unlisted Securities issued by the Company.
17. As soon as practicable after -
- 17.1. 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 -
    - 17.1.1. the names and addresses and identity or other unique identifying numbers of the Persons to whom the Securities were issued;
    - 17.1.2. those Persons' Electronic Addresses provided by or on behalf of such Persons;
    - 17.1.3. the number and class of Securities issued to each of them, the date of issue, distinguishing numbers of such certificated Securities and the Consideration for which the Securities were issued;
    - 17.1.4. the total number of Securities of a class held by any Person;
    - 17.1.5. the date on which any such Securities were transferred by the Holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
    - 17.1.6. as regards debt instruments as contemplated in section 43 of the Companies Act –
      - 17.1.6.1. the number of those Securities still in issue;
      - 17.1.6.2. the names and addresses of the Holders of the Securities and any holders of a Beneficial Interest in the Securities;
    - 17.1.7. the total number of Uncertificated Securities from time to time;
  - 17.2. the re-acquisition or surrender of any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities –
    - 17.2.1. the date on which the Securities were re-acquired or surrendered to the Company;
    - 17.2.2. the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
    - 17.2.3. the Consideration for which the Securities were re-acquired by, or surrendered to the Company; and

- 17.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 17.3. the transfer of any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities evidenced by certificates that it has transferred –
- 17.3.1. the names, addresses and unique identifying numbers of the transferee to whom the Securities were transferred;
- 17.3.2. those transferees' Electronic Addresses who have furnished them;
- 17.3.3. the number and class of Securities transferred, the date of the transfer, distinguishing numbers of such Securities and the Consideration for which the Securities were transferred;
- 17.3.4. the value of any Consideration still to be received by the Company on such Securities in the case of a transfer of Securities contemplated in section 40(5) and (6) of the Companies Act.
- 17.3.5. any other information contemplated in clause 17.1, any reference to issue being read as a reference to transfer,
- provided that such entry may only be made if the transfer –
- 17.3.6. is evidenced by a proper instrument of transfer that has been delivered to the Company; or
- 17.3.7. was effected by operation of law;
- 17.4. any disclosures to the Company of any Beneficial Interests in respect of Securities, the Company must enter or cause to be entered in the register which the Company shall maintain to record all Beneficial Interests disclosures made in terms of section 56 of the Companies Act, a record of all such disclosures, including the following information for any Securities in respect of which a disclosure was made, if and to the extent known to the Company -
- 17.4.1. the name and unique identifying number of the Holder of the Securities;
- 17.4.2. the number, class and the distinguishing numbers of the Securities; and
- 17.4.3. 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 –
- 17.4.3.1. name and unique identity number;

17.4.3.2. business, residential or postal address;

17.4.3.3. Electronic Address if provided,

as well as any other information prescribed in terms of the Companies Act from time to time to be included in its Securities Register. If the Company has uncertificated Securities at any time it shall comply with the provisions of sections 52 and 53 and in particular shall enter or cause to be entered in its Securities Register the total number of such uncertificated Securities from time to time.

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

18.1. state on the face –

18.1.1. the name of the Company;

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

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

18.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE) evidenced by that certificate;

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

19. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.

20. Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in his name, or to several certificates, each for a part of such Securities.

21. 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 Holders.

22. A Person –

22.1. 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

- 22.2. 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.

**PROHIBITION AGAINST VOTING OF SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER AND THE COMPANY TAKING ANY LIEN**

23. If any Securities of the Company are registered in the name of a Person who is not the Holder of the Beneficial Interests in all such Securities of the Company, that registered Holder of Securities must disclose –

23.1. the identity of the person on whose behalf the Securities are held; and

23.2. the identity of each Person with a Beneficial Interest in the Securities so held, the number and class of Securities held for each such Person with a Beneficial Interest, and the extent of each such Beneficial Interest,

in accordance with the time periods as stipulated in section 56(4) of the Companies Act.

24. The Company shall permit Securities to be held by one Person for the Beneficial Interest of another. Save as set out in the specific terms and conditions of any documents in terms of which Securities other than Shares are to be issued, the Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy appointment from the Holder, notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder between the Holder and the holder of the Beneficial Interest.
25. The Company shall not be entitled to claim any lien over any Securities issued by it.

**LISTINGS ON STOCK EXCHANGES**

26. The Company may seek listings on such stock exchanges as the Directors may consider appropriate from time to time.

**TRANSFER OF SECURITIES**

27. There is no restriction on the transfer of Securities.
28. The Securities Register (but not any sub-registers) may be closed during such time as the Directors think fit, not exceeding in total 60 (sixty) days in each year for purposes of determining the identities of the Persons entitled to receive any notice from the Company, participate in Distributions or other advantages and/or exercise other rights to which Holders may be entitled.
29. The transfer of any Securities which are certificated shall be implemented in accordance with the then common form of transfer, or such other form as the Directors may direct from time to time.

Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require in order for the transferor to establish his title in the Securities or his rights to transfer the Securities.

30. All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in Writing of the revocation of the same shall have been given and lodged at the Company's 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.

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

31. Subject to the laws relating to securities tax upon or in respect of the estates of deceased Persons and the administration of estates of insolvent and deceased Persons and Persons under disability -
- 31.1. the parent or guardian or curator of any Holder who is a minor;
  - 31.2. the trustee of an insolvent Holder;
  - 31.3. the liquidator of a body corporate Holder;
  - 31.4. the tutor or curator of a Holder under disability;
  - 31.5. the executor or administrator of the estate of a deceased Holder; or
  - 31.6. 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 -
- 31.7. 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
  - 31.8. himself/herself/itself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the 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.

**GENERAL MEETINGS OF THE COMPANY**

32. If, at any time, there is only one Shareholder of the Company, that Shareholder may exercise all of the Voting Rights pertaining to the Company on any matter at any time without notice or compliance with any internal formalities, and its power to do so shall be unrestricted under this MOI, and the relevant further provisions hereof shall be as read with the necessary changes, including such that sections 59 to 65 of the Companies Act and the comparable provisions relating to such matters in this MOI shall not apply.
33. 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, deal with such matters as are required under the Companies Act to be dealt with at such meeting.
34. Shareholders may adopt, by Written resolution in accordance with section 60 of the Companies Act, any resolution which may be adopted pursuant such section of the Companies Act.
35. A Company must hold a Shareholders Meeting –
- 35.1. at any time that the Board is required by the Companies Act or this MOI to refer a matter to Holders entitled to vote for decision;
- 35.2. whenever required in terms of section 70(3) of the Companies Act to fill a vacancy on the Board.
36. The Board or a Shareholder/s holding not less than 10% (ten percent) of the Voting Rights attached to the Ordinary Shares, or not less than 10 (ten) of the Holders of the Ordinary Shares or, if the Company has no Directors, any single Holder entitled to vote or, any single Holder entitled to vote in respect of any meeting required to be convened by the Company under the Companies Act or the MOI, may, whenever he thinks fit, convene a Shareholders Meeting. A Shareholders Meeting must be convened by the Board if one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and –
- 36.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
- 36.2. in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of the requisite number of Holders and/or requisite percentage Voting rights referred to in the foregoing provisions of this clause 36.
37. 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, in the manner contemplated in section 63(2) of the Companies Act, is not limited or restricted.

38. The Holder of any Securities which are in certificated form (and thus not subject to the rules of Strate Limited as the Central Securities Depository), in which any Person has a Beneficial Interest, must deliver to each such Person –
  - 38.1. 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
  - 38.2. 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.
39. Subject to 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 Holders entitled to vote or otherwise entitled to receive notice.
40. The quorum shall be sufficient Persons Present at the Shareholders 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 but the Shareholders Meeting may, if the Company has more than two Shareholders, not begin unless in addition at least 3 (three) Persons entitled to vote are Present at the Meeting.
41. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 40 are present when the matter is called on the agenda.
42. Subject to section 64(5) of the Companies Act, if within 60 (sixty) minutes from the time appointed for the Shareholders' Meeting to commence, a quorum is not present, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 45, for 1 (one) week to the same time on the same day in the next week or, if that be a Saturday, Sunday or public holiday in the Republic of South Africa, to the next succeeding day which is not a Saturday or Sunday public holiday in the Republic of South Africa, or such other earlier or later date, time and place as the chairperson of the meeting may announce at the meeting or may subsequently specify by notice to Shareholders, and if at such adjourned Shareholders Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, then the Person/s entitled to vote Present at the Shareholders Meeting shall be deemed to be the requisite quorum.
43. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to Exercise, in aggregate, a majority of the Voting Rights –

- 43.1. held by all of the Persons who are Present at the Shareholders Meeting at the time; and
- 43.2. that are entitled to be Exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders), as resolved by Ordinary Resolution at the Shareholders Meeting.

- 44. A Shareholders Meeting may not be adjourned beyond the earlier of –
  - 44.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date of notice for the relevant Shareholders Meeting; or
  - 44.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 45. No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 42, unless the location or time of the Shareholders Meeting is different from –
  - 45.1. the location or time of the postponed or adjourned Shareholders Meeting; or
  - 45.2. a location or time announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.
- 46. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the deputy chairperson, if any, shall preside as chairperson at the Shareholders Meeting, or if 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 at the Meeting shall select a Director Present at the Meeting, or if all the Directors Present at the Meeting decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.
- 47. At a 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 -
  - 47.1. not less than 5 (five) Persons having the right to vote on that matter; or
  - 47.2. 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; or
  - 47.3. the chairperson,



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 has been made in the minute book of the Company, shall be conclusive evidence of such declaration, 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.

48. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, save that it shall be taken forthwith, 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 count the relevant votes and 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.
49. 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.
50. 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.
51. Any person entitled to a Share in terms of clause 31 may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Directors have previously accepted his right to vote in respect of that Security, and such recognition has not been withdrawn by the Directors) 24 (twenty four) hours at least 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 31.
52. 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 an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution. A Special Resolution shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution.
53. 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), on a show of hands

a Person entitled to vote Present at the Meeting shall have only 1 (one) vote, irrespective of the number of Securities he holds or represents. A proxy shall, irrespective of the number of Holders of Securities entitled to vote he represents, have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.

54. In the case of joint 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 Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.
55. 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, subject to the remaining provisions of this clause 55, it may be revoked at any time. The appointment of a proxy 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 Company. The appointment of any proxy shall be suspended at any time if and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to so vote.
56. 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, prior to the commencement of the Shareholders Meeting (or, as applicable adjourned or postponed Shareholders' Meeting), before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting.
57. 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 or postponed Shareholders Meeting at which the proxy is used.
58. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form, or such other form as the Company may make available from time to time.
59. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue (including any new resolution, whether procedural or substantive, which is put to a vote at the Shareholder Meeting), the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

60. Notwithstanding anything to the contrary contained in this section entitled "General Meetings of the Company", 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.

#### **RECORD DATE**

61. The Board shall determine, and publish, the Record Date in accordance with the provisions of the Companies Act and, if applicable, the rules of the Central Securities Depository.
62. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter shall be as determined in accordance with the provisions of the Companies Act.

#### **ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES**

63. The minimum number of Directors shall, subject to any further requirements under section 66(2), be 3 (three). 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. The number of Directors which constitute the Board shall be set by Ordinary Resolution from time to time; provided that where the number of standing Directors is reduced to below the number of Directors which then hold office, unless the resolution provides otherwise, the Director/s appointed most recently in time (and their associated Alternate Director/s) shall cease office such that the reduced number of positions is filled, but not exceeded.
64. Each of the Directors and the Alternate Directors, other than a Director contemplated in clause 69, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 66, to serve for an indefinite term as a Director or Alternate Director subject to clauses 72 and 75-77 below. No Alternate Director may be appointed from the ranks of the Directors. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing 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 he shall have a separate vote, on behalf of each Director he is representing.
65. No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.
66. In any election of Directors and Alternate Directors, the election is to be conducted as follows –

- 66.1. each Person nominated for appointment to a vacant seat on the Board (or, *mutatis mutandis*, as an Alternate Director to a specified Director) shall be voted on by Shareholders by way of Ordinary Resolution;
- 66.2. each Person whose proposed appointment as a Director is approved by a majority of the Voting Rights exercised on such resolution shall be appointed as a Director; provided that where the number of qualifying Individuals having such majority approval exceeds the number of vacant positions, the relevant vacant positions shall be filled by those candidates which received the highest number of affirmative votes and, in the event of an equality of affirmative votes for candidates in relation to one or more positions where the number of such candidates exceeds the remaining vacant positions, such remaining vacant positions shall be filled by selection from those candidates who received equal votes by way of a lot conducted in a manner determined by the chairperson of the meeting; and
- 66.3. each person whose proposed appointment as an Alternate Director to a specified Director is approved by a majority of the Voting Rights exercised on such resolution shall be appointed as an Alternate Director to such specified Director; provided that where there is more than one qualifying person having such majority approval, the position shall be filled by the candidate which received the highest number of affirmative votes and, in the event of an equality of affirmative votes, the position shall be filled by selection from such candidates by way of a lot conducted in a manner determined by the chairperson of the meeting.
67. No Person shall be elected as a Director or Alternate Director, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director 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.
68. No election of a Director shall take effect unless and until he has consented to serve in such capacity.
69. 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 Annual General Meeting to be held after the appointment of such Individual as a Director unless he is elected at such or any other Shareholders Meeting.
70. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if their number is reduced below the number fixed by or pursuant to this MOI as the minimum, the continuing Directors or Director must, as soon as possible, and in any event no later than 3 months from the date the number of Directors fell below such minimum, fill the vacancy or call

a Shareholders Meeting to fill such vacancy. A failure by the Company to have the minimum number of Directors does not limit or negate the authority of the Board of Directors or invalidate anything done by the Board of Directors or the Company.

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

#### **CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

72. A Director or Alternate Director shall cease to hold office as such -
- 72.1. immediately when he becomes Ineligible or Disqualified or the Board resolves to remove 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 he shall be suspended);
  - 72.2. when his term of office contemplated in clause 75 expires;
  - 72.3. when he dies;
  - 72.4. if there are more than 3 (three) Directors in office and if the Board (other than the Director concerned) determines that he has become incapacitated to the extent that such Director 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 he shall be suspended);
  - 72.5. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
  - 72.6. if he is removed by Ordinary Resolution;
  - 72.7. if there are more than 3 (three) Directors in office and if 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 he shall be suspended);
  - 72.8. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally;
  - 72.9. he is otherwise removed in accordance with any provisions of this MOI;

72.10. when he resigns by Written notice to the Company.

### **REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF COMMITTEES**

73. The Directors or Alternate Directors or members of Board or statutory committees shall be entitled to such remuneration for their services as Directors or Alternate Directors or members of committees as may have been determined from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors and Alternate Directors shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the Directors and Holders, and the members of the committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the members of the committees as determined by a disinterested quorum of Directors. The Board may pay or grant any type of remuneration, including as contemplated in sections 30(6)(b) to (g) of the Companies Act, to any executive Directors in respect of their holding of employment with the Company.
74. 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 major Subsidiary of, the Company and in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

### **RETIREMENT OF DIRECTORS IN ROTATION**

75. At the Annual General Meeting held in each year, 1/3 (one-third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that if, at the date of any Annual General Meeting, any Director will have held office for a period in excess of 3 (three) years or longer since his last election or appointment, he shall retire at such Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto. The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election, for which purposes the length of time a Director has been in office shall be computed from the date of his 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.
76. A retiring Director shall act as a Director throughout the Meeting at which he retires. Notwithstanding anything herein contained, in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the managing director or any other executive Director and his contract provides that he is not subject to retirement.
77. Retiring Directors shall be eligible for re-election. No person other than a Director retiring at the Meeting and a Director who ceases to hold office pursuant to clause 69 shall, unless recommended by the Directors for election, be eligible for election to the office of a Director at any Annual General

Meeting unless, not less than 7 (seven) days nor more than 21 (twenty one) days before the day appointed for the Meeting, there shall have been to the company secretary notice in Writing by some Holder duly qualified to be present and vote at the Meeting for which such notice is given of the intention of such Holder to propose such Person for election and also notice in Writing signed by the Person to be proposed of his willingness to be elected. If at any Annual General Meeting, the place of any retiring Director is not filled, he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, continue in office unless it shall be determined at such Meeting not to fill such vacancy.

### **GENERAL POWERS AND DUTIES OF DIRECTORS**

78. Notwithstanding any implication in this MOI to the contrary, and subject only to the mandatory provisions of the Companies Act, (i) the powers and authority granted to the Directors in terms of section 66(1) of the Companies Act are not limited in any manner and (ii) the Directors shall have all such further and additional powers and authority (including as to delegation) as may validly be invested by law in the Directors, including the power to conduct, or cease to conduct, or to operate, or cease to operate, the business or affairs of the Company, and/or to cause such matters to be done, or not done, as the case may be.
79. Without derogating from the provisions of clause 78, the Directors may -
- 79.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
- 79.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,
- any persons who are employees or former employees 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.

### **BOARD COMMITTEES**

80. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of any such committees, other than the nominations committee (if any) which shall have as its members only non-executive Directors, the majority of whom must be independent (as defined in the JSE listings requirements), and which must be chaired by the chairperson of the Board, 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.
81. No Person shall be appointed as a member of a Board committee, if 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.

82. 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.
83. A member of a Board committee shall cease to hold office as such immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.
84. Save as the Directors may otherwise determine from time to time, 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.

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

85. For the purposes of clauses 86 to 87, "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.
86. 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.
87. 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.

**PROCEEDINGS OF DIRECTORS**

88. A Director authorised by the Board –
- 88.1. may, at any time, call a meeting of the Board; and
- 88.2. must call a meeting of the Board if required to do so by at least 2 (two) Directors.
89. The Directors may determine from time to time 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 Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.

90. If all of the Directors –

90.1. acknowledge actual receipt of the notice; or

90.2. are present at the Board meeting; or

90.3. 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.

91. The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit.

92. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication in accordance with section 73(3) of the Companies Act. Any inadvertent failure in the Electronic Communication facility to have or maintain any connection to a Director participating by electronic means (or who wished to so participate) shall not preclude the meeting from commencing or continuing, or cause any resolution passed thereat to be invalid, provided that the requisite majority of Directors necessary to constitute a quorum and to approve the resolution are not affected thereby, and participated in the meeting or on the resolution, as the case may be.

93. The quorum for a Directors' meeting is the majority of Directors.

94. The Directors may elect a chairperson of their meetings and determine the period for which he is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the deputy chairperson, if any, shall preside as chairperson at the meeting, failing which, the Directors present may choose one of their number to be chairperson of the meeting.

95. Each Director has 1 (one) vote on a matter before the Board and a majority of votes cast on a resolution is sufficient to approve that resolution.

96. In the case of a tied vote, the chairperson may cast a deciding vote.

97. The Company must keep minutes of the meetings of the Board, and of each Board and statutory committee, and include in the minutes –

- 97.1. any declaration given by notice or made by a director as required by section 75 of the Companies Act;
- 97.2. every resolution adopted by the Board.
98. Resolutions adopted by the Board –
- 98.1. must be dated and sequentially numbered; and
- 98.2. are effective as of the date of the resolution, unless the resolution states otherwise.
99. Any minutes of a meeting, or a resolution, signed by the chairperson or the Company Secretary of the meeting, or by the chairperson of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
100. As permitted under section 74 of the Companies Act, a decision that could be voted on at a meeting of the Directors may instead be adopted by Written consent of a majority of the Directors (or their Alternates) given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. 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 (and constituted the necessary majority), unless a statement to the contrary is made in that resolution.
101. In relation to any Written resolution contemplated in clause 100 –
- 101.1. a fax or other electronic form of copy (eg. PDF) ) of a Director's signed resolution shall be acceptable evidence that such resolution has been signed by the Director;
- 101.2. if a Director is ineligible to vote on, or participate in any discussion on, a resolution (or relevant part thereof), the signature by that Director of the Written resolution will not invalidate the Written resolution and that Director's signature will be counted towards the quorum, but not the vote, in respect of the resolution concerned (or part thereof); and
- 101.3. any failure by any Director to sign any Written resolution within the period stipulated in the notice to the Director shall not affect the validity of such Written resolution.

#### **PRESCRIBED OFFICERS OF THE COMPANY**

102. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office

or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

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

#### **APPOINTMENT OF COMPANY SECRETARY**

104. The Directors must appoint the company secretary from time to time, who –
- 104.1. shall be a permanent resident of the Republic of South Africa and remain so while serving as company secretary; and
- 104.2. shall have the requisite knowledge of, or experience in, relevant laws; and
- 104.3. may be a Juristic Person subject to the following –
- 104.3.1. 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;
- 104.3.2. 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 104.1 and 104.2.
105. 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 Directors consider 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 104.3.
106. If at any time a Juristic Person or partnership holds office as company secretary of the Company –
- 106.1. the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 104.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
- 106.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 104.3, until the Company has received a notice contemplated in clause 106.1; and
- 106.3. 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 104.3 at the time of that action.

107. 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.
108. 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.

#### **DISTRIBUTIONS MADE BY THE COMPANY**

109. The Company in general meeting (if so permitted under the Companies Act) or the Directors may make Distributions from time to time in accordance with the provisions of the Companies Act; provided that no Distribution may be declared by the Company in general meeting greater than that recommended by the Directors. No Distributions shall carry interest against the Company.
110. Distributions payable in monetary form shall, unless the Board determines otherwise, be declared in the currency of the Republic of South Africa ("**ZAR**"). The Board may determine the exchange rate applicable to distributions declared in ZAR and to be paid in another currency, or declared in another currency and payable in ZAR.
111. Any Distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways, subject to the provisions of the Companies Act, as the Board (or, where applicable, the Shareholders) may at the time of authorising the Distribution determine and direct.
112. All cash Distributions, interest or other moneys payable to a Shareholder may be paid by cheque or electronic funds transfer or otherwise, as specified in the resolution declaring the distribution, or in the absence of the method of payment being specified in such resolution, in such manner as the Board (or, if applicable, the Shareholders) may from time to time determine. Payment may be sent by post to any of the registered address(es) of a Shareholder specified in the securities register or, in the case of joint Shareholders, to any of the registered address(es) of that one of them first named in the securities register in respect of such joint Shareholdings. The payment of such cheque or payment by electronic transfer into the bank account recorded in the bank account register of the Company (if any) nominated by the Shareholder, or in the case of joint Shareholders into the bank account nominated by the Shareholder whose name stands first in the securities register in respect of the share, shall be a good discharge by the Company in respect thereof.
113. If as a result of the declaration of a Distribution any Shareholders become entitled to fractions of any specific assets of the Company, the Board may sell the assets represented by such fractions and

after deducting the expenses of such sale distribute the balance of the proceeds of the sale amongst the Shareholders entitled to the fractions in proportion to their entitlement.

114. Every payment of a Distribution made by cheque through the post or by electronic transfer shall be made at the risk of the Shareholders or joint Shareholders. The Company shall not be responsible for the loss in transmission of any cheque or other document sent through the post either to a registered address of any Shareholder or to any other address requested by him or for the loss or misdirection of any electronic transfer
115. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 109, 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.
116. The Company must hold all unclaimed monies which are due to the Shareholders pursuant to any Distribution in trust indefinitely, but subject to the laws of prescription.
117. 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 or company secretary from time to time.

#### **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

118. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
119. The Company shall prepare its Financial Statements in accordance with the standards prescribed under the Companies Act from time to time and, where so required under the Companies Act or the listings requirements of the JSE (to the extent applicable) shall have its annual Financial Statements audited.
120. The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Holders and holders of Beneficial Interests not being Directors are entitled to inspect and take copies of pursuant to the Companies Act, which shall be open to inspection by Holders and holders of Beneficial Interests, not being Directors.
121. The Company shall notify the Holders and the holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder or holder of Beneficial Interests requests a copy of the annual

Financial Statements, the Company shall make same available to such Holder / holder of Beneficial Interests free of charge.

#### **AUDIT COMMITTEE AND AUDITOR**

122. The Audit Committee of MTN Group Limited (being the Company's Holding Company) will perform all the duties required by the Companies Act on behalf of the Company.
123. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, 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.
124. Nothing precludes the appointment by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee (or the committee performing such function), but if such an Auditor is appointed, the appointment is valid only if the audit committee is satisfied that the proposed Auditor is independent of the Company as contemplated in section 90(2)(c), read with 94(8), of the Companies Act.

#### **LOSS OF DOCUMENTS**

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

#### **NOTICES**

126. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or, if required, a holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by Electronic Communication. 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.
127. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –
- 127.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and
- 127.2. confirms that the notices, documents, records or statements contemplated in clause 127.1 can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.

128. The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
129. If joint Holders are registered in respect of any Security or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
130. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been Delivered on the date and time determined in accordance with Table CR3 in the Regulations (which is included as **Annexure C** for easy reference but does not form part of this MOI for purposes of interpretation).
131. A Holder or Person entitled to Securities (or 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 Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
132. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
133. As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

## INDEMNIFICATION OF DIRECTORS BY THE COMPANY

134. For the purposes of clauses 135 to 137, "Director" includes a former Director, an Alternate Director, a Prescribed Officer, 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 and a member of the audit committee.
135. The Company may –
- 135.1. 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 in terms of any national legislation, unless the conviction was based on strict liability;
- 135.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 135.3. directly or indirectly indemnify a Director for –
- 135.3.1. any liability, other than in respect of –
- 135.3.1.1. any liability arising in terms of section 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
- 135.3.1.2. any fine contemplated in clause 135.1;
- 135.3.2. any expenses contemplated in clause 135.2, irrespective of whether it has advanced those expenses, if the proceedings –
- 135.3.2.1. are abandoned or exculpate the Director; or
- 135.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 135.3.1.
136. The Company may purchase insurance to protect –
- 136.1. a Director against any liability or expenses for which the Company is permitted to indemnify a Director, as contemplated in clause 135.2 or 135.3; or
- 136.2. the Company against any contingency including but not limited to –
- 136.2.1. any expenses –
- 136.2.1.1. that the Company is permitted to advance in accordance with clause 135.2; or



136.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 135.3.2; or

136.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 135.3.1.

137. The Company is entitled to claim restitution from a Director or from a director of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director or director of a Related company in any manner inconsistent with section 78 of the Companies Act.

### **REPURCHASE OF SECURITIES**

138. The Company is authorised to repurchase Securities as provided for in section 48 of the Companies Act and the JSE listings requirements (to the extent applicable).

### **REGISTER OF DISCLOSURES AND NOTIFICATION**

139. The Company must -

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

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

139.3. file a copy of a notification in respect of the acquisition of any Beneficial Interest constituting 5% (five per cent) or a multiple thereof of the issued Securities of that class or disposal so that the Person no longer holds a multiple of 5% (five per cent) of the issued Securities of that class, with the Panel; and

139.4. report the information to the Holders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 139.3 unless it relates to the disposal of any Beneficial Interest of less than 1% (one per cent) of the class.

### **SOCIAL AND ETHICS COMMITTEE**

140. The Social and Ethics Committee of MTN Group Limited (being the Company's Holding Company) will perform all the duties required by the Companies Act on behalf the Company.

### **AUTHENTICATION OF DOCUMENTS**

141. Any Director or the company secretary or any Person appointed by the Directors for this purpose shall have power to authenticate any documents affecting the constitution of the Company and any

resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. Where any books, records, documents or accounts are elsewhere than at the office, the local manager or other officer of the Company having the custody thereof shall be deemed to be the Person appointed by the Directors aforesaid.

142. A document purporting to be a copy of a resolution of the Directors or an extract from the minutes of a meeting of the Directors which is certified as such in accordance with the provisions of clause 141 shall be conclusive evidence in favour of all Persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

#### **SEVERABILITY**

143. Any provision in this MOI which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this MOI shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this MOI, without invalidating the remaining provisions of this MOI or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **APPLICABLE LAW**

144. This MOI shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

## Annexure A 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;

"**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;

"**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;

"**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

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

- (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;

"**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);

"**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;

"**file**" when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

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

"**financial statement**" includes—

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

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

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

"**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;

"**personal liability company**" means a profit company that satisfies the criteria in section 8(2)(c);

"**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**" (or "**present at the meeting**", depending on the context) 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 (c);

"**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);

"**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;

**"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;

**"state-owned company"** means an enterprise that is registered in terms of this Act as a company, and either -

- (a) is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act 1 of 1999); or
- (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), and is otherwise similar to an enterprise referred to in paragraph (a);

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

**"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;

**Annexure B 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 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, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).



**Annexure C    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 South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive</p>

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

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