

This is the Memorandum of Incorporation tabled and adopted by way of special written resolution passed by the board of directors of the Company in accordance with section 16(1)(c) of the Companies Act, No 71 of 2008t, signed by the Chairman for purposes of identification.



2021.07.13

Chairman

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

of

Fox Street 3 (RF) Limited

(Registration Number 2014/027637/06)

being a profit company which is classified as a ring-fenced public company

("the Company")

The Company has adopted this unique form of Memorandum of Incorporation and, accordingly, the standard form of Memorandum of Incorporation for Profit Companies as contained in the Companies Regulations shall not apply to the Company.

This Memorandum of Incorporation replaces the memorandum of incorporation of the Company that was in existence at the time of adoption of the Memorandum of Incorporation.

TABLE OF CONTENTS

PART A – THE MOI AND RULES	4
1 INTERPRETATION	4
2 CONFLICTS WITH THE MEMORANDUM OF INCORPORATION.....	8
3 AMENDMENTS TO THE MEMORANDUM OF INCORPORATION.....	9
PART B – STATUS AND POWERS OF THE COMPANY	9
4 STATUS AS PUBLIC COMPANY	9
5 POWERS OF THE COMPANY.....	10
6 LIMITATION OF LIABILITY	10
7 GENERAL RING FENCING PROVISIONS, MAIN PURPOSE AND MAIN BUSINESS OF THE COMPANY	10
PART D – LIMITING LEGAL CAPACITY AND POWERS.....	14
8 GENERAL RESTRICTIONS, LIMITATIONS AND QUALIFICATIONS.....	14
PART E – SECURITIES OF THE COMPANY.....	17
9 SHARE CAPITAL.....	17
10 RIGHTS OF THE ORDINARY SHARES.....	17
11 RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE CUMULATIVE REDEEMABLE PREFERENCE SHARES.....	17
12 REGISTER AND CERTIFICATES	20
13 TRANSFER OF SECURITIES	21
14 DEBT INSTRUMENTS	22
15 BENEFICIAL INTERESTS	23
16 JOINT HOLDERS OF SECURITIES.....	23
17 LEGAL REPRESENTATIVES AND TRANSMISSION OF SECURITIES	23
PART F – SECURITIESHOLDERS RIGHTS AND PROCEEDINGS	24
18 SECURITIESHOLDERS RIGHT TO INFORMATION	24
19 SOLE SHAREHOLDER'S AUTHORITY TO ACT.....	24
20 PROXY REPRESENTATION	25
21 RECORD DATES	26

22	SHAREHOLDERS MEETINGS	26
23	NOTICE OF SHAREHOLDERS MEETINGS	27
24	CONDUCT OF MEETINGS	27
25	SHAREHOLDER MEETING QUORUM AND ADJOURNMENT	28
26	CHAIRPERSON	30
27	SHAREHOLDERS RESOLUTIONS	31
28	WRITTEN RESOLUTIONS BY SHAREHOLDERS	31
	PART G – DIRECTORS' POWERS AND PROCEEDINGS	32
29	AUTHORITY OF THE BOARD OF DIRECTORS	32
30	APPOINTMENT OF DIRECTORS	32
31	ALTERNATE DIRECTOR.....	33
32	BOARD COMMITTEES.....	34
33	CHAIRPERSON	34
34	DIRECTORS MEETINGS	35
35	WRITTEN RESOLUTIONS BY DIRECTORS	36
36	PAYMENTS TO DIRECTORS	37
37	INDEMNIFICATION AND INSURANCE FOR DIRECTORS	37
	PART H – GENERAL PROVISIONS	37
38	AUDIT COMMITTEE	37
39	FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION	38
40	FINANCIAL ASSISTANCE.....	38
41	NOTICES.....	38
42	WINDING UP.....	39

ANNEXURES

SCHEDULE 1 – SHARE CAPITAL

PART A – THE MOI AND RULES

1 INTERPRETATION

In this MOI, clause headings are used for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

1.1 an expression that denotes -

1.1.1 any gender, includes the other genders;

1.1.2 a natural person, includes an artificial or juristic person and *vice versa*; and

1.1.3 the singular, includes the plural and *vice versa*;

1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings, -

1.2.1 "**Act**" - the Companies Act, 71 of 2008, as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;

1.2.2 "**Board**" - the board of Directors of the Company from time to time;

1.2.3 "**Business Day**" – any day (other than a Saturday, Sunday or public holiday in the Republic) on which commercial banks settle payments in Rand in Johannesburg;

1.2.4 "**Company**" - the company defined as such on the front page of this MOI;

1.2.5 "**Director**" – a director of the Company;

1.2.6 "**Electronic Communication**" – an electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, 25 of 2002;

- 1.2.7 **"Final Discharge Date"** – the date on which all the Secured Obligations have been irrevocably and unconditionally paid and discharged in full and no Secured Creditor has any further commitment to provide finance or any other form of credit or financial accommodation whatsoever under any Transaction Document;
- 1.2.8 **"Financial Markets Act"** – the Financial Markets Act, No 19 of 2012, as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;
- 1.2.9 **"Investec"** – Investec Bank Limited (registration number 1969/004763/06), a public company with limited liability registered and incorporated in accordance with the laws of South Africa;
- 1.2.10 **"Legal Representative"** - any person who has submitted proof (which is satisfactory to the Board) of his appointment (and, to the extent required by the Board, the continuation of that appointment) as -
- 1.2.10.1 an executor of the estate of a deceased Shareholder, or a curator, guardian or trustee of a Shareholder whose estate has been sequestrated or who is otherwise under any disability;
- 1.2.10.2 the liquidator of any Shareholder that is a body corporate in the course of being wound-up; or
- 1.2.10.3 the business rescue practitioner of any Shareholder which is a company undergoing business rescue proceedings;
- 1.2.11 **"Memorandum of Incorporation"** or **"MOI"** - the memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.12 **"Notes"** – the notes to be issued by the Company under the Programme;
- 1.2.13 **"Noteholders"** – has the meaning ascribed thereto in the Terms and Conditions;

- 1.2.14 "**Ordinary Share**" - an ordinary share in the capital of the Company with the rights contemplated in 10;
- 1.2.15 "**Ordinary Shareholder**" - a shareholder reflected in the Securities Register as holding Ordinary Shares;
- 1.2.16 "**Person**" – includes any natural person or any company incorporated or registered as such under any law, any other juristic person and any body of persons corporate or incorporate;
- 1.2.17 "**Preference Share**" – a cumulative redeemable preference share in the capital of the Company, having the preferences, rights, limitations and other terms contemplated in 11;
- 1.2.18 "**Preference Shareholder**" – a shareholder reflected in the Securities Register as holding Preference Shares;
- 1.2.19 "**Programme**" – the asset backed note programme established or to be established by the Company under the Programme Memorandum, pursuant to which the Company may issue Notes from time to time;
- 1.2.20 "**Programme Memorandum**" – the written programme memorandum published or to be published by the Company, as revised, supplemented, amended or updated from time to time, pursuant to which the Company may issue Notes under the Programme;
- 1.2.21 "**Regulations**" - the Companies Regulations of 2011 for so long as they remain of force and effect and any other regulations made in terms of the Act;
- 1.2.22 "**Republic**" - the Republic of South Africa;
- 1.2.23 "**Secured Creditor**" – a Person who is defined as such in the Terms and Conditions;

- 1.2.24 **"Secured Obligations"** - all present and future obligations and indebtedness of whatsoever nature (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, including any liability to pay damages or pursuant to enrichment) which the Company may now or at any time hereafter owe or have towards a Secured Creditor under or in connection with the Transaction Documents;
- 1.2.25 **"Securities"** – collectively –
- 1.2.25.1 Shares, debentures, Notes, bonds or other instruments, irrespective of their form of title (including options on Shares or debentures, Notes or units, and rights thereto) issued or authorised to be issued by the Company; and
- 1.2.25.2 anything falling within the meaning of the definition of "securities" as defined in section 1 of the Financial Markets Act,
- and **"Security"** shall be reference to any one of them as the context may require;
- 1.2.26 **"Securities Register"** – the register of issued Securities of the Company established in terms of section 50(1) of the Act;
- 1.2.27 **"Share"** - a share (as defined in the Act) of the Company, which shall include Ordinary Shares;
- 1.2.28 **"Shareholder"** - a holder of a Share who is entered as such in the Securities Register of the Company;
- 1.2.29 **"Terms and Conditions"** – the terms and conditions of the Notes (as amended or supplemented in accordance with its provisions and/or in terms of the applicable pricing supplements) or, if the Company's indebtedness under the Notes is to be refinanced at any time in accordance with the provisions of the Transaction Documents, the terms and conditions of any new financial indebtedness entered into in connection with that refinancing; and

- 1.2.30 **"Transaction Documents"** - the transaction documents as defined in the Programme Memorandum;
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.4 the use of the word **"including"**, **"includes"** and **"include"**, followed by a specific example(s), shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example(s);
- 1.5 where any term is defined within a particular clause other than this 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this MOI;
- 1.6 any capitalised word or expression used in this MOI that is defined in the Act and that is not otherwise defined in this MOI shall have the meaning assigned to it in the Act. For the avoidance of doubt, it is recorded that any reference to "Present at such Meeting" or "Present at the Meeting" shall be construed in accordance with the definition of "Present at a Meeting" in the Act;
- 1.7 a reference to a **"section"** refers to the corresponding section of the Act; and
- 1.8 references in the left-hand margins to sections of the Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only.

2 **CONFLICTS WITH THE MEMORANDUM OF INCORPORATION**

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and -

- 2.1 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Act expressly allows for the Company to adopt the conflicting provision; or

2.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict.

3 AMENDMENTS TO THE MEMORANDUM OF INCORPORATION

3.1 Until the Final Discharge Date, no provision of this MOI, including any restrictive conditions and this provision, may be amended or deleted unless -

3.1.1 the entity appointed to hold security for the benefit of Noteholders and other Secured Creditors approves such amendment or deletion in writing; and

3.1.2 the rating agency or each of the rating agencies appointed by the Company to assign a rating to the Notes (if any), have been notified in writing of such proposed amendment or deletion.

3.2 At any time after the Final Discharge Date this MOI may be altered or amended in the manner set out in sections 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) read with sections 16(2), 17(1)(a) and 15(2) of the Act.

3.3 Save as specifically provided for in this 3, this MOI is not capable of amendment by any other method. Accordingly, the provisions of section 16(1)(b) of the Act shall not apply, nor shall any other alterable provisions of the Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in this 3 apply.

PART B – STATUS AND POWERS OF THE COMPANY

4 STATUS AS PUBLIC COMPANY

4.1 The Company is classified as a public company, in terms of section 8(2)(d) of the Act.

- 4.2 The Company is incorporated in accordance with and governed by –
- 4.2.1 the unalterable provisions of the Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with the provisions of section 15(2)(a)(iii) of the Act);
- 4.2.2 the alterable provisions of the Act, subject to the limitations, restrictions, qualification, extension or other alterations set out in this MOI in accordance with the provisions of the Act and/or as set out in this MOI; and
- 4.2.3 the provisions of this MOI (subject to the provisions of section 15(2) of the Act).

5 POWERS OF THE COMPANY

- 5.1 The Company is subject to the restrictive conditions and prohibitions as contemplated in sections 15(2)(b) and 15(2)(c) of the Act, as set out in 7.
- 5.2 The legal powers and capacity of the Company are subject to the restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii) of the Act, as set out in 9.

6 LIMITATION OF LIABILITY

No Person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

PART C – RING FENCING PROVISIONS

7 GENERAL RING FENCING PROVISIONS, MAIN PURPOSE AND MAIN BUSINESS OF THE COMPANY

- 7.1 The main purpose of the Company and main business which the Company is to carry on, is to -
- 7.1.1 acquire the rights, title and interest in and to residential property loan agreements and the related security with regard to such loan agreements

(collectively referred to as the "**Participating Assets**") pursuant to a securitisation scheme described in the Programme Memorandum, with funds raised directly or indirectly through the issue of Notes and to manage the Participating Assets so acquired;

- 7.1.2 enter into such agreements, documents, deeds or instruments as may be required to document and conclude any transactions contemplated by 7.1.1, together with any agreements, documents, deeds or instruments which may be incidental or related to those transactions; and
 - 7.1.3 exercise and, if necessary, enforce the rights of the Company, and perform its obligations under, each Transaction Document and Participating Asset.
- 7.2 The Company shall not, and no Director, other officer, body or organ of the Company shall be authorised on behalf of the Company to, enter into any transaction -
- 7.2.1 that contravenes or conflicts with this MOI;
 - 7.2.2 that contravenes or conflicts with the obligations of the Company under any agreement, document, deed or instrument to which it is or may become a party in accordance with this MOI;
 - 7.2.3 in respect of which the Company has no capacity or power;
 - 7.2.4 to the extent to which the capacity or powers of the Company have been qualified; or
 - 7.2.5 unless all applicable restrictive conditions which are imposed under this MOI are complied with in full.
- 7.3 Except as permitted or required or contemplated by the Transaction Documents, the Company shall not, and no Director, other officer, body or organ of the Company shall be authorised on behalf of the Company to -

- 7.3.1 engage or participate in any activities other than its main business and those activities of the Company (and any activities directly related thereto) which it is required to undertake under, or which are otherwise contemplated by, the Transaction Documents;
- 7.3.2 register any transfer, or issue any Shares, in the capital of the Company;
- 7.3.3 discharge or release any Person from its obligations to the Company if that Person has not performed its obligations in full;
- 7.3.4 enter into any reconstruction, amalgamation, merger or consolidation, or be acquired by another Person;
- 7.3.5 have or acquire any subsidiaries;
- 7.3.6 employ any person as an employee;
- 7.3.7 occupy any premises;
- 7.3.8 raise, incur or permit to be outstanding any indebtedness (other than in terms of the Warehouse Facility Agreement (if applicable), any statutory costs and expenses, auditing fees and directly related costs and expenses) including but not limited to any indebtedness for borrowed money or cede, pledge, mortgage, hypothecate, assign, charge, encumber or provide any other security or priority of interest, whether real or personal, registered or unregistered, of any nature whatsoever or any option, right of refusal or similar interest over any of its assets to any third party whatsoever;
- 7.3.9 grant any guarantee, suretyship, bond, letter of credit, indemnity or similar assurance against financial loss, or incur or assume any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any Person or to make an investment in or loan to any Person, or to purchase assets of any Person, where, in each case, that obligation is assumed in order to maintain or assist the ability of that Person to meet any of its indebtedness;

- 7.3.10 transfer, sell, lend, part with or otherwise dispose of, or deal with, or grant any option or present or future right to acquire, the whole or any of its assets or undertakings, or any interest, estate, right, title or benefit therein;
- 7.3.11 pay any dividend (whether in cash or in *specie*) or make any other distribution (whether by payment or otherwise, and whether in cash or in *specie*) to its Shareholders or issue any further Shares or repurchase any Shares; or
- 7.3.12 undertake or allow any Person to take any action which is likely to adversely affect the enforceability, validity or effectiveness of any Transaction Document or the effectiveness, ranking or priority of any security interests created thereby; or except in accordance with the express terms of the Transaction Documents, amend, terminate or discharge any Transaction Document (or consent to or exercise any powers of consent or waiver thereunder which may result in such an amendment, termination or discharge), or permit any party to a Transaction Document (or any other Person whose obligations form part of any security interests created thereunder) to be released from its obligations thereunder.
- 7.4 The Company shall -
- 7.4.1 conduct business only in its own name;
- 7.4.2 always hold itself out as an entity which is separate from any other entity or group of entities and shall without delay correct any misunderstanding known to the company regarding its separate identity;
- 7.4.3 maintain books and records separate from those of any other Person, maintain bank accounts separate from those of any other Person and shall not commingle its assets with the assets of any other Person;
- 7.4.4 comply with all applicable laws;
- 7.4.5 not discharge any indebtedness except as expressly permitted under or contemplated by the Transaction Documents to which the Company is a party;

- 7.4.6 comply with, perform, observe and discharge in full all of its obligations under the Transaction Documents to which the Company is a party; and
- 7.4.7 not at any time act or omit to act in any manner which results or would be reasonably likely to result in the Company failing to comply timeously and in full with all its obligations under a Transaction Document. For the purposes of the foregoing the term "obligations" shall include, without limitation, undertakings comprising covenants, representations and warranties.
- 7.5 Neither the Directors (in their own capacity or on behalf of the Company) nor any Shareholder shall, at any time before the second anniversary of the Final Discharge Date, vote in favour of or take any other action to institute, or join with any Person in instituting, any proceedings for the winding-up, dissolution or reconstruction of the Company, any compromise, composition or scheme of arrangement between the Company and its Shareholders or any of its creditors, the commencement of business rescue proceedings or the appointment of a business rescue practitioner or any related relief or any similar proceedings under the laws of any applicable jurisdiction, in any court in South Africa or elsewhere, unless -
- 7.5.1 the prior consent of the entity appointed to hold security for the benefit of Noteholders and other Secured Creditors has been obtained; or
- 7.5.2 the Directors or the relevant member, in the opinion of a senior advocate practicing at the Johannesburg bar with no less than 10 (ten) years standing as such, are likely to incur personal liability for any failure to do so.
- 7.6 Save as set out in 8 below, there are no other restrictive conditions applicable to the Company in terms of section 15(2)(b) or (c) of the Act.

PART D – LIMITING LEGAL CAPACITY AND POWERS

8 GENERAL RESTRICTIONS, LIMITATIONS AND QUALIFICATIONS

- 8.1 Except as permitted or required or contemplated by the Transaction Documents or as may be necessary or required to achieve the main purpose of the Company and to undertake and carry on its main business, the Company shall not have the power

or capacity to, and no Director, other officer, body or organ of the Company shall be authorised on behalf of the Company to -

- 8.1.1 purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, Shares, debentures and every other kind or description of movable and immovable property;
- 8.1.2 manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property or assets;
- 8.1.3 apply for, purchase or by any other means acquire, protect, prolong or renew any patents, patent rights, licences, trademarks, concessions or other rights or deal with or alienate them;
- 8.1.4 borrow money;
- 8.1.5 secure the payment of moneys borrowed in any manner including the mortgaging or pledging of property and, without detracting from the generality thereof, in particular by the issue of any kind of debenture or debenture stock, with or without security;
- 8.1.6 lend money to any person or company;
- 8.1.7 invest money in any manner;
- 8.1.8 open and operate banking accounts or overdraw such accounts;
- 8.1.9 make, draw, issue, execute, accept, endorse or discount promissory notes, bills of exchange or any other kind of negotiable or transferable instruments;
- 8.1.10 enter into indemnities, guarantees or suretyships or secure payments thereunder in any way;
- 8.1.11 form or have an interest in any company or companies for the purpose of acquiring the undertaking or all or any of the assets or liabilities of the

company, or for any other purpose which may seem, directly or indirectly, calculated to benefit the company, or transfer to any such company or companies the undertaking or all or any of the assets or liabilities of the Company;

- 8.1.12 amalgamate with other companies;
 - 8.1.13 take part in the management, supervision or control of the business or operations of any other company or business, or enter into partnerships;
 - 8.1.14 remunerate any person or persons, either in cash or by the allotment of shares (credited as fully paid-up), for services rendered in its formation or in the development of its business;
 - 8.1.15 make donations;
 - 8.1.16 undertake or execute any trust;
 - 8.1.17 act as principals, agents, contractors or trustees;
 - 8.1.18 pay gratuities or pensions or establish pension schemes, profit-sharing plans or other incentive schemes in respect of its Directors, officers and employees;
 - 8.1.19 distribute *in specie* or in kind any of its assets among its Shareholders;
 - 8.1.20 enter into contracts outside the Republic or execute any contracts, deeds or documents in any foreign country; or
 - 8.1.21 have a seal or use such seal for any purpose in the Republic or in any foreign country.
- 8.2 Save as set out in 8.1, there are no other restrictions, limitations or qualifications applicable to the legal powers and capacity of the Company in terms of section 19(1)(b)(ii) of the Act.

PART E – SECURITIES OF THE COMPANY

9 SHARE CAPITAL

The numbers and classes of Shares which the Company is authorised to issue are set out in Schedule 1 to this MOI.

10 RIGHTS OF THE ORDINARY SHARES

Each Ordinary Share in the issued capital of the Company ranks *pari passu* with all other Ordinary Shares in respect of all rights, and entitles its holder to -

- 10.1 the right to be entered into the Securities Register of the Company as the registered holder of an Ordinary Share;
- 10.2 the rights to attend, participate in, speak at and vote on any matter to be considered at, any meeting of Ordinary Shareholders;
- 10.3 the right to receive any distribution by the Company, if and when declared on the Ordinary Shares, to be made in proportion to the number of Ordinary Shares held by each Ordinary Shareholder;
- 10.4 subject to the rights of the Preference Shares, the right to receive the net assets of the Company remaining upon its liquidation; and
- 10.5 any other rights attaching to the Ordinary Shares in terms of the Act or any other law.

11 RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE CUMULATIVE REDEEMABLE PREFERENCE SHARES

- 11.1 The Preference Shares shall rank *pari passu* with each other and shall confer the right to receive a fixed cumulative preferential dividend (referred to hereafter as the "**Preferential Dividend**") out of the Company's statutory net profits after taxation available for distribution by way of dividends, as determined by the Directors from time to time, in priority to any payments of dividends to the holders of the Ordinary Shares in the capital of the Company, calculated as follows -

- 11.1.1 the Preferential Dividend shall be paid in cash only unless the holders of the Preference Shares unanimously agree otherwise;
- 11.1.2 the Preferential Dividend shall be calculated on the number of Preference Shares in issue at the date of declaration of the Preference Dividend;
- 11.1.3 the Preferential Dividend will be due and, if declared, payable on any Interest Payment Date (as such term is defined in the Transaction Documents), in an amount equal to the cash that is available for this purpose in the applicable Priority of Payments (as such term is defined in the Transaction Documents, as amended from time to time in accordance with their terms) on such day, after the payment of all higher-ranking items in the applicable Priority of Payments.
- 11.2 The Preferential Dividend shall be paid, to the extent permitted by, and in accordance with the applicable Priority of Payments (as such term is defined in the Transaction Documents), subject to the provisions of the Act.
- 11.3 If on a dividend payment date referred to in 11.1.3, the Preferential Dividend, or part thereof, is not declared, then no dividend may be declared in respect of the Ordinary Shares in the capital of the Company until such arrear Preferential Dividends have been declared and paid.
- 11.4 The Preference Shares shall confer the right, on a winding-up of the Company, to receive, in priority to any payment in respect of the Ordinary Shares in the capital of the Company then issued -
 - 11.4.1 a return of the consideration paid for which the Preference Shares were issued; and
 - 11.4.2 any arrear Preferential Dividends (whether declared or not), calculated down to the date of winding-up.

- 11.5 Save as set out in 11.1 and 11.2 above, the holders of the Preference Shares shall not be entitled to any participation in the profits or assets of the Company or, upon a winding up, in any of the surplus funds of the Company.
- 11.6 Subject to the provisions of the Act, as amended, the Preference Shares shall be liable to be redeemed at the option of the holders of the Preference Shares, at any time after the date on which the Notes are finally redeemed, provided that such date shall not be a date that is prior to 3 (three) years and 1 (one) day after the date of issue of such Preference Shares. The amount payable on such redemption shall be -
- 11.6.1 a return of the consideration paid for which the Preference Shares were issued;
- 11.6.2 any arrear Preferential Dividends (whether declared or not), calculated down to-the date of redemption; and
- 11.6.3 such premium as may be determined by the Directors of the Company.
- 11.7 The Company shall not be liable to a holder of Preference Shares for interest on any unclaimed redemption by such holder.
- 11.8 A holder of Preference Shares shall be entitled to receive notice of, and to attend any general meeting of the Company, but shall not be entitled to vote at such meeting -
- 11.8.1 unless the Preferential Dividend or any part thereof is, at the date of holding of that meeting, 6 (six) months or more in arrears (after it has been declared);
or
- 11.8.2 unless any redemption payment on that Preference Share is, at the date of holding-of such meeting, 6 months or more in arrears; or
- 11.8.3 save upon any resolution proposed at any such general meeting for the winding up or reduction of capital of the Company or directly affecting the rights attached to that Preference Share or the interests of the holder thereof.

- 11.9 The rights attaching to the Preference Shares and the interests of the holders of the Preference Shares shall not be regarded as being directly affected or modified by the creation by the Company of any further shares of any class (including any other class of Preference Shares), unless those new shares rank in some or all respects in priority to or *pari passu* with the Preference Shares.
- 11.10 The provisions of the articles relating to general meetings of Ordinary Shareholders voting thereat, and the appointment of proxies to act thereat, shall apply *mutatis mutandis* to every meeting of the holders of the Preference Shares except that a quorum at any such general meeting shall be such person(s) holding, or representing by proxy, at least one quarter of the Preference Shares then in issue; provided that if at any adjournment of such meeting a quorum is not so present, then the provisions of the clauses relating to adjourned general meetings shall apply *mutatis mutandis*. At every general meeting of the Company at which both the holders of the Ordinary Shares and Preference Shares are present and entitled to vote, upon a poll a holder of a Preference Share shall be entitled to that proportion of the total votes in the Company which the aggregate value of the Preference Shares held by him bears to the aggregate value of all the shares issued by the Company at that time.
- 11.11 The Company shall, upon receipt of written notice of the redemption of the Preference Shares from the registered holders of the Preference Shares, give written notice to such holder of the time and place for the payment of the amount payable on redemption, and an address for the surrender to the Company of the Preference Share certificates which relate thereto, shall be stated in the notice. On such surrender the Company shall pay the redemption proceeds to the registered holders.

12 REGISTER AND CERTIFICATES

- 12.1 The Securities issued by the Company shall be issued in certificated or uncertificated form.
- 12.2 The Company shall establish or cause to be established, and shall maintain, a Securities Register in accordance with the Act and the Regulations and, to the

extent that the form of and the manner of maintaining the Securities Register is not prescribed, the Board shall determine the form and manner thereof.

- 12.3 The Company shall enter into its Securities Register the transfer of any certificated Securities which is effected in accordance with 13 and shall include in such entry the information required by section 51(5) of the Act.
- 12.4 The certificates evidencing any certificated Securities of the Company shall comply with the requirements set out in section 51(1) of the Act and shall otherwise be in such form as may be determined by the Board.
- 12.5 Any Person who is entitled to have his name entered into the Securities Register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the Securities Register, including the name, business address, residential address, postal address and available e-mail address of that Person.
- 12.6 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.

13 TRANSFER OF SECURITIES

- 13.1 The Securities of the Company are freely transferable, subject to the provisions contained in this MOI and the Terms and Conditions.
- 13.2 For purposes of section 51(6)(a) of the Act, a "**proper instrument of transfer**" means an instrument in writing, in any form, specifying –
- 13.2.1 the full name of the transferor (being the name of a Person entered in the Securities Register as the registered holder of the Securities being transferred);
- 13.2.2 the full name of the transferee; and

- 13.2.3 the number of the class of Shares being transferred,
- which has been signed by or on behalf of the registered securities holder as transferor and signed by or on behalf of the transferee.
- 13.3 Subject to 7 and 8, the Board may not decline to register the transfer of any Shares in terms of a proper instrument of transfer unless (and for so long as) the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this 13. The transferor shall be deemed to remain the holder of and shall remain the registered Shareholder in respect of such Shares until the name of the transferee is entered in the Securities Register in respect thereof.
- 13.4 Any Person wishing the Company to register the transfer of any Shares shall deliver to the Company –
- 13.4.1 a copy of a proper instrument of transfer, certified as a true copy of the original; and
- 13.4.2 the original certificate (or a Duplicate Certificate issued pursuant to 12.6) of the Shares being transferred or, in the absence of such original or Duplicate Certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Shares.
- 13.5 The copy of the instrument of transfer, original or duplicate Share certificate, other documentary evidence and a copy of any authority to transfer the Shares shall remain in the custody of the Company at its registered office.

14 DEBT INSTRUMENTS

The Board may authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Act, provided that any borrowing, guarantee, security or similar restrictions in 7 and 8 are complied with.

15 **BENEFICIAL INTERESTS**

Securities issued by the Company may be held by a nominee on behalf of a beneficial security holder undisclosed to the Company.

16 **JOINT HOLDERS OF SECURITIES**

16.1 In the case of any Security registered in the names of two or more Persons as joint holders, the Person first-named in the Securities Register shall, save as is provided in this MOI, be the only Person recognised by the Company as having any title to such Security and to the related certificate of title.

16.2 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, shall be the only Person recognised by the Company as having any title to such Security.

16.3 A certificate registered in the names of two or more Persons shall be delivered to the Person first-named in the Securities Register as a holder thereof, and delivery of a certificate to that Person shall be a sufficient delivery to all joint holders of that Security.

17 **LEGAL REPRESENTATIVES AND TRANSMISSION OF SECURITIES**

17.1 Subject to section 51(6)(b) of the Act and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of 16.1 and 16.2 as having any title to any Shares (and also the legal guardian of any minor Shareholder and any person who obtains title to any Shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this article or as to his or her title to any Shares, and subject to the transfer provisions in this MOI, transfer such Shares to himself or to any other person.

17.2 A Legal Representative of the holder of any Security issued by the Company ("**Security Holder**") shall –

17.2.1 be the only person recognised by the Company as having any rights in respect of or title to a Security registered in the name of the Security Holder whom he represents; and

17.2.2 if so required by that Legal Representative or by the Board, be entered into the Securities Register of the Company *nomine officio* in the place and on behalf of that Security Holder,

provided that if the Legal Representative so entered into the Securities Register ceases to be the Legal Representative of that Security Holder, the Board shall, pending transfer of that Security Holder or another Legal Representative of that Security Holder or any other Person who is entitled to become the holder of that Security, be entitled to suspend the rights of the holder of that Security to vote and shall be entitled to withhold (and retain until such transfer has occurred) all Distributions payable to the holder of that Security.

PART F – SECURITIESHOLDERS RIGHTS AND PROCEEDINGS

18 SECURITIESHOLDERS RIGHT TO INFORMATION

Each Shareholder and each Person who is the registered holder of, or holds a beneficial interest in, any Securities issued by the Company shall have the information rights set out in section 26(1) of the Act.

19 SOLE SHAREHOLDER'S AUTHORITY TO ACT

Notwithstanding anything to the contrary contained in this MOI, if, at any time, as contemplated in section 57(2) of the Act, the Company has only 1 Shareholder –

19.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this MOI; and

19.2 the provisions of 21 (*Record Dates*), 23 (*Notice of Shareholders Meetings*), 24 (*Conduct of Meetings*), 25 (*Shareholders Meeting Quorum and Adjournment*), 27 (*Shareholders Resolutions*) and 28 (*Written Resolution by Shareholders*) shall not apply to the Company.

20 PROXY REPRESENTATION

20.1 A Shareholder may, at any time by written proxy appointment, appoint any individual including an individual who is not a Shareholder of the Company, as a proxy to -

20.1.1 participate in, and speak and vote at, a Shareholders meeting on behalf of the Shareholder; or

20.1.2 give or withhold written consent on behalf of the Shareholder to a decision contemplated in 28,

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for the appointment of a proxy) shall be governed by section 58 of the Act and this 20.

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

20.3 A proxy shall only be duly appointed if appointed as such by a written instrument, whether in the form of a proxy form, power of attorney or other document ("**Proxy Instrument**") and such appointment complies with section 58(2) of the Act.

20.4 A Shareholder may not appoint more than one person concurrently as proxies, and may not appoint more than one proxy in respect of such Shareholder's Securities to exercise Voting Rights attached to all Securities held by the Shareholder.

20.5 A proxy may not delegate the proxy's authority to act on behalf of the Shareholder to another person.

- 20.6 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy unless the Proxy Instrument was delivered to the Registered Office of the Company (marked urgent and for the attention of the company secretary, chairperson or any Director of the Company and accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the Board or the chairperson of any meeting referred to in the proviso to this 20.6) or to any other person entitled to accept the proxy appointment or revocation on behalf of the Company.
- 20.7 A proxy shall, as contemplated in section 58(7) of the Act, be entitled, in the Proxy's own discretion, to exercise, or abstain from exercising, any voting right of the Shareholder; provided that if the Proxy Instrument specifically provides otherwise then the specific provisions of the proxy appointment shall prevail.

21 RECORD DATES

The Board may, in accordance with section 59 of the Act and the Regulations, determine and publish a Record Date for any action or event, provided that if the Board does not determine a Record Date for any action or event, the Record Date shall be as determined in accordance with section 59(3) of the Act.

22 SHAREHOLDERS MEETINGS

- 22.1 The Company shall not be required to hold any meetings of Shareholders other than those required by the Act.
- 22.2 The Company shall hold a Shareholders meeting in the circumstances contemplated in section 61(2) of the Act.
- 22.3 The Board or the company secretary of the Company or any Person referred to in the Terms and Conditions of any Notes issued by the Company shall be entitled to call a Shareholders meeting at any time.
- 22.4 The Company authorises any Shareholder to call a Shareholders meeting for the purposes of section 61(11) of the Act.

22.5 The Shareholders may requisition a Shareholders meeting, as set out in section 61(3) of the Act if holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting requisition the meeting.

22.6 The Board may determine the location for any Shareholders meeting of the Company (including the location of any meeting which has been adjourned), provided that the Terms and Conditions of any Notes issued by the Company may set requirements for the location of a Noteholder's meeting.

23 NOTICE OF SHAREHOLDERS MEETINGS

23.1 The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders, is as provided for in section 62(1)(b) of the Act, provided that the Terms and Conditions of any Notes issued by the Company may provide for longer or shorter minimum notice periods for a Noteholders' meeting.

23.2 The notice of a Shareholders meeting shall be in writing and shall include the items set out in section 62(3) of the Act.

23.3 The notice of a Shareholders meeting must be delivered in accordance with the provisions of 41.

24 CONDUCT OF MEETINGS

24.1 The Company -

24.1.1 may, as contemplated in section 63 of the Act, provide for a Shareholders meeting to be conducted in whole or in part by Electronic Communication; and

24.1.2 must always make provision for any Shareholder, or proxy for a Shareholder, to participate by Electronic Communication in every Shareholders meeting that is being held in person at any place other than the Registered Office of the Company.

- 24.2 The Company shall ensure that any notice of any meeting of Shareholders, at which it will be possible for Shareholders to participate by way of Electronic Communication, shall inform Shareholders of that form of participation and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication.
- 24.3 A resolution passed at any meeting that employs Electronic Communication shall, notwithstanding that the Shareholders are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of 24 to 28 shall apply to these meetings.
- 24.4 At a meeting of Shareholders, voting shall be conducted by way of a poll. The poll shall be conducted in such manner as the chairperson of the meeting directs.

25 SHAREHOLDER MEETING QUORUM AND ADJOURNMENT

- 25.1 The quorum requirements for meetings of Shareholders shall, subject to 25.6, be that –
- 25.1.1 such a meeting shall not begin until sufficient persons are Present at such Meeting to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting;
- 25.1.2 the consideration of a matter to be decided at the meeting shall not begin unless sufficient persons are Present at such Meeting at the time when that matter is called for consideration to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised on that matter; and
- 25.1.3 in terms of section 64(2) of the Act, in the case of Noteholder meetings, to such higher or lower percentage in substitution for the 25% required by section 64(1) of the Act as may be specified in the Terms and Conditions of the Notes.

- 25.2 Notwithstanding the provisions of section 64(4) of the Act and 25.1, if -
- 25.2.1 the quorum requirements for a meeting to begin have not been satisfied, the meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a Business Day, the next Business Day) in the next week;
- 25.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -
- 25.2.2.1 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
- 25.2.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, to the same day (or if that day is a public holiday, the next Business Day) in the next week.
- 25.3 Notwithstanding the provisions of 26.2, in relation to Noteholder meetings, the Terms and Conditions of the Notes issued by the Company may provide that -
- 25.3.1 in terms of section 64(6)(a) of the Act, the period of one hour contemplated in sections 64(4) and 64(5) of the Act is replaced with the period specified in the Terms and Conditions of the Notes; and
- 25.3.2 in terms of section 64(6)(b) of the Act, the period of one week contemplated in section 64(4) of the Act is replaced with the period specified in the Terms and Conditions of the Notes.
- 25.4 The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- 25.5 The chairperson of the meeting shall be entitled to extend the one hour limit provided for under section 64(4) of the Act in the circumstances contemplated in section 64(5) of the Act as well as in those circumstances where the delay is caused

by the verification of the Shareholders identity, as contemplated in section 63(1) of the Act.

- 25.6 If, at the time appointed in terms of this 25 for an adjourned meeting to resume, or for a postponed meeting to begin, the quorum requirements have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 25.7 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as sufficient persons are Present at such Meeting to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised at the meeting.
- 25.8 The Board may, at any time after notice of a Shareholders meeting has been given but prior to the commencement of that meeting, postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage; provided that the Board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Act or this MOI to be held.
- 25.9 Subject to the Act and this MOI, the chairman of any general meeting shall determine the procedure to be followed at that meeting.

26 **CHAIRPERSON**

The chairperson of the Board shall be entitled to chair Shareholders meetings. If, however, there is no chairperson or if he has notified his inability to attend a meeting or if at any meeting he is not present within ten minutes of the time appointed for the meeting, the Shareholders who are entitled to exercise voting rights in relation to the Company present and represented shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Shareholders shall choose one of their own to be the chairperson of the meeting.

The Terms and Conditions of any Notes issued by the Company may specify provisions for the appointment of a person to chair Noteholder meetings.

27 SHAREHOLDERS RESOLUTIONS

27.1 At any meeting of Shareholders, any person who is present at the meeting, whether as a Shareholder or as a proxy for a Shareholder, shall be entitled to exercise one vote for each Ordinary Share held by that Ordinary Shareholder.

27.2 In order for -

27.2.1 an Ordinary Resolution to be approved, it must be supported by the holders of more than 50% of the Voting Rights exercised on the resolution, as provided in section 65(7) of the Act;

27.2.2 a Special Resolution to be approved, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9) of the Act,

at a quorate meeting of Shareholders which is quorate in relation to that resolution; provided that this 27.2 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in 28.

27.3 In addition to those matters which require the approval or authority of a Special Resolution in terms of section 65(11) of the Act, any other section of the Act, any provision of the Regulations or this MOI, the Terms and Conditions of any Notes issued by the Company may require an Extraordinary Resolution (as defined in the Terms and Conditions) of Noteholders to approve matters specified in the Terms and Conditions of such Notes.

28 WRITTEN RESOLUTIONS BY SHAREHOLDERS

A resolution that could be voted on at a Shareholders Meeting may instead be adopted by written vote of the Shareholders, as contemplated in section 60 of the Act, if it is supported by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Shareholders meeting.

PART G – DIRECTORS' POWERS AND PROCEEDINGS

29 AUTHORITY OF THE BOARD OF DIRECTORS

- 29.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, provided that any borrowing, guarantee, security or similar restrictions contained in 7 and 8 are complied with.
- 29.2 The Board may delegate to any one or more persons all such powers and delegate to any one or more persons the doing of all such acts (including the right to sub-delegate).

30 APPOINTMENT OF DIRECTORS

- 30.1 The Board shall comprise of not less than three directors, in addition to the minimum number of directors necessary to satisfy any committee requirements in terms of the Act or this MOI.
- 30.2 There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(ii) of the Act.
- 30.3 The provisions of section 68(2) of the Act shall apply to the election of Directors, provided that a Director may be elected by written vote in accordance with 28.
- 30.4 At least 50% of the Directors (and at least 50% of any alternates) must be elected by the Shareholders entitled to exercise voting rights in such election, as contemplated in section 68 of the Act read with section 66(4)(b) of the Act.
- 30.5 In addition to the elected Directors, in terms of section 66(4)(a)(i) of the Act, for so long as there are Notes in issue, Investec may appoint, remove and replace, one (and no more than one) Director of the Company, and his or her alternate, by way of written notice to the Company, such appointment, removal or replacement taking effect on the date of receipt by the Company of such notice, subject to such person delivering written consent to serve as a Director.

- 30.6 For so long as there are Notes in issue, all the elected and appointed directors of the Company (other than any director appointed in terms of 30.5) must be independent of Investec and of any subsidiary or holding company of Investec or any subsidiary of Investec's holding company or any person acting in a primary role (as defined in the Securitisation Regulations). A person shall be regarded as being independent for these purposes, provided that he is not a director, officer, employee or consultant of Investec or any subsidiary or holding company of Investec or any subsidiary of Investec 's holding company or any person acting in a primary role (as defined in the Securitisation Regulations). For purposes of this 33.6, "**Securitisation Regulations**" has the meaning given to that term in the Terms and Conditions.
- 30.7 The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of 30.3, and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company. The authority of the Board in this regard shall not be limited or restricted by this MOI.
- 30.8 Each Director shall serve for an indefinite term, as contemplated in section 68(1) of the Act.
- 30.9 Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time.

31 ALTERNATE DIRECTOR

- 31.1 Each Director may, by notice to the Company at any time -
- 31.1.1 nominate any one or more than one person in the alternative (including any of his co-Directors) to be his Alternate Director, for election in terms of 29.2; or
- 31.1.2 terminate any such appointment.

31.2 The appointment of an Alternate Director shall terminate when the Director to whom he is an Alternate Director -

31.2.1 ceases to be a Director; or

31.2.2 terminates his appointment.

32 BOARD COMMITTEES

32.1 The Board may -

32.1.1 appoint any number of committees of Directors; and

32.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate); and

32.1.3 include any person who is not a Director of the Company in such committees,

and, accordingly, the authority of the Board in this regard is not limited or restricted by this MOI.

32.2 The authority and power of any committees established by the Board, as contemplated in section 72(2) of the Act, is not limited or restricted by this MOI, but may be restricted by the Board when establishing one committee or by subsequent resolution.

33 CHAIRPERSON

33.1 The chairperson of the Board shall be elected by the Directors annually at the first board meeting of the Company's financial year, provided that if the chairperson is absent from a meeting for any reason, the Directors shall elect one of their number to be chairperson of that meeting.

33.2 The chairperson shall preside as the chairperson of each meeting of the Board and shall, subject to the Act and this MOI and any decision of the Board, determine the procedure to be followed at all meetings of the Board.

33.3 Notwithstanding the provisions of section 73(5)(e) of the Act, the chairperson shall not have a second or casting vote in addition to his deliberative vote (if any).

34 DIRECTORS MEETINGS

34.1 The Board may -

34.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2) of the Act, any Director shall be entitled to convene or direct the person so authorised by the Board to convene a meeting of the Board; and

34.1.2 determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Act, and the authority of the Board in this regard is not limited or restricted by this MOI.

34.2 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Act, is not amended by this MOI.

34.3 The Board -

34.3.1 may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and

34.3.2 must always make provision for any Director to participate by Electronic Communication in every Board meeting that is held in person at any place other than the Registered Office of the Company.

34.4 The quorum requirement for a meeting of the Board to begin, the voting rights at such a meeting, and the requirements for the approval of a resolution at such a meeting are as set out in section 73(5) of the Act.

- 34.5 At any meeting of the Board, an Alternate Director shall not be entitled to attend, speak or vote unless the Director to whom he is an Alternate Director is absent from that meeting.
- 34.6 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes -
- 34.6.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and
- 34.6.2 every resolution adopted by the Board.
- 34.7 Resolutions adopted by the Board -
- 34.7.1 must be dated and sequentially numbered; and
- 34.7.2 are effective as of the date of the resolution, unless the resolution states otherwise.

35 WRITTEN RESOLUTIONS BY DIRECTORS

- 35.1 A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been submitted to all of the Directors and signed by at least that number of the Directors (or their Alternate Directors) having a majority of the Voting Rights that could be exercised upon that resolution if it were considered by a meeting of the Board.
- 35.2 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors.
- 35.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by or on behalf of the Director (or Alternate Director) who signed it last.
- 35.4 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternate Directors).

36 PAYMENTS TO DIRECTORS

Subject to 7 and 8, the Company may pay remuneration to its Directors for those services as such; provided that such remuneration must be approved by a Special Resolution passed by the Shareholders within the 2 (two) previous years and the authority of the Board in this regard is not restricted or limited by this MOI.

37 INDEMNIFICATION AND INSURANCE FOR DIRECTORS

Subject to 7 and 8 and to any and all acts contemplated or authorised by the Transaction Documents, the authority of the Company to –

- 37.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company as set out in section 78(4) of the Act;
- 37.2 directly or indirectly indemnify a Director for expenses contemplated in 37.1, irrespective of whether or not it has advanced those expenses;
- 37.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Act; and
- 37.4 purchase insurance to protect a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with 37.3, or the Company against any contingency as set out in section 78(7) of the Act,

is not amended by this MOI.

PART H – GENERAL PROVISIONS

38 AUDIT COMMITTEE

- 38.1 At each annual general meeting, the Company shall elect an audit committee comprising at least 3 (three) members subject to the provisions of sections 94(2), 94(3) and 94(4) of the Act.

38.2 In the event of a vacancy arising in the audit committee, the Board of the Company must appoint a person to fill any such vacancy within 40 (forty) Business Days after the vacancy arises.

38.3 Subject to the terms of reference of the audit committee and the Board's determination from time to time, the audit committee shall have the duties set out in section 94(7) of the Act.

39 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION

39.1 The Company shall prepare annual Financial Statements in accordance with the Act and the Regulations and shall, only to the extent required by the Act or the Regulations, have those annual Financial Statements audited or reviewed.

39.2 A copy of the annual Financial Statements of the Company shall be delivered to all Shareholders as soon as possible after those annual Financial Statements have been approved by the Board.

39.3 Except as set out in this 39, no information rights are established by this MOI in favour of a Person who holds or has a beneficial interest in any Securities issued by the Company in addition to those rights created by section 26 of the Act.

40 FINANCIAL ASSISTANCE

The Board may authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities, as set out in section 44 of the Act, provided that such financial assistance complies with the relevant provisions of the Act and provided further that any borrowing, guarantee, security or similar restrictions set out in 7 and 9 are complied with.

41 NOTICES

41.1 Any notice that is required to be given to Shareholders or Directors may be given in any manner prescribed in the Table CR3 to the Regulations and that notice shall

be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery.

41.2 Each Shareholder and Director shall -

41.2.1 notify the Company in writing of a postal address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and, if he has not named such an address, he shall be deemed to have waived his right to be so served with notices; and

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

42 WINDING UP

42.1 Subject to the provisions of 7.5, the Company shall not cause itself to be voluntarily wound-up without a resolution being passed unanimously at a meeting of its Board and, if applicable, by an Extraordinary Resolution (as defined in the Terms and Conditions) being passed by Noteholders.

42.2 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows -

42.2.1 to repay to the Ordinary Shareholders the amount paid upon on the Shares held by each of them; and

42.2.2 the balance (if any) shall be distributed among the Ordinary Shareholders in proportion to the number of Shares held by each of them,

provided that the provisions of this 42.2.2 shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.

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

SCHEDULE 1 – SHARE CAPITAL

The numbers and classes of Shares which the Company is authorised to issue are set out below -

- 1 1 000 no par value Ordinary Shares each having the rights and limitations set out in the MOI; and
- 2 100 no par value cumulative redeemable Preference Shares each having the preferences, rights, limitations and other terms set out in the MOI.