

This is the Memorandum of Incorporation tabled and adopted by way of a special resolution in accordance with section 16(1)(c) of the Companies Act No 71 of 2008 at the general meeting of the Company held on _____ 2016, signed by the Chairman for purposes of identification.

Chairman

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

of

Fox Street 6 (RF) Limited

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.

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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;

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, a public company with limited liability registered and incorporated in accordance with the laws of South Africa under registration number 1969/004763/06;
- 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"** – any debt securities issued by the Company from time to time in terms of the residential mortgage backed securities programme to be established by the Company;
- 1.2.13 **"Noteholders"** – has the same meaning given to that term in the Terms and Conditions;

- 1.2.14 "**Ordinary Share**" - an ordinary share in the capital of the Company, having the preferences, rights, limitations and other terms contemplated in 11;
- 1.2.15 "**Ordinary Shareholder**" - a shareholder reflected in the Securities Register as holding Ordinary Shares;
- 1.2.16 "**Person**" – includes 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 12;
- 1.2.18 "**Preference Shareholder**" – a shareholder reflected in the Securities Register as holding Preference Shares;
- 1.2.19 "**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;
- 1.2.20 "**Republic**" - the Republic of South Africa;
- 1.2.21 "**Secured Creditor**" – a Person who is defined as such in the Terms and Conditions;
- 1.2.22 "**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;

- 1.2.23 **"Securities"** – collectively –
- 1.2.23.1 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
- 1.2.23.2 anything falling within the meaning of "securities" as defined in section 1 of the Financial Markets Act;
- 1.2.24 **"Securities Register"** – the register of issued Securities of the Company established in terms of section 50(1) of the Act;
- 1.2.25 **"Share"** - a Share (as defined in the Act) of the Company, which shall include Ordinary Shares;
- 1.2.26 **"Shareholder"** - a holder of a Share who is entered as such in the Securities Register of the Company;
- 1.2.27 **"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;
- 1.2.28 **"Transaction Documents"** - has the meaning given to that term in the Terms and Conditions; and
- 1.2.29 **"Warehouse Facility Agreement"** – to the extent required, a written revolving credit facility agreement to be concluded between the Company and Investec, in terms of which Investec will make a revolving credit facility available to the Company for the purpose of acquiring residential property loans from Investec or any of its affiliates and which facility will be settled utilising funds from the issue of Notes;

- 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 -

S15(2)(b)

S15(2)(c)

S16

S17

- 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, 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.

4 RULES

- 4.1 The Board may, subject to section 15(4) of the Act, make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI, and the authority of the Board in this regard is not limited or restricted in any manner by this MOI.

S15(3)

- 4.2 The Company shall publish a copy of those Rules and a notice of any alteration to those Rules in accordance with section 17(1) of the Act by delivering a copy

S17(1)

thereof to each Shareholder in accordance with 46 or in such other manner as may be required by those Rules.

PART B – STATUS AND POWERS OF THE COMPANY

5 STATUS AS PUBLIC COMPANY

- S8(2)(d) 5.1 The Company is classified as a public company, in terms of section 8(2)(d) of the Act.
- 5.2 The Company is incorporated in accordance with and governed by –
- 5.2.1 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);
- S15(2)(a)(ii) 5.2.2 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
- 5.2.3 the provisions of this MOI (subject to the provisions of section 15(2) of the Act).

6 POWERS OF THE COMPANY

- S19(1)(b)(ii) 6.1 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 8.
- 6.2 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.

7 LIMITATION OF LIABILITY

- S19(2) 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

S15(2)(b)

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

8.1 The main purpose of the Company and main business which the Company is to carry on, is to -

8.1.1 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 to be executed by the Company, as amended and/or supplemented from time to time, with funds raised directly or indirectly through the issue of Notes and to manage the Participating Assets so acquired;

8.1.2 enter into such agreements, documents, deeds or instruments as may be required to document and conclude any transactions contemplated by 8.1.1, together with any agreements, documents, deeds or instruments which may be incidental or related to those transactions; and

8.1.3 exercise and, if necessary, enforce the rights of the Company, and perform its obligations under, each Transaction Document and Participating Asset.

8.2 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 -

8.2.1 that contravenes or conflicts with this MOI;

8.2.2 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;

8.2.3 in respect of which the Company has no capacity or power;

- 8.2.4 to the extent to which the capacity or powers of the Company have been qualified; or
- 8.2.5 unless all applicable restrictive conditions which are imposed under this MOI are complied with in full.
- 8.3 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 -
- 8.3.1 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;
- 8.3.2 register any transfer, or issue any Shares, in the capital of the Company;
- 8.3.3 discharge or release any Person from its obligations to the Company if that Person has not performed its obligations in full;
- 8.3.4 enter into any reconstruction, amalgamation, merger or consolidation, or be acquired by another Person;
- 8.3.5 have or acquire any subsidiaries;
- 8.3.6 employ any person as an employee;
- 8.3.7 occupy any premises;
- 8.3.8 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;

8.3.9 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;

8.3.10 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;

8.3.11 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

8.3.12 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.

8.4 The Company shall -

8.4.1 conduct business only in its own name;

- 8.4.2 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;
- 8.4.3 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;
- 8.4.4 comply with all applicable laws;
- 8.4.5 not discharge any indebtedness except as expressly permitted under or contemplated by the Transaction Documents to which the Company is a party;
- 8.4.6 comply with, perform, observe and discharge in full all of its obligations under the Transaction Documents to which the Company is a party; and
- 8.4.7 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.
- 8.5 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 -
 - 8.5.1 the prior consent of the entity appointed to hold security for the benefit of Noteholders and other Secured Creditors has been obtained; or

8.5.2 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.

8.6 Save as set out in 9 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

9 GENERAL RESTRICTIONS, LIMITATIONS AND QUALIFICATIONS

9.1 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 -

9.1.1 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;

9.1.2 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;

9.1.3 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;

9.1.4 borrow money, save for in terms of the Warehouse Facility Agreement (if applicable);

9.1.5 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;

- 9.1.6 lend money to any person or company;
- 9.1.7 invest money in any manner;
- 9.1.8 open and operate banking accounts or overdraw such accounts;
- 9.1.9 make, draw, issue, execute, accept, endorse or discount promissory notes, bills of exchange or any other kind of negotiable or transferable instruments;
- 9.1.10 enter into indemnities, guarantees or suretyships or secure payments thereunder in any way;
- 9.1.11 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;
- 9.1.12 amalgamate with other companies;
- 9.1.13 take part in the management, supervision or control of the business or operations of any other company or business, or enter into partnerships;
- 9.1.14 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;
- 9.1.15 make donations;
- 9.1.16 undertake or execute any trust;
- 9.1.17 act as principals, agents, contractors or trustees;

- 9.1.18 pay gratuities or pensions or establish pension schemes, profit-sharing plans or other incentive schemes in respect of its Directors, officers and employees;
 - 9.1.19 distribute in specie or in kind any of its assets among its Shareholders;
 - 9.1.20 enter into contracts outside the Republic or execute any contracts, deeds or documents in any foreign country; or
 - 9.1.21 have a seal or use such seal for any purpose in the Republic or in any foreign country.
- 9.2 Save as set out in 9.1, 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

10 SHARE CAPITAL

S36(1)(a)

The Company is incorporated with an authorised share capital of 1000 (one thousand) Ordinary Shares of no par value and 100 (one hundred) cumulative redeemable no par value Preference Shares, both having the rights, privileges and conditions as set out in this MOI. The numbers and classes of Shares which the Company is authorised to issue are set out in Schedule 1 to this MOI.

11 RIGHTS OF THE ORDINARY SHARES

S36(1)(b)

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 -

- 11.1 the right to be entered into the Securities Register of the Company as the registered holder of an Ordinary Share;
- 11.2 the rights to attend, participate in, speak at and vote on any matter to be considered at, any meeting of Ordinary Shareholders;

- 11.3 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;
- 11.4 subject to the rights of the Preference Shares, the right to receive the net assets of the Company remaining upon its liquidation; and
- 11.5 any other rights attaching to the Ordinary Shares in terms of the Act or any other law.

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

- 12.1 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 -
 - 12.1.1 the Preferential Dividend shall be paid in cash only unless the holders of the Preference Shares unanimously agree otherwise;
 - 12.1.2 the Preferential Dividend shall be calculated on the number of Preference Shares in issue at the date of declaration of the Preference Dividend;
 - 12.1.3 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 in the 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 Priority of Payments.
- 12.2 The Preferential Dividend shall be paid, to the extent permitted by, and in accordance with the Priority of Payments (as such term is defined in the Transaction Documents), subject to the provisions of the Act.

- 12.3 If on a dividend payment date referred to in 12.1.3, 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.
- 12.4 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 -
- 12.4.1 a return of the consideration paid for which the Preference Shares were issued; and
- 12.4.2 any arrear Preferential Dividends (whether declared or not), calculated down to the date of winding-up.
- 12.5 Save as set out in 12.1 and 12.2 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.
- 12.6 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 -
- 12.6.1 a return of the consideration paid for which the Preference Shares were issued;
- 12.6.2 any arrear Preferential Dividends (whether declared or not), calculated down to-the date of redemption; and
- 12.6.3 such premium as may be determined by the Directors of the Company.
- 12.7 The Company shall not be liable to a holder of Preference Shares for interest on any unclaimed redemption by such holder.

- 12.8 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 -
- 12.8.1 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
- 12.8.2 unless any redemption payment on that Preference Share is, at the date of holding-of such meeting, 6 months or more in arrears; or
- 12.8.3 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.
- 12.9 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.
- 12.10 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.

12.11 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.

13 VARIATION OF SHARE CAPITAL

S36(3)

13.1 Notwithstanding the provisions of section 36(3) of the Act, the Board shall not have the power to -

13.1.1 increase or decrease the number of authorised Shares of any class of the Shares;

13.1.2 reclassify any classified Shares that have been authorised but not issued;

13.1.3 classify any unclassified Shares that have been authorised but not issued;
or

13.1.4 determine the preferences, rights, limitations or other terms of any Shares,

which powers shall only be capable of being exercised by the Shareholders by way of a Special Resolution of the Shareholders.

S36(2)

13.2 The Shareholders may, by amendment to the MOI passed by way of a Special Resolution of the Shareholders -

13.2.1 increase or decrease the number of authorised Shares of any class of the Shares;

13.2.2 reclassify any classified Shares that have been authorised but not issued;

13.2.3 classify any unclassified Shares that have been authorised but not issued;
or

13.2.4 determine the preferences, rights, limitations or other terms of any
Shares,

provided that the entity appointed to hold security for the benefit of
Noteholders and other Secured Creditors has consented thereto in accordance
with the provisions of 3.1.

14 REGISTER AND CERTIFICATES

S49(2) 14.1 The Securities issued by the Company shall be issued in certificated or
uncertificated form.

S50(1) 14.2 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.

S51(5)
S51(6) 14.3 The Company shall enter into its Securities Register the transfer of any
certificated Securities which is effected in accordance with 15 and shall include
in such entry the information required by section 51(5) of the Act.

S51(1) 14.4 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.

S24(4)(a)
S50
S40(4)(b)
S51(5)
S50(2)(b)(i) & (iv)
Reg 32(2)(a) 14.5 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.

14.6 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.

15 **TRANSFER OF SECURITIES**

15.1 The Securities of the Company are freely transferable, subject to the provisions contained in this MOI and the Terms and Conditions.

15.2 For purposes of section 51(6)(a) of the Act, a "proper instrument of transfer" means an instrument in writing, in any form, specifying –

15.2.1 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);

15.2.2 the full name of the transferee; and

15.2.3 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.

15.3 Subject to 8 and 9, 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 15. 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.

15.4 Any Person wishing the Company to register the transfer of any Shares shall deliver to the Company –

15.4.1 a copy of a proper instrument of transfer, certified as a true copy of the original; and

- 15.4.2 the original certificate (or a Duplicate Certificate issued pursuant to 14.6) 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.
- 15.5 Where an instrument of transfer is signed by a person other than the relevant Shareholder, a copy of the authority granted by the Shareholder for the purpose of transferring Shares, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.
- 15.6 Such authorities shall, as between the Company and the grantor of such authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the Shareholder as transferor pursuant to such authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Shareholder is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.
- 15.7 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.

16 CAPITALISATION SHARES

- S47(1) 16.1 The Board shall not have the power or the authority to -
- 16.1.1 approve the issuing of any authorised Shares as capitalisation shares; or
- 16.1.2 issue Shares of one class as capitalisation shares in respect of the Shares of another class; or
- 16.1.3 resolve to permit the Shareholders to elect to receive a cash payment in lieu of a capitalisation share.

17 DEBT INSTRUMENTS

- S43(2) The Board may authorise the Company to issue secured or unsecured debt
S43(3) instruments, as set out in section 43(2) of the Act, provided that any borrowing,
guarantee, security or similar restrictions in 8 and 9 are complied with.

18 BENEFICIAL INTERESTS

- S56(1) Securities issued by the Company may be held by a nominee on behalf of a
beneficial security holder undisclosed to the Company.

19 JOINT HOLDERS OF SECURITIES

- 19.1 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.
- 19.2 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.
- 19.3 Every Person to whom Securities are issued and whose name is entered in the
Securities Register shall be entitled to one certificate for all the Securities in
any class registered in his name, or to several certificates, each for a part of
such Securities.
- 19.4 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.

20 LEGAL REPRESENTATIVES AND TRANSMISSION OF SECURITIES

- 20.1 The parent or guardian of a Shareholder who is a minor or any person duly
appointed by competent authority to represent or act for any registered

Shareholder shall, subject to the provisions of 19 regarding joint holders, be the only person recognised by the Company as having any title to any Shares registered in the name of such Shareholder, including for voting purposes.

20.2 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 19.1 and 19.2 or 20.1 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.

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

20.3.1 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

20.3.2 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 – SHAREHOLDERS RIGHTS AND PROCEEDINGS

21 SHAREHOLDERS RIGHT TO INFORMATION

S26(1)

- 21.1 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.
- 21.2 The Board may, from time to time, in its discretion, grant a Person who has a registered or beneficial interest in any of the Company's Securities the right to access any information pertaining to the Company in addition to that to which he is entitled in terms of section 26(1) of the Act.
- 21.3 The grant of any additional information right(s) shall be on such terms and subject to such conditions and for such period(s) as the Board may determine in writing, provided that the confidential information of the Company is adequately protected.

22 SOLE SHAREHOLDERS' 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 –

- 22.1 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
- 22.2 the provisions of 24 (*Record Dates*), 26 (*Notice of Shareholders Meetings*), 27 (*Conduct of Meetings*), 28 (*Shareholders Meeting Quorum and Adjournment*), 30 (*Shareholders Resolutions*) and 31 (*Written Resolution by Shareholders*) shall not apply to the Company.

23 PROXY REPRESENTATION

S58(1)

- 23.1 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 -

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

23.1.2 give or withhold written consent on behalf of the Shareholder to a decision contemplated in 31,

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 23.

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

23.3 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**") which complies with 23.4.

23.4 Subject to the provisions of the Act, a Proxy Instrument -

23.4.1 need not, subject to 23.4.2, bear a handwritten signature of the member appointing the proxy and may be an instrument created by electronic or other means, including, without limitation, electronic mail or facsimile;

23.4.2 shall be in such form as is approved or accepted by the Directors and shall be accompanied by such documentary or other evidence as may be required by the Directors in order to establish the validity and/or authenticity thereof, including the authority of the person appointing the proxy;

23.4.3 shall be received at the transfer office not less than twenty-four hours before the time appointed for the holding of the general meeting, or resumption of an adjourned general meeting at which the person named therein proposes to vote;

- 23.4.4 shall not be valid after the expiry of 2 (two) months after the date when it was deposited at the transfer office unless it specifically provides otherwise;
- 23.4.5 shall in addition to the authority conferred by the Act, except insofar as it provides otherwise, be deemed to confer the power generally to act at the general meeting in question, subject to any specific direction contained in the Proxy Instrument as to the manner of voting;
- 23.4.6 shall be valid at every resumption of an adjourned meeting to which it relates, unless the contrary is stated thereon;
- 23.4.7 shall not be used at the resumption of an adjourned general meeting if it could not have been used at the general meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place; and
- 23.4.8 may confer the power of delegation and sub-delegation on any proxy appointed in terms thereof, so that any proxy so appointed may appoint any other person as proxy in his stead.
- 23.5 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.
- 23.6 A proxy may not delegate the proxy's authority to act on behalf of the Shareholder to another person.
- 23.7 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy –
- 23.7.1 until the expiry of twenty-four hours after the date on which the instrument containing; or

23.7.2 after midnight on the day on which the instrument revoking,

the appointment of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the company secretary, chairperson or managing 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 23.7) or to any other person entitled to accept the proxy appointment or revocation on behalf of the Company; provided that the Board, or the chairperson of any meeting at which the proxy wishes to exercise any rights of the Shareholder, may agree to allow any such proxy appointment or revocation to become effective prior to the time when it would otherwise have become effective in terms of this 23.

23.8 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.

S58(7)

24 **RECORD DATES**

S59(1)
S59(2)

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

24.1 receive a notice of a Shareholders meeting;

24.2 participate in and vote at a Shareholders meeting;

24.3 decide any matter by written consent or by Electronic Communication;

24.4 receive a Distribution; or

24.5 be allotted or exercise any other rights,

S59(3) provided that if the Board does not determine a Record Date for any action or event, as contemplated in this 24, the Record Date shall be as determined in accordance with section 59(3) of the Act.

25 **SHAREHOLDERS MEETINGS**

S61(2)(a) 25.1 The Company shall not be required to hold any meetings of Shareholders other than those required by the Act.

25.2 The Company shall hold a Shareholders meeting in the circumstances contemplated in section 61(2) of the Act.

S61(3) 25.3 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.

25.4 The Company authorises any Shareholder to call a Shareholders meeting for the purposes of section 61(11) of the Act.

25.5 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.

25.6 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.

26 **NOTICE OF SHAREHOLDERS MEETINGS**

26.1 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.

S62(3) 26.2 The notice of a Shareholders meeting shall be in writing and shall include the items set out in section 62(3) of the Act.

26.3 The notice of a Shareholders meeting must be delivered in accordance with the provisions of 45.

27 CONDUCT OF MEETINGS

27.1 The Company -

S63(2)(a) 27.1.1 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

S63(2)(b) 27.1.2 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,

S61(2) and any Electronic Communication facility so employed must ordinarily enable all persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Company shall be limited and restricted accordingly.

S63(3)(b)

27.2 The responsibility for the expense of gaining access to the medium or means of Electronic Communication employed for any Shareholders meeting shall be that of the Shareholder or proxy. If a provision has been made for a Shareholders meeting to be conducted by Electronic Communication or for participation in a Shareholders meeting by Electronic Communication and the medium or means of such Electronic Communication is available and functioning, then the Shareholders meeting shall be entitled to proceed even if a Shareholder or proxy is not able to gain access to the medium or means of Electronic Communication so employed.

S63(3)(a) 27.3 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.

27.4 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 27 to 31 shall apply to these meetings.

S63(4) 27.5 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.

28 **SHAREHOLDER MEETING QUORUM AND ADJOURNMENT**

S64(1) 28.1 The quorum requirements for meetings of Shareholders shall, subject to 28.6, be that –

28.1.1 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;

28.1.2 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

28.1.3 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.

- S64(4) 28.2 Notwithstanding the provisions of section 64(4) of the Act and 28.1, if -
- 28.2.1 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;
- 28.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -
- 28.2.2.1 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
- 28.2.2.2 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.
- 28.3 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 -
- 28.3.1 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
- 28.3.2 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.
- 28.4 The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- S64(5) 28.5 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.

S64(8) 28.6 If, at the time appointed in terms of this 28 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.

S64(9) 28.7 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.

S64(12)
S64(13) 28.8 A Shareholders meeting, or the consideration of any matter being debated at a Shareholders meeting, may be adjourned as contemplated in sections 64(12) and 64(13) of the Act for an unlimited period.

28.9 The Board may, at any time after notice of a Shareholders meeting (other than a Shareholders Meeting required to be held in terms of 25.3) 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.

S64(7)(a)
S64(7)(b) 28.10 If a Shareholders Meeting is postponed or adjourned, whether in terms of 28.2 or otherwise, the Company must give notice to all Shareholders who were entitled to receive notice of the meeting of the postponement or adjournment and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and any other information which the Board may decide to include therein.

28.11 Subject to the Act and this MOI, the chairman of any general meeting shall determine the procedure to be followed at that meeting.

28.12 Even if he is not a Shareholder –

28.12.1 any Director; or

28.12.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof),

may attend and speak at any general meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

29 **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.

30 **SHAREHOLDERS RESOLUTIONS**

S63(6) 30.1 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.

S65(7) 30.2 In order for -

30.2.1 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;

S65(10) 30.2.2 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 30.2 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in 31.

30.3 If any Shareholder abstains from voting in respect of any resolution, that Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.

S65(11) 30.4 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 a special resolution of Noteholders to approve matters specified in the Terms and Conditions of such Notes.

31 WRITTEN RESOLUTIONS BY SHAREHOLDERS

S60(1) 31.1 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.

31.2 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the Company received the written vote of the Shareholder or the proxy of the Shareholder whose vote resulted in the resolution by being supported by sufficient votes for its adoption.

PART G – DIRECTORS POWERS AND PROCEEDINGS

32 AUTHORITY OF THE BOARD OF DIRECTORS

S66(1) 32.1 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 8 and 9 are complied with.

32.2 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).

32.3 If the Company has only one Director -

32.3.1 that Director may exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities;

S71(3)-(7) 32.3.2 sections 71(3) to (7) of the Act shall not apply to the governance of the Company; and

S34
S35 32.3.3 that Director must record all Board resolutions in accordance with section 73(7) of the Act.

33 APPOINTMENT OF DIRECTORS

33.1 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.

S66(4)(a)(i)
S66(4)(a)(ii) 33.2 There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(ii) of the Act.

33.3 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 31.

S68(2)

- 33.4 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.
- 33.5 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.
- 33.6 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 33.5) 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 Notice). 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.
- s68(3) 33.7 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 33.3, 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.
- s68(1) 33.8 Each Director shall serve for an indefinite term, as contemplated in section 68(1) of the Act.

- S69(3) 33.9 The Company may not permit a person to serve as Director if that person is ineligible or disqualified in terms of the Act.
- S69(6) 33.10 In addition to the grounds of ineligibility and disqualification of Directors as contained in section 69 of the Act, a Director shall cease to be eligible to continue to act as a Director if he absents himself from all meetings of the Board occurring within a period of 6 (six) consecutive months without the leave of the Board, and the Board resolves that his office shall be vacated; provided that this 33 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself.
- 33.11 This MOI does not impose any minimum shareholding or other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Act and 33.10.
- S70 33.12 Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time.

34 **ALTERNATE DIRECTOR**

- 34.1 Each Director may, by notice to the Company at any time -
- S66(4)(iii) 34.1.1 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 32.2;
- 34.1.2 terminate any such appointment.
- 34.2 The appointment of an Alternate Director shall terminate when the Director to whom he is an Alternate Director -
- 34.2.1 ceases to be a Director; or
- 34.2.2 terminates his appointment.

34.3 An Alternate Director shall subject to this MOI -

34.3.1 act as a Director and generally exercise all the rights of the Director to whom he is an Alternate Director, but only during the absence or incapacity of that Director; and

34.3.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

35 **BOARD COMMITTEES**

S72(1) 35.1 The Board may -

35.1.1 appoint any number of committees of Directors; and

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

35.1.3 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.

S72(2) 35.2 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.

36 **CHAIRPERSON**

36.1 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.

- 36.2 The chairperson of the Board or, failing him, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board; provided that, if no chairperson or deputy chairperson is present and willing to act, the Board present shall elect one of the Directors to be the chairperson of that meeting of the Board.
- 36.3 The chairperson 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 and of the Shareholders.
- 36.4 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).

37 DIRECTORS MEETINGS

37.1 The Board may -

S73(1)(b)
S73(2) 37.1.1 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

S73(4) 37.1.2 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; provided that -

37.1.2.1 no meeting may be convened without notice to all of the Directors; and

37.1.2.2 any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question,

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

- S73(5)(a) 37.2 If all of the Directors of the Company -
- 37.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;
 - 37.2.2 are present at a meeting; or
 - 37.2.3 waive notice of the meeting,
- S73(3) the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 37.3 The Board -
- 37.3.1 may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and
 - 37.3.2 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,
- and any Electronic Communication facility so employed must ordinarily enable all persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Board in this regard is not limited or restricted by this MOI.
- S73(3)(b)-(e) 37.4 As set out in section 73(b) of the Act, the quorum for meetings of the Board shall be a majority in number of the Directors then in office; provided that unless the Board decides otherwise -
- 37.4.1 if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may

only deal with the matters that were on the agenda of the meeting that was postponed; and

37.4.2 if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Act, the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.

37.5 At any meeting of the Board, -

S73(5)

37.5.1 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;

37.5.2 each Director has one vote on every matter to be decided by the Board; and

37.5.3 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in 37.5.2 at a quorate meeting of the Board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This 37.5.3 shall not detract from the Board's ability to adopt resolutions as set out in 38.

S73(6) 37.6 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes -

37.6.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and

37.6.2 every resolution adopted by the Board.

S73(7) 37.7 Resolutions adopted by the Board -

37.7.1 must be dated and sequentially numbered; and

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

S73(8) 37.8 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

38 WRITTEN RESOLUTIONS BY DIRECTORS

S74 38.1 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.

38.2 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors.

38.3 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.

38.4 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternate Directors).

39 PAYMENTS TO DIRECTORS

Subject to 8 and 9 –

S66(8)
S66(9) 39.1 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; and

39.2 each Director shall be paid all travelling, subsistence and other expenses properly incurred by him in the execution of his duties as a Director; provided that such expenses shall first have been authorised or ratified by the Directors.

40 **INDEMNIFICATION AND INSURANCE FOR DIRECTORS**

Subject to 8 and 9 and to any and all acts contemplated or authorised by the Transaction Documents –

- S78(1)
- 40.1 For the purposes of this 40, a Director includes -
- 40.1.1 a former Director and an Alternate Director;
 - 40.1.2 a Prescribed Officer; and
 - 40.1.3 a person who is a Member of a committee of the Board,
- irrespective of whether or not the person is also a Member of the Board.
- S78(4)
S78(5)
S78(7)
- 40.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act -
- 40.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company;
 - 40.2.2 directly or indirectly indemnify a Director for expenses contemplated in 40.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -
 - 40.2.2.1 are abandoned or exculpate that Director; or
 - 40.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of 40.2.3;
 - 40.2.3 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

- 40.2.4 purchase insurance to protect -
 - 40.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with 40.2.3; or
 - 40.2.4.2 the Company against any contingency, including -
 - 40.2.4.2.1 any expenses -
 - 40.2.4.2.1.1 that the Company is permitted to advance in accordance with 40.2.1; or
 - 40.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with 40.2.2; or
 - 40.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with 40.2.3,
- and the authority of the Board in this regard is not limited or restricted by this MOI.
- 40.3 The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any Loss, liability, damage, cost (including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense ("**Loss**") which that Director may suffer as a result of any act or omission of that Director in his capacity as a Director; provided that -
 - 40.3.1 this indemnity shall not extend to any Loss -
 - 40.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Act; or
 - 40.3.1.2 arising from any gross negligence or recklessness on the part of that Director; or
 - 40.3.1.3 of or damage to reputation; or

40.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),

and Directors shall not be entitled to recover the Losses referred to in this 40.3.1 from the Company. All losses other than those referred to in this 40.3.1 are referred to herein as "**Indemnified Losses**";

40.3.2 each Director's right to be indemnified by the Company in terms of this indemnity shall exist automatically upon his/her becoming a Director and shall endure even after he(s)he ceases to be a Director until he(s)he can no longer suffer or incur any Indemnified Loss;

40.3.3 then –

40.3.3.1 if any claim is made against a Director in respect of any Indemnified Loss, the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this 40.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this 40.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this 40.3.3;

40.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that –

- 40.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;
- 40.3.3.2.2 the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director; and
- 40.3.3.2.3 the Company shall consult with the Director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;
- 40.3.4 to the extent that any Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;
- 40.3.5 if this 40 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this 40 in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the Shareholders;
- 40.3.6 all provisions of this 40.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this 40.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this agreement shall remain of full force and effect; and

40.3.7 this indemnity shall not detract from any separate indemnity that the Company may sign in favour of the Director.

PART H – GENERAL PROVISIONS

41 AUDIT COMMITTEE

41.1 At each annual general meeting, the Company shall elect an audit committee comprising at least 3 (three) members.

41.2 Each member of the audit committee must-

41.2.1 be a director of the Company, who satisfies the applicable qualifications, prescribed by the Act;

41.2.2 not be -

41.2.2.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;

41.2.2.2 a prescribed officer or full-time employee of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous 3 (three) financial years; or

41.2.2.3 a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by such relationship; and

41.2.3 not be related to any person who falls within any of the criteria set out in 41.2.2.

41.3 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.

41.4 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.

42 **ACCESS TO COMPANY RECORDS**

No additional 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, other than those rights created by section 26 of the Act.

43 **FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION**

S29 43.1 The Company shall prepare annual Financial Statements in accordance with
S30 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.

S30 43.2 A copy of the annual Financial Statements of the Company shall be delivered to all Shareholders in accordance with 45 as soon as possible after those annual Financial Statements have been approved by the Board.

S26(3) 43.3 Except as set out in this 43, 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.

44 **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 8 and 9 are complied with.

45 DISTRIBUTIONS

45.1 The Company may transmit any Distribution or amount payable in respect of a Share by -

45.1.1 ordinary post to the postal address of the Shareholder thereof (or, where two or more Persons are registered as the joint Shareholders of any Share, to the address of the joint holder whose name stands first in the Securities Register) recorded in the Securities Register or such other address as the holder thereof may previously have notified to the Company in writing for this purpose; or

45.1.2 electronic bank transfer to such bank account as the holder thereof may have notified to the Company in writing for this purpose,

and the Company shall not be responsible for any loss in transmission.

45.2 Any Distribution or other money payable on or in respect of a Share, -

45.2.1 which is unclaimed, may be retained by the Company and may be invested or used as the Board may deem fit for the benefit of the Company until claimed by the Shareholder concerned. All unclaimed moneys, other than Distributions, that are due to a Shareholder(s) shall be held by the Company in trust indefinitely until lawfully claimed by such Shareholder(s);

45.2.2 which is unclaimed for a period of 3 (three) years from the date on which they were declared may be declared forfeited by the Board for the benefit of the Company. The Directors shall be entitled at any time to annul such forfeiture upon such conditions (if any) as the Board deems fit; or

45.2.3 which is retained and unclaimed for 3 (three) years, should the Company be wound-up or deregistered, after the payment date of the Distribution or money in question, shall be forfeited and revert to the Company or its assigns and may be dealt with by the Directors or such assigns as they deem fit; and

45.2.4 shall not bear interest against the Company,

and the Board shall, for the purpose of facilitating the winding-up or deregistration of the Company before the date of any such forfeit, be entitled to delegate to any bank, registered as such in accordance with the laws of the Republic, the liability for payment of any such Distribution or other money, payment of which has not been forfeited in terms of the foregoing.

45.3 Distributions (in the form of a dividend or otherwise) shall be paid to Shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the Distribution, whichever is the later date.

45.4 For the purposes of this 45, the Company shall apply the solvency and liquidity test in terms of section 4 of the Act in respect of any Distribution to be made by the Company.

46 **NOTICES**

46.1 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.

46.2 Each Shareholder and Director shall -

46.2.1 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

46.2.2 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.

47 WINDING UP

47.1 Subject to the provisions of 8.5, 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 a Special Resolution (as defined in the Terms and Conditions) being passed by Noteholders.

47.2 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 -

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

47.2.2 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 47.2.2 shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.

47.3 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

S36(1)(a) The numbers and classes of Shares which the Company is authorised to issue are set out below -

- 1 1000 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.