

MEMORANDUM OF INCORPORATION

of

HULAMIN LIMITED

(incorporating the amendments adopted at the AGM on 26 April 2018)

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1. Interpretation

In this Memorandum of Incorporation:

- 1.1 "Act" means the Companies Act No. 71 of 2008.
- 1.2 "Company" means Hulamin Limited, registration number 1940/013924/06;
- 1.3 "JSE" means the JSE Limited, registration number 2005/022939/06.
- 1.4 "Listings Requirements" means the JSE Listings Requirements.
- 1.5 "Regulation" means a regulation contained in the Companies Regulations, 2011, published under Government Notice R351 in *Government Gazette* 34239 of 26 April 2011.
- 1.6 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 excluding the day on which the first such event occurs, including the day on or by which the second event is to occur and excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated above.
- 1.7 Words defined in the Act, certain of which are set out in Schedule A to this Memorandum of Incorporation for easy reference, bear the same meaning in this Memorandum of Incorporation as in the Act. Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, and words importing any gender shall include the other genders and words importing persons shall include bodies corporate.

2. **Incorporation**

2.1 The Company was incorporated on 27 May 1940 as a private company. It was converted to a public company with its present name, "Hulamin Limited", under the Companies Act No. 61 of 1973.

2.2 The Company is incorporated in accordance with and governed by:

- (a) the unalterable provisions of the Act;
- (b) the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- (c) the provisions of this Memorandum of Incorporation; and
- (d) the Listings Requirements.

2.3 Not all matters affecting the governance of the Company are catered for in this Memorandum of Incorporation. In cases of doubt, or where this Memorandum of Incorporation is silent on a matter, the Act should be consulted.

3. **Powers of the Company**

The Company is a juristic person which has all of the legal powers and capacity of an individual except to the extent that:

- 3.1 a juristic person is incapable of exercising any such power, or having any such capacity; or
- 3.2 this Memorandum of Incorporation or the Act place restrictions on the powers of the Company.

4. **Ratification of *ultra vires* acts**

No special resolution for the ratification of any *ultra vires* act by a director, directors or the Company, as contemplated in section 20(2) of the Act, may be proposed if it purports to ratify an act which contravenes the Listings Requirements, unless otherwise agreed with the JSE. **[LR 10.3]**

5. **Alterations to the Memorandum of Incorporation**

5.1 This Memorandum of Incorporation may be altered or amended in accordance with the provisions of section 16 of the Act:

- (a) by the Company's board to the extent necessary to comply with an order of court;
- (b) by the Company's board in order to correct a patent error in spelling, punctuation, reference, grammar or similar defects by posting a notice of the alterations to every holder of securities and filing a notice of the alteration with the Commission as provided for in section 17(1) of the Act; or
- (c) by a special resolution, save if such an amendment is ordered by a court in terms of section 16 (1)(a) of the Act. For the avoidance of doubt, for the purposes of this clause 5.1(c) "amendment" shall include:
 - (i) the creation of any class of shares; **[LR 10.5(d)(i)]**
 - (ii) the variation of any preferences, rights, limitations and other terms attaching to any class of shares; **[LR 10.5(d)(ii)]**
 - (iii) the conversion of one class of securities into one or more other classes; **[LR 10.5(d)(iii)]**

- (iv) an increase in the number of securities of a class;
[LR 10.5(d)(iv)]
- (v) a consolidation of securities; **[LR 10.5(d)(v)]**
- (vi) a sub-division of securities; **[LR 10.5(d)(vi)]**
- (vii) a change of the name of the Company;
[LR 10.5(d)(vii)]
- (viii) any action under section 36 of the Act; and
- (ix) any other alteration to the share capital or authorised shares of the Company or amendments to the rights attaching to any class of shares of the Company, whether in issue or not.

[LR 10.5(d)] [LR 10.9(c)]

5.2 The Company must comply with any requirements of the Listings Requirements in respect of alterations of share capital, authorised shares and rights attaching to classes of shares, over-and-above the requirement to obtain a special resolution. **[LR 10.9(c)]**

5.3 The preferences, rights, limitations or other terms of any class of shares of the Company must not be varied and no resolution may be proposed to the shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Act. **[LR 10.5(g)]**

6. **Company Rules**

The directors are prohibited from making, amending or repealing rules relating to the governance of the Company, as contemplated in section 15(3) of the Act. **[LR 10.4]**

7. Auditor

The annual financial statements of the Company shall be audited. The financial year of the Company ends on the 31st of December of each year.

8. Compliance with Accountability Requirements

8.1 The Company shall appoint an auditor in accordance with the provisions of Part C of Chapter 3 of the Act.

8.2 The Company shall appoint an audit committee in accordance with the provisions of Part A of Chapter 3 of the Act.

8.3 The Company shall appoint a company secretary in accordance with the provisions of Part B of Chapter 3 of the Act, provided that:

(a) the terms and conditions governing the appointment of the secretary shall be decided by the directors;

(b) the directors may remove or dismiss the secretary from office at any time.

8.4 In terms of section 72(4) of the Act read with Regulation 43, the Company must appoint a social and ethics committee in accordance with the requirements of Regulation 43.

9. Takeover Regulations

The Company, being a public company, is subject to the provisions of Parts B and C of Chapter 5 of the Act pertaining to fundamental transactions, takeovers and offers and to the Takeover Regulations provided for in the Act.

10. **Shares**

10.1 The Company is authorised to issue shares as set out below:

Ordinary Shares:

The Company is authorised to issue 800 000 000 ordinary shares of no par value, each of which entitles the holder to:

- (a) one vote on any matter to be decided by a vote of holders of securities of the Company;
- (b) participate in any distribution of profit to the holders of securities of the Company; and
- (c) share in the distribution of the Company's residual value upon its dissolution.

A1 Ordinary Shares:

The Company is authorised to issue 4 721 600 A1 ordinary shares of no par value, the rights, limitations and other terms of which are set out in Schedule B to this Memorandum of Incorporation.

A2 Ordinary Shares:

The Company is authorised to issue 26 755 733 A2 ordinary shares of no par value, the rights, limitations and other terms of which are set out in Schedule B to this Memorandum of Incorporation.

B1 Ordinary Shares:

The Company is authorised to issue 9 018 000 B1 ordinary shares of no par value, the rights, limitations and other terms of which are set out in

Schedule B to this Memorandum of Incorporation.

B2 Ordinary Shares:

The Company is authorised to issue 9 018 000 B2 ordinary shares of no par value, the rights, limitations and other terms of which are set out in Schedule B to this Memorandum of Incorporation.

B3 Ordinary Shares:

The Company is authorised to issue 18 036 000 B3 ordinary shares of no par value, the rights, limitations and other terms of which are set out in Schedule B to this Memorandum of Incorporation.

10.2 Securities within each class in issue shall rank pari passu (as that phrase is defined in the Listings Requirements) in respect of all rights within the class.**[LR 10.5(a)]**

11. **Securities Certificates**

11.1 The Company shall not issue certificates evidencing or purporting to evidence title to uncertificated securities.

11.2 If any holders of securities become entitled to the issue of certificates:

- (a) such certificates shall be issued under the authority of the directors in accordance with the requirements of section 51 of the Act and in such manner and form as the directors shall from time to time prescribe;
- (b) every person whose name is entered as a securities holder in the securities register shall be entitled to one certificate for all the securities registered in that person's name, or to several certificates, each for a part of such securities;

- (c) each original certificate shall be issued without charge but for every subsequent certificate in respect of the same securities issued to the same member and for every certificate issued in respect of a withdrawal of uncertificated securities the directors may require the member to pay the reasonable expenses incurred by the Company in issuing the said certificate;
- (d) a certificate which is damaged, worn out, defaced, lost or destroyed may be replaced on such terms as to evidence, indemnity and the payment of expenses as the directors think fit; and
- (e) a certificate for securities registered in the name of 2 (two) or more persons must be delivered to the holder first named in the Company's securities register.

12. **Issuing securities, options and convertible securities**

12.1 Unissued equity securities must be offered to existing holders of securities *pro rata* to the number of securities of that class which they hold unless:

- (a) the securities are issued for the acquisition of assets; or
- (b) the directors have been authorised by the holders of securities to issue unissued securities or to grant options to subscribe for unissued securities as the directors in their discretion deem fit, provided that such corporate action(s) have been approved by the JSE and are subject to the Listings Requirements. **[LR 10.1]**

12.2 The directors may issue shares for cash and options and convertible securities for cash in accordance with the Listings Requirements. **[LR 10.9(a)]**

- 12.3 Notwithstanding the provisions of section 40(5) of the Act, securities in the Company for which listing is sought will not be issued unless fully paid up. **[LR 10.2(a)]**
- 12.4 The Company may only issue or allot uncertificated securities to a person who is a client of a participant or for whom a participant has agreed to act.
- 12.5 If so authorised by the holders of securities in the Company, the Company may pay a commission at a rate not exceeding 10% (Ten Percent) of the issue price of securities to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the Company. **[LR 10.14]**
- 12.6 The Company may, on issue of securities, pay such brokerage as may be lawful.

13. Transfer of Securities

- 13.1 Save as set out in this Memorandum of Incorporation, the transferability of securities in the Company is unrestricted and the Company may offer its securities to the public, subject to the provisions of this Memorandum of Incorporation, the Act and the Listings Requirements. **[LR 10.2(a)]**
- 13.2 Transfer of uncertificated securities will be effected upon a debiting and crediting respectively of both the account in the sub-register from which the transfer is effected and the account in the sub-register to which the transfer is to be made in accordance with the rules of the relevant central securities depository and otherwise in accordance with the requirements of section 53 of the Act and of section 42 of the Securities Services Act.

- 13.3 Transfer of certificated securities shall be effected upon the delivery of a proper instrument of transfer to the Company as contemplated in section 51 of the Act. The directors may decline to recognise any instrument of transfer unless:
- (a) the instrument of transfer is accompanied by the certificate of the security to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
 - (b) the duty thereon payable in terms of any law has been paid.
- 13.4 All authorities to sign transfer deeds granted by holders of securities for the purpose of transferring securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices will, 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 has 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 a notice, the Company will be entitled to give effect to any instruments signed under the authority to sign, and certified by the officer of the Company, as being in order before the giving and lodging of such a notice. **[LR 10.2(b)]**
- 13.5 Securities registered in the name of a deceased or insolvent holder of securities shall not be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the directors to do so. **[LR 10.13]**

14. Financial Assistance

14.1 Subject to the requirements set out in sections 44(3) and 44(4) of the Act, the board may authorise the Company to provide financial assistance by way of a loan or a provision of security or otherwise to any person or persons, including the Company's directors:

- (a) for the purpose of, or in connection with, the subscription of any option or any securities, issued or to be issued by the Company, or a related or inter-related company; or
- (b) for the purchase of any shares of the Company, or a related or inter-related company.

14.2 Subject to the requirements set out in sections 45(3) and 45(4) of the Act, the board may authorise the Company to provide direct or indirect financial assistance to:

- (a) a director or prescribed officer of the Company or of a related or inter-related company;
- (b) a related or inter-related company or corporation;
- (c) a member of a related or inter-related corporation; or
- (d) a person related to any company, corporation, director, prescribed officer or member contemplated above.

15. Capitalisation Shares

If so authorised by an ordinary resolution, the directors may award capitalisation shares in accordance with the requirements of section 47 of the Act. Subject to the solvency and liquidity test referred to in sections 4 and 47(2) of the Act, the board may permit any shareholder

entitled to receive an award of capitalisation shares to elect instead to receive a cash payment at a fair value determined by the board. Shareholders may not be prohibited from exercising such an election. **[LR 10.6] [LR 10.7]**

16. Repurchase of Securities

The Company may repurchase securities issued by it, whether pursuant to the exercise of appraisal rights contemplated in section 164 of the Act or otherwise, in accordance with the Listings Requirements and, except where the repurchase is pursuant to the exercise of appraisal rights as aforesaid, section 48 of the Act. **[LR 10.9(b)]**

17. Nominees

17.1 The Company's securities may be held by, and registered in the name of, one person for the beneficial interest of another person. In such event the person who is not the holder of the beneficial interest must disclose to the Company the identity of the person on whose behalf the securities are held and the identity of each person with a beneficial interest in the securities so held, the number and class of securities held for each person with a beneficial interest and the extent of each such beneficial interest, as required by section 56(3) and (4) of the Act.

17.2 The Company must establish and maintain a register of the disclosures described in clause 17.1 above and publish in its annual financial statements, a list of the persons who hold beneficial interests equal to or in excess of 5% (Five Percent) of the total number of securities of that class issued by the Company, together with the extent of those beneficial interests.

18. **Fractions of Securities**

If on any capitalisation issue or consolidation of securities, members would, but for the provisions of this clause, become entitled to fractions of securities, the directors may sell the securities resulting from the aggregation of such fractions on such terms and conditions as they deem fit for the benefit of the relevant holders of securities and any director shall be empowered to sign any instrument of transfer or other instrument necessary to give effect to such sale.

19. **Debt Instruments**

The board may authorise the Company to issue secured or unsecured debt instruments. Every such instrument must clearly indicate on its first page whether the relevant debt instrument is secured or unsecured. The board may not grant the holder of any debt instrument any of the special privileges contemplated by section 43(3) of the Act. **[LR 10.10]**

20. **Access to Company Records**

Each holder of a beneficial interest in securities issued by the Company has the right to inspect and copy without charge the records listed in section 26(1) of the Act.

21. **Record Date**

The record date for determining the rights of holders of securities or for any transaction, must be set in accordance with the Listings Requirements. **[LR 10.15]**

22. **Shareholders Meetings**

22.1 For the purposes of this clause 22 and clauses 23 to 41 inclusive, “shareholder” means the holder of a share issued by the Company and

who is entered as such in the securities register of the Company, but also includes a person who is entitled to exercise any voting rights in relation to the Company, irrespective of the form, title or nature of the securities to which those voting rights are attached.

22.2 The Company shall hold an annual general meeting of its shareholders at least once per annum, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown. The annual general meeting shall deal with, at a minimum, the following business:

- (a) the presentation of the directors' report, the audited financial statements for the immediately preceding financial year and an audit committee report;
- (b) the election of directors and of an audit committee; and
- (c) any matters raised by the shareholders, with or without advance notice to the Company.

22.3 The board may call a meeting of shareholders at any time.

22.4 As provided for in section 61 of the Act, the board must call a shareholders meeting if one or more written and signed demands for such a meeting are delivered to the Company and:

- (a) each such demand describes the specific purpose for which the meeting is proposed; and
- (b) in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (Ten Percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

22.5 Save for the meetings contemplated in this clause 22 or as required in terms of the Act or the Listings Requirements, the Company is not obliged to hold any meetings of shareholders.

23. **Location of Shareholders' Meetings**

The board may determine the location for any shareholders' meeting, provided that such meeting shall be held in the Republic.

24. **Notice of a Shareholders' Meeting**

24.1 The Company must deliver a notice of each shareholders' meeting at least 15 (fifteen) business days before the meeting is to begin. **[LR 10.11(a)] [LR 10.11(b)]**

24.2 Notices of shareholders' meetings must be delivered to each person entitled to vote at such meeting, as well as to the JSE and must be announced through the Securities Exchange News Service. Other documents which are not, in terms of the Act or the Listings Requirements, required to be delivered to all shareholders or holders of securities, will be delivered to each person who has elected to receive such documents. **[LR 10.11(e)] [LR 10.11(f)]**

24.3 Notwithstanding the provisions of this clause 24, the Company may, in terms of section 62(2A) of the Act, call a meeting with less notice than required in terms of this clause 24 and the meeting may proceed if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting. **[LR 10.11(a)]**

25. **Electronic Participation in Shareholders' Meetings**

The Company may conduct a shareholders' meeting entirely by electronic communication, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting. Every shareholders' meeting of the Company that is held in person must be reasonably accessible within the Republic of South Africa for electronic participation in all or part of the meeting in the manner contemplated in this clause 25.

26. **Quorum for Shareholders' Meetings**

26.1 A shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (Twenty Five Percent) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting, provided that at least 3 (three) shareholders are present at the meeting. **[LR10.11(h)]**

26.2 Persons constituting a quorum must remain present for the duration of the meeting. **[LR10.11(h)]**

27. **Postponement of a Shareholders' Meeting**

27.1 If within 20 (twenty) minutes of the appointed time for a meeting a quorum required:

(a) for that meeting to begin is not present, the meeting will be postponed without further motion or vote for a period of 2 (two) weeks;

(b) for consideration of a particular matter to begin, is not present:

- (i) if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - (ii) if there is no other business on the agenda of the meeting, the meeting will be adjourned without further motion or vote for a period of 2 (two) weeks.

- 27.2 If at the time appointed for a postponed meeting to begin a quorum is not present, the shareholders present in person or by proxy will be a quorum.

- 27.3 The period of 20 (twenty) minutes specified in clause 27.1 may be extended by the chairman presiding at the meeting for a reasonable period on the grounds that:
 - (a) exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of the shareholders to be present at the meeting; or
 - (b) one or more particular shareholders, having been delayed, have communicated an intention to attend the meeting and those shareholders together with others in attendance, would constitute a quorum.

- 27.4 Where a meeting has been postponed as described in clause 27.1 above, the Company shall, upon a date not later than 3 (three) days after the postponement, publish in a newspaper circulating in the province where the registered office of the Company is situated a notice stating:

- (a) the date, time and place to which the meeting has been postponed;
- (b) the matter(s) before the meeting when it was postponed; and
- (c) the ground for the postponement.

27.5 At a meeting adjourned in terms of section 64(10) of the Act, no business shall be transacted other than the business left unfinished at the meeting at which the adjournment took place.

28. **The Chairman**

The chairman of the board, if any, must chair meetings of shareholders. If there is no such chairman, or if the chairman of the board is not present or is unwilling to act as chairman within 10 (ten) minutes after the time appointed for holding the meeting, the shareholders present or represented by proxies must choose one of their number to chair the meeting.

29. **Shareholders' Resolutions**

29.1 For an ordinary resolution to be approved it must be supported by more than 50% (Fifty Percent) of the voting rights exercised on the resolution.

29.2 For a special resolution to be approved it must be supported by at least 75% (Seventy Five Percent) of the voting rights exercised on the resolution. **[LR 10.11(a)]**

29.3 The business to be conducted at a shareholders' meeting convened in terms of the Listings Requirements may not be addressed by means of a written resolution, as contemplated in section 60 of the Act. **[LR 10.11(c)]**

30. Voting at a Meeting of Shareholders

30.1 At a meeting of shareholders voting may either be by a show of hands or by polling.

30.2 As required by section 63(7) of the Act a polled vote must be held on any particular matter to be voted on if demand for such a vote is made by:

(a) at least 5 (five) persons having the right to vote on that matter, either as a shareholder or a proxy representing a shareholder;
or

(b) a person who is, or persons who together are entitled, as a shareholder or proxy representing a shareholder, to exercise at least 10% (Ten Percent) of the voting rights entitled to be voted on that matter.

30.3 If voting is by a show of hands any person who is present at the meeting (whether as a shareholder or as proxy for a shareholder) and is entitled to exercise voting rights, has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.

A declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the meeting, will be *prima facie* evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

30.4 If voting on a particular matter is by polling, any person who is present at the meeting whether as a shareholder or as a proxy for a shareholder, has the voting rights set out in clause 30.6 below. If a poll is duly demanded, it must be taken in such manner as the chairman

directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

30.5 A poll demanded on the election of a chairman or on a question of adjournment, must be taken forthwith. A poll demanded on any other question will be taken at such time as the chairman of the meeting directs.

The demand for a poll will not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

30.6 Subject to clause 30.7 below, every holder of an ordinary share in the Company has one vote in respect of each share which he holds and may vote at every shareholders' meeting, whether in person or by proxy. **[LR 10.5(b)]**

30.7 The holders of the A, B1, B2 and B3 Ordinary Shares in the Company have the voting rights set out in Schedule B to this Memorandum of Incorporation. **[LR 10.5(b)]**

30.8 To the extent that shareholders, other than the holders of ordinary shares and any special shares created for the purposes of black economic empowerment in terms of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 and the Codes issued pursuant thereto, are permitted to vote at shareholders' meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each share that they hold, provided that their total voting rights at such meetings may not exceed 24,99% (Twenty Four Comma Ninety Nine Percent) of the total voting rights of all shareholders at such meeting. **[LR 10.5(c)]**

30.9 The chairman of shareholders' meetings shall not have a vote other than where he is a holder of securities himself or a proxy for a holder of securities.

- 30.10 In the case of joint holders the vote of the person whose name appears first in the securities register and who tenders a vote, whether in person or by proxy, will be accepted to the exclusion of the votes of the other joint holders.
- 30.11 The holder of a general or special power of attorney, whether he is himself a shareholder or not, given by a shareholder may attend meetings of the shareholders and vote, if duly authorised under that power of attorney to attend and take part in the meetings.
- 30.12 A corporate body which is a holder of securities in the Company may by a resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the shareholders.
- 30.13 The guardian of a minor, the curator bonis of a shareholder, the executor of a deceased shareholder and the trustee or liquidator of an insolvent shareholder may vote at any shareholders' meeting in respect thereof in the same manner as if he were the registered holder of the relevant security or securities, provided that not less than 48 (forty eight) hours before the commencement of the meeting, he shall satisfy the directors that he is such parent, guardian, curator, trustee or liquidator or that the directors have previously admitted his right to vote in respect of that security or those securities. Co-executors of a deceased shareholder and co-trustees or co-liquidators of an insolvent shareholder in whose name shares stand in the securities register shall be deemed to be joint holders of that security or those securities.

31. **Proxies**

- 31.1 Any shareholder entitled to attend and vote at a meeting of shareholders is entitled to appoint a proxy or proxies to attend, speak and to vote in his stead.

31.2 A proxy appointment must be in writing under the hand of the appointer or his agent duly authorised in writing, or, if the appointer is a corporate body, under the hand of the officer or agent duly authorised by that body.

31.3 A proxy need not be a shareholder of the Company.

31.4 A shareholder may appoint more than one proxy to attend on the same occasion.

31.5 A proxy appointment remains valid for:

- (a) one year after the date upon which it was signed; or
- (b) any longer or shorter period expressly set out in the appointment,

unless:

- (a) it is revoked by the shareholder by delivering a copy of the revocation instrument to the proxy and to the Company, in which case the proxy appointment terminates on the date on which the revocation instrument was delivered to the proxy and the Company or the date stated in the revocation instrument, if any, whichever is the later; or
- (b) the instrument of proxy was especially supplied by the Company or the proxy was appointed in response to a specific invitation to appoint a proxy issued by the Company, as contemplated in section 58(8) of the Act, in which case the proxy instrument terminates at the end of the meeting at which the proxy was intended to be used.

- 31.6 . A copy of the instrument appointing a proxy must be delivered to the recipient named in the notice of the meeting before the commencement of the meeting at which the proxy is intended to be used.
- 31.7 If the directors so authorise members may deposit forms of proxy with the Company by electronic medium, provided that the directors have approved a method by which and the electronic medium through which forms of proxy may be so deposited.
- 31.8 The form of proxy sent by electronic medium will be deemed to constitute a valid instrument of proxy for the purpose of this clause 31 and will be deemed to comply with the provisions of this clause 31 requiring the signature of instruments of proxy.

32. Verification of Right to attend Meeting

A person who wishes to attend or participate in a shareholders meeting whether as a shareholder or as a proxy for a shareholder or otherwise as contemplated in clauses 30.11, 30.12 and 30.13, must present reasonably satisfactory identification to the chairman of the meeting before the time scheduled for the start of the meeting. In order for the shareholder, proxy or other person contemplated in clauses 30.11, 30.12 or 30.13 to participate in the meeting the chairman must be reasonably satisfied that such person's right to participate and vote at the meeting has been reasonably verified.

33. Election of Directors

- 33.1 The board shall comprise not less than 4 (four) directors and any number of alternate directors, to be elected by holders of the Company's securities entitled to exercise voting rights in such an election, as contemplated in section 68(1) of the Act, provided that no election of directors may be conducted in writing as contemplated in section 60 of the Act. The Remuneration and Nomination Committee of the board shall and any shareholder of the Company may nominate persons for election as directors, provided that no person nominating a

person for election as a director has the right to appoint or remove any director(s) of the Company. **[LR 10.16(a)] [LR 10.16(b)]**.

- 33.2 The shareholders may from time to time increase or reduce the number of directors, provided that the number of directors shall not be less than 4 (four).
- 33.3 A director is not obliged to hold any shares to qualify for election as a director.
- 33.4 As provided in section 66(7) of the Act, a person becomes entitled to serve as a director of a Company when that person:
- (a) has been elected in accordance with this Memorandum of Incorporation; and
 - (b) has delivered to the Company a written consent to serve as its director.
- 33.5 No person may be appointed as, consent to serve as or act as a director of the Company if they are ineligible or disqualified to serve as a director of a company in terms of section 69 of the Act.
- 33.6 A director may be elected or appointed for a fixed period of time to be determined by the shareholders. Life directorship and directorship for an indefinite period is prohibited. **[LR 10.16(k)]**
- 33.7 If a vacancy arises on the board it must be filled at the next annual general meeting of the Company. The board may appoint a person to serve as a director on a temporary basis until the vacancy has been

filled or the board's appointment is approved at the next annual general meeting. **[LR 10.16(c)]**

- 33.8 If the number of directors falls below the minimum provided in this Memorandum of Incorporation, the remaining directors must as soon as possible and in any event not later than 3 (three) months from the date that the number of directors falls below the minimum, fill the vacancies. A failure by the Company to have the minimum number of directors during the 3 (three) month period does not limit or negate the authority of the board of directors or invalidate anything done by the board or the Company. After the expiry of the 3 (three) month period, the remaining directors may only act for the purpose of filling vacancies or calling shareholders' meetings. **[LR 10.16(d)]**
- 33.9 The appointment, by the directors, of a person as an additional director must be confirmed by the shareholders at the next annual general meeting. **[LR 10.16(c)]**
- 33.10 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. In this event, that director's appointment in respect of such other office must be determined by a disinterested quorum of directors of the Company. **[LR 10.16(e)]**
- 33.11 At least one third of directors must retire at the Company's annual general meeting, as follows: **[LR 10.16(g)]**
- (a) if their number is not a multiple of 3 (three), then the number nearest to but not less than one-third shall retire from office;
 - (b) the directors so to retire shall be those who have been longest in office since their last election, but in the case of persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot;

- (c) notwithstanding anything herein contained, if at the date of any annual general meeting any director shall have held office for a period of 3 (three) years since his last election or appointment, he shall retire at such meeting either as one of the directors to retire by rotation or additionally thereto;
- (d) the length of time a director has been in office shall be computed from his last election, appointment or date upon which he was deemed re-elected;
- (e) such retiring members of the board may be re-elected, provided they are eligible - the board, through the Remuneration and Nomination Committee, should recommend eligibility, taking into account past performance and contribution made;
[LR 10.16(g)]
- (f) a director retiring at a meeting will retain office until the election of directors at that meeting has been completed; and
- (g) if at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, then unless it is expressly resolved not to fill such vacancies, the retiring directors, or such of them as have not had their offices filled, will be deemed to have been re-elected unless a resolution for the re-election of any such director has been put to the meeting and defeated, or the retiring director(s) in question are not eligible for re-election as contemplated in sub- clause (e) above.

34. Alternate Directors

- 34.1 An alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other directors of the Company.
- 34.2 A director whilst also acting as an alternate director, shall at any meeting of directors be entitled to 2 (two) votes.
- 34.3 The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and discharge all the powers, duties and functions of the directors they represent.

35. Proceedings of Directors

- 35.1 If so authorised by the board a director may call a meeting of the board at any time.
- 35.2 A director authorised to call a meeting of the board must call a meeting if required to do so by at least 25% (Twenty Five Percent) of the directors, in the case of a board that has at least 12 (twelve) members, or 2 (two) directors in any other case.
- 35.3 The board may determine the form and time for giving notice of its meetings, provided that the requirements regarding notice set out in the Listings Requirements, if any, are satisfied.
- 35.4 If all of the directors are present at a meeting, or waive notice of a meeting, the meeting may proceed if the Company failed to give the required notice of the meeting. A meeting may proceed despite a defect in the giving of the notice if all of the directors acknowledge actual receipt of the notice, or are present at the meeting, or waive notice of the meeting.

- 35.5 A majority of the directors must be present at a meeting before a vote may be called at a meeting of the directors.
- 35.6 At directors' meetings and in adopting resolutions in writing, each director has one vote. Questions arising at any meeting must be decided by a majority of votes.
- 35.7 A meeting of the board may be conducted by electronic communication or one or more of the directors may participate in a meeting by electronic communication, as provided for in section 73(3) of the Act.
- 35.8 If within twenty minutes of the appointed time for a meeting a quorum is not present the meeting will automatically be postponed for one week. Where a meeting has been so postponed, the Company shall, upon a date not later than 3 (three) days after the postponement, give notice to all of the directors stating:
- (a) the date, time and place to which the meeting has been postponed;
 - (b) the matter(s) before the meeting when it was postponed; and
 - (c) the ground for the postponement.
- 35.9 If at the appointed time for a postponed meeting to begin a quorum is not present the directors present will be deemed to constitute a quorum.
- 35.10 Subject to clauses 35.1 to 35.8 the directors may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think fit.
- 35.11 A decision that could be voted on at a meeting of the board may instead be adopted by written consent of the majority of the directors given in person or by electronic communication provided that each of the

directors has received notice of the matter to be decided. Such resolution, inserted in the minute book, will be as valid and effective as if it had been passed at a meeting of directors. Any such resolution may consist of several documents and will be deemed to have been passed on the date on which it was signed by the last director who signed it (unless a statement to the contrary is made in that resolution). **[LR 10.16(j)]**

36. Chairman of the Board

36.1 The directors may elect a chairman, deputy chairman and / or vice chairman from their number and determine the periods for which they will hold office. If at any meeting neither the chairman nor the deputy / vice chairman is present within 5 (five) minutes after the time appointed for holding the meeting, the directors present may elect one of their number to be chairman of the meeting. **[LR 10.16(i)]**

36.2 If there is an equality of votes at a board meeting, the chairman shall have a second or casting vote, unless the shareholders determine otherwise in general meeting, provided that if the quorum of directors is 2 (two), the chairman shall not be permitted to have a casting vote if only 2 (two) directors are present at the board meeting. **[LR 10.16(i)]**

37. Minutes

37.1 The directors shall cause minutes to be kept:

- (a) of all appointments of officers, including directors and alternate directors;
- (b) of all names of directors present at every shareholders' meeting and directors' meeting; and

(c) of all proceedings at shareholders' meetings and directors' meetings.

37.2 Such minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

38. Board Committees

38.1 The directors may delegate any of their powers to committees which may include persons who are not directors of the Company provided that any such person must not be ineligible or disqualified to be a director and no such person may vote on any matter to be decided by the committee.

38.2 Any board committee shall, in the exercise of the powers delegated to it, conform to any rules that may be imposed on it by the directors.

38.3 A board committee may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within 5 (five) minutes after the time appointed for holding the same, the members present may elect one of their number to be chairman of the meeting.

38.4 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting must be determined by a majority of votes of the members present, and in the event of an equality of votes the chairman shall not have a second or casting vote.

39. Powers of the Directors

The business of the Company shall be managed by the directors who may exercise all such powers of the Company as are not by the Act,

this Memorandum of Incorporation or the Listings Requirements, required to be exercised by the holders of securities in the Company.

40. The Remuneration of Directors

40.1 Directors may be remunerated only in accordance with a special resolution approved by the shareholders within the previous 2 (two) years.

40.2 The remuneration of a director 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, must be determined by a disinterested quorum of directors of the Company. **[LR 10.16(e)]**

40.3 The directors must be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company and in attending meetings of the directors or of board committees. If any director is required to perform extra services, to reside abroad or be specifically occupied about the Company's business, they shall be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable to them. **[LR 10.16(f)]**

41. Annual Financial Statements

41.1 The annual financial statements of the Company must be prepared within six months after the end of the Company's financial year. The annual financial statements must be:

- (a) audited in accordance with the requirements of the Act, the Regulations and the Listings Requirements;

- (b) approved by the board and signed by a director on behalf of the board; and
- (c) presented at the annual general meeting (which, in terms of section 30(3)(d) of the Act, must be the first meeting of the holders of securities after the statements have been approved by the board).

41.2 A copy of the annual financial statements of the Company must be distributed to the shareholders at least 15 (fifteen) business days before the date of the annual general meeting at which they will be considered. This clause shall not require a copy of the annual financial statements to be sent to any person of whose address the Company is not aware or to more than one joint shareholders. **[LR 10.19]**

41.3 The directors shall cause a copy / copies of the annual financial statements and all related documents required in terms of the Listings Requirements, to be submitted to the JSE in the format and within the time frames set out in the Listings Requirements.

42. **Annual Return**

The Company must file an annual return by lodging Form CoR 30.1 with the Commission within thirty business days after the anniversary of its incorporation.

43. **Dividends**

43.1 Dividends are declared by the directors in accordance with the Act. **[LR 10.17(a)]**

43.2 Dividends are payable to shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later. **[LR 10.17(b)]**

43.3 Not less than fourteen days shall elapse between the date of declaration of a dividend or date of confirmation of the dividend, whichever is the later, and the date upon which the Company's transfer register is closed for the purpose of ascertaining the holders of securities entitled to receive payment of the dividend.

44. **Payments to Securities Holders**

44.1 All payments to the holders of securities of the Company must be made in accordance with the Listings Requirements, such as:

- (a) the requirement to obtain the approval of the holders of securities for specific payments (as that term is defined in the Listings Requirements);
- (b) the requirement to submit the relevant directors' resolution and other documents prescribed in the Listings Requirements, to the JSE;
- (c) the obligation to distribute a circular to shareholders setting out the source of the payment and other information prescribed in the Listings Requirements; and
- (d) the obligation to publish an announcement in accordance with the corporate action timetable set out in the Listings Requirements,

and may not be paid on the condition that the capital paid may be called up again. **[LR 10.8]**

44.2 Every amount payable to a holder of securities may be paid by cheque or by electronic bank transfer. Any one of 2 (two) or more joint holders may give instructions for payment into a bank by electronic bank

transfer and may give effectual receipts for any dividends or other moneys payable in respect of the securities held by them as joint holders.

44.3 No dividends shall bear interest against the Company.

44.4 The Company shall hold in trust all monies due to shareholders, indefinitely, subject to the laws of prescription. **[LR 10.17(c)]**

44.5 The Company shall not be responsible for the loss in transmission of any cheque or other document sent through the post to the registered address of any holder of securities or for the loss or misdirection of any electronic transfer made to the bank account nominated by that holder.

45. **Lien on Securities**

The Company is prohibited from claiming a lien on securities.
[LR 10.12]

46. **Communication of Information**

46.1 Holders of securities shall register an address with the Company which may be in the Republic of South Africa or elsewhere at which the Company may deliver notices or documents as contemplated in this Memorandum of Incorporation, the Act and the Regulations or the Listings Requirements. Notwithstanding the registration of any such address, the Company may nonetheless deliver notices and documents to holders of securities in accordance with the provisions of this Memorandum of Incorporation, the Act, the Regulations and / or the Listings Requirements.
[LR 10.18]

46.2 Only the person whose name stands first in the securities register as one of the joint holders of any security or securities, shall be entitled to

receive notices from the Company and any notice given to such person shall be deemed to be a notice to all joint holders.

46.3 A holder of securities who has provided the Company with an electronic address will be deemed to have authorised the Company to use that address for the purpose of giving notices and delivering documents.

46.4 A notice or document to be delivered for any purpose contemplated in the Act, the Regulations or the Listings Requirements may be delivered in accordance with the requirements of Regulation 7.

46.5 A notice may be given by the Company to the persons entitled to a security in consequence of the death, insolvency or liquidation of a securities holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent, or liquidator of the company or close corporation in question, or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, insolvency or liquidation had not occurred.

46.6 A notice given to any holder of securities shall be binding on all persons claiming on that holder's death, insolvency or liquidation or on any transmission of his interests.

47. **Seal**

47.1 The Company may be provided with a seal in which its name is engraved in legible characters.

47.2 The Company may exercise from time to time the powers (which will be vested in the directors) given by the statutes in respect of seals in foreign countries.

47.3 The seal of the Company may not be affixed to any document except with the authority of the directors or of a committee of directors, and the persons appointed by the directors, or a committee of directors for that purpose, shall sign every document to which the seal of the Company is so affixed.

48. **Winding-up**

48.1 If the Company be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation must be applied as follows:

- (a) to repay to the holders of securities the amounts paid up on the securities respectively held by each of them; and
- (b) the balance (if any) shall be distributed among the holders of securities in proportion to the number of securities respectively held by each of them,

subject to the rights of and restrictions on the rights of the holders of securities (if any) issued upon special terms.

48.2 In a winding-up, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution, be paid to the holders of securities of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such holders, and the liquidation of the Company may be closed and the Company dissolved.

49. **Costs, Losses and Expenses**

Every director, manager, secretary or other official or servant of the Company shall be indemnified by the Company against all costs, losses

and expenses, including travelling expenses, which any such official or servant may incur or become liable for by reason of any contract entered into, or act or deed lawfully done by him as such officer or servant, and it will be the duty of the directors, out of the funds of the Company, to pay all such costs, losses and expenses.

50. **Signature of Documents**

Unless otherwise provided by resolution of the directors in any particular case, any document required to be signed on behalf of the Company will be deemed to have been validly signed if signed by any 2 (two) of the directors or by any one of the directors and the Company secretary.

Schedule 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; ¹

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

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

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

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

"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;

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

"Companies Tribunal" means the Companies Tribunal established in terms of section 193;

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

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

- (a) was registered in terms of the:
 - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
 - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

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

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

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

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

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

"distribution" means a direct or indirect:

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

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

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

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

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

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

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

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

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

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

"financial statement" includes:

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

"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);

"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;

"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;

"participant" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act 36 of 2004);

"person" includes a juristic person;

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

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

"private company" means a profit company that:

- (a) is not a public, personal liability or state-owned company; and
- (b) satisfies the criteria set out in section 8(2)(b);

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

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

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

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

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

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

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

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

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

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

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

"special resolution" means:

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

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

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

"voting rights", with respect to any matter to be decided by a company, means: (a)

the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or

- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

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

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

**SCHEDULE B – RIGHTS, LIMITATIONS AND OTHER TERMS
OF A1, A2, B1, B2 AND B3 ORDINARY SHARES**

1. TERMS OF THE A1 ORDINARY SHARES

1.1 For the purposes of this Article 1:

1.1.1 “A1 Ordinary Shares” means the A1 ordinary shares of no par value in the Company, the terms of which shares are set out in this Article 1;

1.1.2 “Completion Date” means the date on which the A1 Ordinary Shares are issued to the ESOP Trust;

1.1.3 “ESOP Trust” means the trustees for the time being of the 2015 Hulamin Employee Share Ownership Trust established for purposes of the Hulamin Employee Share Ownership Scheme;

1.1.4 “ordinary shares” means the issued ordinary shares of no par value in the Company; and

1.1.5 “Vesting Date” means the 5th (fifth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6.

1.2 The rights or other terms attaching to the A1 Ordinary Shares shall only be varied or cancelled by means of a special resolution passed by the Company with the consent in writing of the holder of the A1 Ordinary Shares.

1.3 Each of the A1 Ordinary Shares shall entitle the holder:

1.3.1 to receive notice of and vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum of Incorporation and the

A1 Ordinary Shares shall rank *pari passu* with the ordinary shares in this respect;

1.3.2 to receive any distribution in accordance with the holder's voting power; and

1.3.3 on a liquidation of the Company, to receive an amount of R0.01 (one cent).

1.4 The holder of the A1 Ordinary Shares shall not be entitled, before the Vesting Date, to dispose of or encumber any of the A1 Ordinary Shares.

1.5 To give effect to the provisions of Article 1, the A1 Ordinary Shares shall be certificated and the share certificates of the A1 Ordinary Shares shall be held in safe custody by the secretary of the Company. The certificates of the A1 Ordinary Shares shall be appropriately endorsed to reflect the existence of the safe custody arrangement.

1.6 On the Vesting Date:

1.6.1 the A1 Ordinary Shares shall automatically be released from safe custody and the share certificates in respect of the A1 Ordinary Shares shall be delivered to the holder of the A1 Ordinary Shares to enable the A1 Ordinary Shares to become uncertificated;

1.6.2 the A1 Ordinary Shares shall rank *pari passu* in all respects with the ordinary shares;

1.6.3 the A1 Ordinary Shares shall be renamed "ordinary shares" and shall be listed on the JSE; and

1.6.4 Articles 1.1 to 1.5 shall cease to be of any further force and effect.

2. **TERMS OF THE A2 ORDINARY SHARES**

2.1 For the purposes of this Article 2:

2.1.1 "A2 Ordinary Shares" means the A2 ordinary shares of no par

value in the Company, the terms of which shares are set out in this Article 2;

- 2.1.2 “A2 Remaining Shares” means the A2 Ordinary Shares, at Vesting Date, which are not A2 Repurchase Shares;
- 2.1.3 “A2 Repurchase Shares” means the number of the A2 Ordinary Shares which are to be acquired by the Company in accordance with the formula set out in Article 2.7;
- 2.1.4 “Completion Date” means the date on which the A2 Ordinary Shares are issued to the ESOP Trust;
- 2.1.5 “ESOP Trust” means the trustees for the time being of the 2015 Hulamin Employee Share Ownership Trust established for purposes of the Hulamin Employee Share Ownership Scheme;
- 2.1.6 “ordinary shares” means the issued ordinary shares of no par value in the Company;
- 2.1.7 “Vesting Date” means the 5th (fifth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6; and
- 2.1.8 “VWAP” means the volume weighted average trading price of an ordinary share in the Company on the JSE.
- 2.2 The rights or other terms attaching to the A2 Ordinary Shares shall only be varied or cancelled by means of a special resolution passed by the Company with the consent in writing of the holder of the A2 Ordinary Shares.

- 2.3 Each of the A2 Ordinary Shares shall entitle the holder:
- 2.3.1 to receive notice of and vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum of Incorporation and the A2 Ordinary Shares shall rank *pari passu* with the ordinary shares in this respect; and
- 2.3.2 on a liquidation of the Company, to receive an amount of R0.01 (one cent).
- 2.4 Except as set out in Article 2.7 and until the Vesting Date, the A2 Ordinary Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders). On the Company acquiring the A2 Repurchase Shares on the Vesting Date in terms of Article 2.7, all of the A2 Remaining Shares automatically and without any further action rank *pari passu* with the ordinary shares in respect of participating in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders).
- 2.5 The holder of the A2 Ordinary Shares shall not be entitled, before the Vesting Date, to dispose of or encumber any of the A2 Ordinary Shares.
- 2.6 To give effect to the provisions of Article 2.4, the A2 Ordinary Shares shall be certificated and the share certificates of the A2 Ordinary Shares shall be held in safe custody by the secretary of the Company. The certificates of the A2 Ordinary Shares shall be appropriately endorsed to reflect the existence of the safe custody arrangement.
- 2.7 The Company shall, on the Vesting Date, and subject to and in terms of the provisions of the Act, acquire such number of the A2 Ordinary Shares, at an acquisition price of R0.01 (one cent) per A2 Ordinary Share, as determined in accordance with the following formula:

RA2 equals the greater of:

$$\frac{(P1 \times A2) - D}{P2}$$

and

$$\frac{((P1 + P2 - C) \times A2) - D}{P2}$$

rounded to the nearest share,
provided that RA2 may not be greater than
the number of A2 Ordinary Shares in issue
on the Vesting Date and may not be less
than zero, and where:

RA2 = the number of A2 Ordinary Shares to be acquired (A2 Repurchase Shares);

P1 = R 5.83 (VWAP during the 30 JSE trading days preceding the Completion Date);

P2 = VWAP during the 30 JSE trading days preceding the Vesting Date or if the Company's ordinary shares are no longer trading on the JSE, the market value of the shares determined in accordance with **Appendix 1** to this **Schedule B**;

A2 = number of A2 Ordinary Shares in issue on the Vesting Date;

D = the aggregate amount of all the dividends that would have been declared and paid in respect of the A2 Ordinary Shares since the Completion Date if the A2 Ordinary Shares were entitled to participate equally with the ordinary shares insofar as the declaration of dividends are concerned;

C = R 11.96

2.8 On the Vesting Date:

2.8.1 the A2 Remaining Shares shall automatically be released from safe custody and the share certificates in respect of the A2 Remaining Shares shall be delivered to the holder of the A2 Ordinary Shares to enable the A2 Remaining Shares to become uncertificated;

2.8.2 the A2 Remaining Shares shall rank *pari passu* in all respects with the ordinary shares and;

2.8.3 the A2 Remaining Shares shall be shall be renamed “ordinary shares” and listed on the JSE; and

2.8.4 Articles 2.1 to 2.7 shall cease to be of any further force and effect.

3. **TERMS OF THE B1 ORDINARY SHARES**

3.1 For the purposes of this Article 3:

3.1.1 “B1 Ordinary Shares” means the B1 ordinary shares of no par value in the Company, the terms of which shares are set out in this Article 3;

3.1.2 “B1 Release Date” means the 8th (eighth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6;

3.1.3 “B1 Remaining Shares” means the B1 Ordinary Shares, at Vesting Date, which are not B1 Repurchase Shares;

3.1.4 “B1 Repurchase Shares” means the number of the B1 Ordinary Shares which are to be acquired by the Company in accordance with the formula set out in Article 3.7;

- 3.1.5 “BEE SPV” means Imbewu SPV 14 Proprietary Limited (registration number 2013/209910/07);
- 3.1.6 “Completion Date” means the date on which the B1 Ordinary Shares are issued to the BEE SPV;
- 3.1.7 “ordinary shares” means the issued ordinary shares of no par value in the Company;
- 3.1.8 “Vesting Date” means the 5th (fifth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6; and
- 3.1.9 “VWAP” means the volume weighted average trading price of an ordinary share in the Company on the JSE.
- 3.2 The rights or other terms attaching to the B1 Ordinary Shares shall only be varied or cancelled by means of a special resolution passed by the Company with the consent in writing of the holder of the B1 Ordinary Shares.
- 3.3 Each of the B1 Ordinary Shares shall entitle the holder:
- 3.3.1 to receive notice of and vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum of Incorporation and the B1 Ordinary Shares shall rank *pari passu* with the ordinary shares in this respect; and
- 3.3.2 on a liquidation of the Company, to receive an amount of R0.01 (one cent).
- 3.4 Except as set out in Article 3.7 and until the Vesting Date, the B1 Ordinary Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders). On the Company acquiring the B1 Repurchase Shares on the Vesting Date in terms of Article 3.7, all of the

B1 Remaining Shares automatically and without any further action rank *pari passu* with the ordinary shares in respect of participating in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders).

- 3.5 The holder of the B1 Ordinary Shares shall not be entitled, before the B1 Release Date, to dispose of or encumber any of the B1 Ordinary Shares, irrespective of whether these shares are B1 Remaining Shares.
- 3.6 To give effect to the provisions of Article 3.4, the B1 Ordinary Shares shall be certificated and the share certificates of the B1 Ordinary Shares shall be held in safe custody by the secretary of the Company. The certificates of the B1 Ordinary Shares shall be appropriately endorsed to reflect the existence of the safe custody arrangement.
- 3.7 The Company shall, on the Vesting Date, and subject to and in terms of the provisions of the Act, acquire such number of the B1 Ordinary Shares, at an acquisition price of R0.01 (one cent) per B1 Ordinary Share, as determined in accordance with the following formula:

RB1 equals the greater of:

$$\frac{(P1/2 \times B1)}{P2}$$

and

$$\frac{((P1/2 + P2 - C) \times B1)}{P2}$$

rounded to the nearest share,
provided that RB1 may not be greater than the number of B1 Ordinary Shares in issue on the Vesting Date and may not be less than zero, and where:

RB1 = the number of B1 Ordinary Shares to be acquired (B1 Repurchase Shares);

- P1 = R 5.83 (VWAP during the 30 JSE trading days preceding the Completion Date);
- ;
- P2 = VWAP during the 30 JSE trading days preceding the Vesting Date or if the Company's ordinary shares are no longer trading on the JSE, the market value of the shares determined in accordance with **Appendix 1** to this **Schedule B**;
- B1 = number of B1 Ordinary Shares in issue on the Vesting Date;
- C = R 8.10

3.8 On the B1 Release Date:

3.8.1 the B1 Remaining Shares shall automatically be released from safe custody and the share certificates in respect of the B1 Remaining Shares shall be delivered to the holder of the B1 Ordinary Shares to enable the B1 Remaining Shares to become uncertificated;

3.8.2 the B1 Remaining Shares shall rank *pari passu* in all respects with the ordinary shares;

3.8.3 the B1 Remaining Shares shall be renamed "ordinary shares" and shall be listed on the JSE; and

3.8.4 Articles 3.1 to 3.7 shall cease to be of any further force and effect.

4. **TERMS OF THE B2 ORDINARY SHARES**

4.1 For the purposes of this Article 4:

4.1.1 "B2 Ordinary Shares" means the B2 ordinary shares of no par value in the Company, the terms of which shares are set out in this Article 4;

- 4.1.2 “B2 Release Date” means the 8th (eighth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6;
- 4.1.3 “B2 Remaining Shares” means the B2 Ordinary Shares, at Vesting Date, which are not B2 Repurchase Shares;
- 4.1.4 “B2 Repurchase Shares” means the number of the B2 Ordinary Shares which are to be acquired by the Company in accordance with the formula set out in Article 4.7;
- 4.1.5 “BEE SPV” means Imbewu SPV 14 Proprietary Limited (registration number 2013/209910/07);
- 4.1.6 “Completion Date” means the date on which the B2 Ordinary Shares are issued to the BEE SPV;
- 4.1.7 “ordinary shares” means the issued ordinary shares of no par value in the Company;
- 4.1.8 “Vesting Date” means the 5th (fifth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6; and
- 4.1.9 “VWAP” means the volume weighted average trading price of an ordinary share in the Company on the JSE.
- 4.2 The rights or other terms attaching to the B2 Ordinary Shares shall only be varied or cancelled by means of a special resolution passed by the Company with the consent in writing of the holder of the B2 Ordinary Shares.
- 4.3 Each of the B2 Ordinary Shares shall entitle the holder:

- 4.3.1 to receive notice of and vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum of Incorporation and the B2 Ordinary Shares shall rank *pari passu* with the ordinary shares in this respect; and
- 4.3.2 on a liquidation of the Company, to receive an amount of R0.01 (one cent).
- 4.4 Except as set out in Article 4.7 and until the Vesting Date, the B2 Ordinary Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders). On the Company acquiring the B2 Repurchase Shares on the Vesting Date in terms of Article 4.7, all of the B2 Remaining Shares automatically and without any further action rank *pari passu* with the ordinary shares in respect of participating in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders).
- 4.5 The holder of the B2 Ordinary Shares shall not be entitled, before the B2 Release Date, to dispose of or encumber any of the B2 Ordinary Shares, irrespective of whether these shares are B2 Remaining Shares.
- 4.6 To give effect to the provisions of Article 4.4, the B2 Ordinary Shares shall be certificated and the share certificates of the B2 Ordinary Shares shall be held in safe custody by the secretary of the Company. The certificates of the B2 Ordinary Shares shall be appropriately endorsed to reflect the existence of the safe custody arrangement.
- 4.7 The Company shall, on the Vesting Date, and subject to and in terms of the provisions of the Act, acquire such number of the B2 Ordinary Shares, at an acquisition price of R0.01 (one cent) per B2 Ordinary Share, as determined in accordance with the following formula:

RB2 equals the greater of:

$$\frac{(P1 \times B2)}{P2}$$

and

$$\frac{((P1 + P2 - C) \times B2)}{P2}$$

rounded to the nearest share,
provided that RB2 may not be greater than the number of B2 Ordinary Shares in issue on the Vesting Date and may not be less than zero, and where:

- RB2 = the number of B2 Ordinary Shares to be acquired (B2 Repurchase Shares);
- P1 = R 5.83 (VWAP during the 30 JSE trading days preceding the Completion Date);
- ;
- P2 = VWAP during the 30 JSE trading days preceding the Vesting Date or if the Company's ordinary shares are no longer trading on the JSE, the market value of the shares determined in accordance with **Appendix 1** to this **Schedule B**;
- B2 = number of B2 Ordinary Shares in issue on the Vesting Date;
- C = R 8.10

4.8 On the B2 Release Date:

- 4.8.1 the B2 Remaining Shares shall automatically be released from safe custody and the share certificates in respect of the B2 Remaining Shares shall be delivered to the holder of the B2 Ordinary Shares to enable the B2 Remaining Shares to become uncertificated;

4.8.2 the B2 Remaining Shares shall rank *pari passu* in all respects with the ordinary shares;

4.8.3 the B2 Remaining Shares shall be renamed “ordinary shares” and shall be listed on the JSE; and

4.8.4 Articles 4.1 to 4.7 shall cease to be of any further force and effect.

5. TERMS OF THE B3 ORDINARY SHARES

5.1 For the purposes of this Article 5:

5.1.1 “B3 Ordinary Shares” means the B3 ordinary shares of no par value in the Company, the terms of which shares are set out in this Article 5;

5.1.2 “B3 Release Date” means the 8th (eighth) anniversary of the Completion Date or, if applicable, such other date as determined in accordance with Article 6;

5.1.3 “BEE SPV” means Imbewu SPV 14 Proprietary Limited (registration number 2013/209910/07);

5.1.4 “Completion Date” means the date on which the B3 Ordinary Shares are issued to the BEE SPV;

5.1.5 “ordinary shares” means the issued ordinary shares of no par value in the Company.

5.2 The rights or other terms attaching to the B3 Ordinary Shares shall only be varied or cancelled by means of a special resolution passed by the Company with the consent in writing of the holder of the B3 Ordinary Shares.

5.3 Each of the B3 Ordinary Shares shall entitle the holder:

- 5.3.1 to receive notice of and vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum of Incorporation and the B3 Ordinary Shares shall rank *pari passu* with the ordinary shares in this respect; and
- 5.3.2 on a liquidation of the Company, to receive an amount of R0.01 (one cent).
- 5.4 The B3 Ordinary Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company (including dividends or other distributions to shareholders).
- 5.5 The holder of the B3 Ordinary Shares shall not be entitled, before the B3 Release Date, to dispose of or encumber any of the B3 Ordinary Shares.
- 5.6 To give effect to the provisions of Article 5.4, the B3 Ordinary Shares shall be certificated and the share certificates of the B3 Ordinary Shares shall be held in safe custody by the secretary of the Company. The certificates of the B3 Ordinary Shares shall be appropriately endorsed to reflect the existence of the safe custody arrangement.
- 5.7 The Company shall, on the B3 Release Date, and subject to and in terms of the provisions of the Act, acquire all of the B3 Ordinary Shares in issue, at an acquisition price of R0.01 (one cent) per B3 Ordinary Share.
- 5.8 On the Company acquiring the B3 Ordinary Shares in terms of Article 5.7, Articles 5.1 to 5.7 shall cease to be of any further force and effect.

6. **CHANGE OF CONTROL**

- 6.1 For the purposes of this Article 6, a change of control will occur if:
- (i) an offer is made by a third party or parties or any existing shareholder of the Company (“the Third Party”) to all of the shareholders of the Company in terms of the Takeover Regulations as promulgated in terms of the Act (as it may be amended or replaced from time to time) to acquire:

- (a) all of the Company's shareholders' shares in the Company ("the Third Party Offer") as a result of which such Third Party acquires beneficial ownership, whether of all or a majority of the issued ordinary shares (or other equity interest) in the Company; or
 - (b) such number of the Company's shareholders' shares in the Company so as to trigger a mandatory offer in terms of section 123 of the Act; and/or
- (ii) the Company is de-listed from the JSE (a "Change of Control").

6.2 If a Change of Control occurs at any time prior to the relevant Vesting Date, and such Change of Control becomes unconditional and takes effect in accordance with its terms, the holder of the B1 Ordinary Shares and B2 Ordinary Shares shall be entitled to give written notice to the Company at any time prior to such Change of Control becoming unconditional and taking effect, that it wishes to accelerate the relevant Vesting Date in respect of the B1 Ordinary Shares and the B2 Ordinary Shares and the date upon which such Change of Control becomes unconditional and takes effect shall then be deemed to be the Vesting Date. For the avoidance of doubt, the purpose of this Article, read with Article 6.3, is to enable the holder of the B1 Ordinary Shares and the B2 Ordinary Shares to maximize its advantage in participating in any transaction which leads to or amounts to a Change of Control.

6.3 If the holder of the B1 Ordinary Shares and the B2 Ordinary Shares gives written notice in terms of Article 6.2, the B1 Release Date, the B2 Release Date and the B3 Release Date shall be deemed to be the date upon which such Change of Control becomes unconditional and takes effect.

6.4 Notwithstanding anything to the contrary contained in this Schedule B, the holders of the A1 Ordinary Shares, A2 Ordinary Shares, B1 Ordinary Shares and B2 Ordinary Shares shall be entitled to accept any comparable offer made in terms of section 125 of the Act, and nothing in the Memorandum of Incorporation shall prohibit the acceptance by the holders of the A1 Ordinary Shares, A2 Ordinary Shares, B1 and B2 Ordinary Shares of such comparable offer.

- 6.5 If a Change of Control occurs at any time prior to the relevant Vesting Date, and such Change of Control becomes unconditional and takes effect in accordance with its terms, the board of the Company shall be entitled, at any time prior to such Change of Control becoming unconditional and taking effect, that it wishes to accelerate the relevant Vesting Date in respect of the A1 Ordinary Shares and the A2 Ordinary Shares and the date upon which such Change of Control becomes unconditional and takes effect shall then be deemed to be the Vesting Date.

APPENDIX 1

Determination of Market Value

"Market Value" in respect of any shares to be sold or valued in terms of this Memorandum of Incorporation shall mean the 'market value' of the relevant shares as agreed in writing between the parties to the relevant transaction. Failing such agreement within 10 (ten) Business Days of a party requesting in writing such agreement, then the Market Value of the relevant shares shall be determined by the chairman of the Company and the chairman of BEE SPV. If the two chairmen cannot determine the Market Value of the relevant shares within 7 (seven) days of the matter being referred to them, then the determination of the Market Value of the relevant shares shall be referred to final and binding expert determination. The expert shall be a domestic investment bank with appropriate experience agreed to in writing by the relevant parties, and failing agreement within 3 (three) days of the expiry of the aforementioned 7 (seven) day period, the expert (being an independent investment bank with appropriate experience) shall be appointed by the President of the South African Institute of Chartered Accountants on the written request of any of the parties. In determining the Market Value of the relevant shares, the expert shall act as an expert and not as an arbitrator (and the decision of the expert shall be final and binding on the parties).