

**COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION  
OF A PROFIT COMPANY**

**(PUBLIC COMPANY)**

**NAME OF COMPANY:**

**AFROCENTRIC INVESTMENT CORPORATION LIMITED  
("Company")**

**REGISTRATION NUMBER:**

**1988/000570/06**

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**SCHEDULES:**

Schedule 1    Authorised Shares

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## 1. INTRODUCTION

- 1.1 The Memorandum of Incorporation in the prescribed form contemplated in section 13(1)(a)(i) of the Act shall not apply to the Company.
- 1.2 This Memorandum does not:
- 1.2.1 contain any restrictive conditions contemplated in section 15(2)(b) of the Act;
  - 1.2.2 contain any requirement for the amendment of any particular provision of this Memorandum in addition to the requirements of the Act; and
  - 1.2.3 prohibit the amendment of any particular provision of this Memorandum. **[Sections 15(2)(b) and 15(2)(c)]**
- 1.3 The Company is incorporated as a public company in terms of the Act and, accordingly:
- 1.3.1 the Company is not prohibited from offering its securities to the public; and
  - 1.3.2 the transfer of the Company's securities is unrestricted. **[Section 8(2)(d)]**

## 2. INTERPRETATION

In this Memorandum, including the introduction above, and unless the context requires otherwise:

- 2.1 words importing any one gender shall include the other two genders;
- 2.2 the singular shall include the plural and vice versa;
- 2.3 any word which is defined in the Act and is not defined in 2.5, shall bear that statutory meaning in this Memorandum;
- 2.4 the headings have been inserted for convenience only and shall not be used for or assist or affect their interpretation;
- 2.5 each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:
- 2.5.1 "the Act" means the Companies Act 71 of 2008, together with the Companies Regulations, 2011, as amended or substituted from time to time;
  - 2.5.2 "Board" means the board of directors of the Company from time to time;
  - 2.5.3 "Chairman" means the chairman of the directors appointed in accordance with 7.6;
  - 2.5.4 "Deputy Chairman" means the deputy chairman of the directors appointed in accordance with 7.6;
  - 2.5.5 "Disseminated" means the delivery of notices as provided for in terms of section 6(10) of the Act and/or delivery and/or notification of documentation in terms of section 6(11) of the Act;
  - 2.5.6 "Group" means the Company and its subsidiaries from

		time to time and “a member of the Group” means any one of them;
2.5.7	“JSE”	means the JSE Limited (Registration Number 2005/022939/06), a public company incorporated and licensed as an exchange under the Securities Services Act 36 of 2004, as amended or substituted from time to time;
2.5.8	“legal representative”	means any person who has submitted the necessary proof of his appointment as –
2.5.8.1		an executor of the estate of a deceased member or trustee, curator or guardian of a member whose estate has been sequestrated or who is otherwise under disability;
2.5.8.2		the liquidator of any member which is a body corporate in the course of being wound-up; or
2.5.8.3		the business rescue practitioner of any member which is a company under business rescue;
2.5.9	“Listings Requirements”	means the Listings Requirements of the JSE, as amended or substituted from time to time;
2.5.10	“this Memorandum”	means this Memorandum of Incorporation and includes its Schedule, which forms part of it; and
2.5.11	“the Republic”	means the Republic of South Africa.

### 3. GENERAL

#### 3.1 Liability of incorporators, shareholders or directors

This Memorandum does not impose any liability on any person for the liabilities or obligations of the Company, solely by reason of such person being an incorporator, shareholder or director of the Company as contemplated by section 19(2) of the Act.**[Section 19(2)]**

#### 3.2 Powers of the Company

This Memorandum does not restrict, limit or qualify the legal powers or capacity of the Company in section 19(1)(b) of the Act.**[Section 19(1)(b)]**

#### 3.3 Memorandum of Incorporation and rules

3.3.1 The Board shall not have the power to 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 Memorandum, in accordance with the provisions of sections 15(3) to 15(5), both inclusive, of the Act.**[Sections 15(3), 15(4), 15(5) and 15(5A)]**

3.3.2 This Memorandum does not contain any restrictive conditions applicable to

the Company as contemplated in section 15(2)(b) or (c).

3.3.3 This Memorandum may only be altered or amended:

3.3.3.1 in accordance with a Court Order effected by a resolution of the Board in terms of sections 16(1)(a) and 16(4); or

3.3.3.2 by a special resolution of the ordinary shareholders of the Company.

3.3.4 An amendment of this Memorandum shall include, but not be restricted to, the following:

3.3.4.1 the creation of any class of shares;

3.3.4.2 the variation of any preferences, rights, limitation and other share terms attaching to any class of shares;

3.3.4.3 the conversion of one class of shares into one or more other classes of shares;

3.3.4.4 any increase in the number of shares;

3.3.4.5 the consolidation of shares;

3.3.4.6 the subdivision of shares; and/or

3.3.4.7 the change of name of the company;

3.3.5 In addition, if there are listed cumulative and/or non-cumulative preference shares in the capital of the Company, then the following right shall be attached to such shares:

*“No further securities ranking on priority to, or pari passu with, existing shares, of any class, shall be created without a special resolution passed at a separate general meeting of such preference shareholders”.*

3.3.6 If the Board, or any individual authorised by the Board, alters this Memorandum in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, it must publish a notice of such alteration by publishing the alterations on the Company’s website, and must file a notice of alteration in the manner prescribed by the Act. **[Section 17(1)]**

### 3.4 **Financial assistance to related persons**

This Memorandum does not limit, restrict or qualify the authority of the Board to authorise the Company to provide direct or indirect financial assistance to any person contemplated in section 45 of the Act. **[Section 45(2)]**

### 3.5 **Solvency and liquidity test**

This Memorandum does not alter the application of the solvency and liquidity test provided in section 4 of the Act. **[Section 4(2)(c)]**

### 3.6 **Annual Financial Statements**

A copy of the annual financial statements must be disseminated to shareholders at least 15 business days before the date of the annual general meeting at which they will be considered.

### 3.7 Ratification of Ultra Vires Acts

The proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) of the Act which would lead to the ratification of an act that is contrary to the Listings Requirements, shall be prohibited, unless otherwise agreed with the JSE.

## 4. SECURITIES OF THE COMPANY

### 4.1 Authorisation for shares

4.1.1 The Company is authorised to issue the shares specified in Schedule 1, provided that, if required by the Act or the Listings Requirements, the Company may only issue:**[Section 36(1)(a)]**

4.1.1.1 unissued shares to shareholders of a particular class of shares, *pro rata* to the shareholders' existing shareholding unless such shares were issued for an acquisition of assets, subject to the Listings Requirements;

4.1.1.2 unissued shares or options for cash, as the Board in its discretion think fit, if approved by shareholders in general meeting, subject to the Listings Requirements; and

4.1.1.3 shares that are fully paid up and freely transferrable, unless otherwise required by the Listings Requirements.

4.1.2 Any amendment to this Memorandum must be approved by a special resolution of ordinary shareholders, save where an amendment is ordered by a court in terms of sections 16(1)(a) and 16(4)

4.1.2.1 the creation of any class of shares;

4.1.2.2 the variation of any preferences, rights, limitations and other terms attaching to any class of shares;

4.1.2.3 an increase in the number of securities of a class;

4.1.2.4 a consolidation of securities;

4.1.2.5 a sub-division of securities; and/or

4.1.2.6 the change of the name of the company.

4.1.3 Securities of each class of shares for which listing is applied shall rank *pari passu* in respect of all rights.

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

### 4.2 Capitalisation shares

This Memorandum does not limit, restrict or qualify the authority of the Board, in terms of section 47 of the Act, to:

- 4.2.1 approve the issue of any authorised shares of the Company as capitalisation shares, on a pro rata basis to the shareholders of one or more classes of shares;
- 4.2.2 approve the issue of shares of one class as capitalisation shares in respect of shares of another class; or
- 4.2.3 permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, at a value determined by the Board. **[Sections 47(1) and (2)]**

provided that the requirements of section 47 are met. **[Sections 47(1) and (2)]**

#### 4.3 **Payments to securities holders**

- 4.3.1 Without derogating from any of the other provision in this Memorandum, all payments made to holders of securities listed on the JSE must be provided for in accordance with the Listings Requirements and may not provide for capital to be repaid on the basis that it may be called up again
- 4.3.2 Any acquisition by the Company or a subsidiary company of the Company's shares and any distribution to shareholders will be subject to the provisions of the Act and the Listings Requirements

#### 4.4 **Debt instruments**

This Memorandum does not limit, restrict or qualify the authority of the Board to authorise the Company to issue secured or unsecured debt instruments, provided that the Board may not grant special privileges regarding the attending and voting at general meetings of the Company or the appointment of directors in respect of such debt instruments. **[Sections 43(2)(a) and 43(3)]**

#### 4.5 **Registration of beneficial interests**

This Memorandum does not limit or restrict the holding of the Company's issued securities by, or the registration of the Company's issued securities in the name of, one person for the beneficial interest of another. **[Section 56(1)]**

#### 4.6 **Joint holders of securities**

Where two or more persons are registered as the holders of any security, they shall be deemed to hold that security jointly, and:

- 4.6.1 notwithstanding anything to the contrary in this Memorandum, on the death, sequestration, liquidation or legal disability of any one of such joint holders, the remaining joint holders may be recognised, at the discretion of the Board, as the only persons having title to such security;
- 4.6.2 any one of such joint holders may give effectual receipts for any dividends, bonuses or returns of capital or other accruals payable to such joint holders;
- 4.6.3 only the joint holder whose name stands first in the securities register of the Company shall be entitled to delivery of the certificate relating to that security,

or to receive notices from the Company (and any notice given to such joint holder shall be deemed to be notice to all of the joint holders); and

- 4.6.4 any one of the joint holders of any security conferring a right to vote may vote either personally or by proxy at any shareholders' meeting in respect of such security as if he were solely entitled thereto, and if more than one of such joint holders is present at any shareholders' meeting, either personally or by proxy, the joint holder who tenders a vote and whose name stands in the securities register of the Company before the other joint holders who are present in person or by proxy shall be entitled to vote in respect of that security.

#### 4.7 **Legal Representatives**

A legal representative (not being one of several joint holders) shall be the only person recognised by the Company as a shareholder or having any title to a security registered in the name of the shareholder whom he represents. The legal representative shall provide proof of his capacity as such in a form reasonably satisfactory to the Company or the Chairman, as the case may be.

#### 4.8 **Commission**

- 4.8.1 The Company may not pay commission of more than 10% (ten per centum) of the subscription price at which securities are issued to any person in consideration for such person subscribing or agreeing to subscribe, absolutely or conditionally, or for procuring or agreeing to procure subscriptions, absolute or conditional, for such securities.

- 4.8.2 Such commission may be paid in whole or in part by fully paid up securities, provided that the prior approval of Shareholders by means of an ordinary resolution shall be required before any commission or portion thereof is paid in shares.

#### 4.9 **Authority to sign transfer deeds**

All authorities to sign transfer deeds granted by holders of securities for the purpose of transferring securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.

#### 4.10 **Securities not subject to lien**

Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

#### 4.11 **Transmission**

This Memorandum may not contain a provision to the effect that securities registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the directors of the Company to do so.



## 5. SHAREHOLDER RIGHTS AND PROXY FORMS

### 5.1 Shareholders' right to information

This Memorandum does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and (2) of the Act. **[Section 26(3)]**

### 5.2 Representation by concurrent proxies

This Memorandum does not limit or restrict the right of a shareholder to appoint two or more persons concurrently as proxies, or to appoint more than one proxy to exercise voting rights attached to different securities held by that shareholder. **[Section 58(3)(a)]**

### 5.3 Authority of proxy to delegate

This Memorandum does not limit or restrict the right of a proxy to delegate the proxy's authority to act on behalf of the shareholder appointing him to another person, subject to such restrictions as may be set out in the instrument appointing the proxy. **[Section 58(3)(b)]**

### 5.4 Requirement to deliver proxy instrument to the Company

A copy of the instrument appointing a proxy must be delivered to the registered office of the Company, or to any other person specified by the Company, not less than 48 (forty eight) hours (or such lesser period as the directors may determine in relation to a particular meeting) before the time appointed for the holding of the meeting (including an adjourned meeting) at which the person(s) named in the proxy form proposes to vote and if the instrument of proxy is not so delivered, the form of proxy shall not be treated as valid. **[Section 58(3)(c)]**

### 5.5 Record date for exercise of shareholder rights

A record date for any action or event shall be determined in accordance with the Act and the Listings Requirements. **[Section 59(1)]**

## 6. SHAREHOLDERS MEETINGS

### 6.1 Convening of shareholders' meetings

This Memorandum does not specify any person other than the Board who may call a shareholders' meeting. **[Sections 61(1) and 61(3)]**

### 6.2 Shareholders' right to requisition a meeting

This Memorandum does not specify a lower percentage of voting rights than the percentage specified in section 61(3) of the Act required for the requisition by shareholders of a shareholder's meeting. **[Section 61(3)]**

### 6.3 Location of shareholders meetings

This Memorandum does not limit, restrict or qualify the authority of the Board to determine the location of any shareholders meeting, which may be in South Africa or in any foreign country. **[Section 61(9)]**

#### 6.4 **Notice of shareholders meetings**

6.4.1 This Memorandum does not provide a different period of notice of shareholders meetings to the period prescribed by the Act. **[Sections 62(1) and 61(2)]**

6.4.2 Notice of shareholder meetings shall be disseminated to each shareholder entitled to vote at such meeting and who has elected to receive such notice.

#### 6.5 **Shareholders meetings conducted by electronic communication**

This Memorandum does not authorise the Company to provide for any shareholders meeting generally to be conducted by electronic communication, or for one or more shareholders, or proxies for shareholders, to participate in any shareholders meeting by electronic communication, unless the Board authorises it in respect of any particular meeting. **[Section 63(2)]**

#### 6.6 **Quorum for shareholders meetings**

6.6.1 This Memorandum does not specify a different percentage of voting rights in terms of section 64(1) of the Act and accordingly at least 25% (twenty five per centum) of all the voting rights that are entitled to be exercised in respect of:

6.6.1.1 at least one matter to be decided at any shareholders' meeting must be present for that meeting to begin; and

6.6.1.2 for the consideration of any matter to be decided at any shareholders' meeting.

provided that 3 (three) shareholders entitled to attend and vote are present at the referred to in 6.6.1.1 and 6.6.1.2. **[Sections 64(1) and 64(2)]**

6.6.2 This Memorandum specifies 30 (thirty) minutes as a different time to the 1 (one) hour provided in sections 64(4) and 64(5) of the Act for a quorum to be established before a shareholders' meeting may be adjourned. **[Sections 64(4), 64(5) and 64(6)]**

6.6.3 This Memorandum does not specify a different period than the period of 1 (one) week provided in section 64(4) for the adjournment of a shareholders meeting. **[Sections 64(4) and 64(6)]**

6.6.4 This Memorandum prohibits the continuation of any shareholders' meeting or the consideration of any matter to be considered at any shareholders' meeting after a quorum has been established for commencement of such meeting if such quorum is not present for that matter to be considered. **[Section 64(9)]**

#### 6.7 **Adjournment of shareholders meetings**

This Memorandum does not provide different maximum periods for adjournment of shareholders' meetings than those specified in section 64(12) of the Act. **[Sections 64(12) and 64(13)]**

## 6.8 Shareholders' resolutions

6.8.1 This Memorandum does not require a higher percentage of voting rights to approve an ordinary resolution than the percentage voting rights specified in the Act.**[Sections 65(7) and 65(8)]**

6.8.2 This Memorandum does not require a different percentage of voting rights to approve a special resolution than the percentage voting rights specified in the Act.**[Section 65(9) and 65(10)]**

6.8.3 Subject to the Listings Requirements and the Act, this Memorandum does not require a special resolution for any other matter not contemplated in section 65(11) of the Act.**[Section 65(12)]**

## 6.9 Shareholders meetings in terms of the Listings Requirements

6.9.1 Shareholders meetings that are called for the purpose of passing any resolution required in terms of the Listings Requirements may not be voted on in writing as provided for in section 60 of the Act, unless permitted by the Listings Requirements.

6.9.2 This Memorandum does not prohibit or restrict the Company from calling any meeting for the purposes of adhering to the Listings Requirements.

## 6.10 Notice of shareholders meetings to the JSE

6.10.1 A copy of all notices of shareholders' meetings must be sent to the JSE at the same time as notices are disseminated to shareholders if required in terms of the Listings Requirements.

6.10.2 All notices of shareholders meetings must also be announced through the official news service of the JSE at the same time as notices are sent to shareholders, or as soon thereafter as is practicable.

## 7. DIRECTORS AND OFFICERS

### 7.1 Composition of the board of directors

7.1.1 Subject to the Listings Requirements, this Memorandum specifies 4 (four) as the minimum number of directors of the Company, being a higher number in substitution for the minimum number of directors required in terms of section 66(2) of the Act. **[Sections 66(2) and (3)]**

7.1.2 Subject to 7.1.7 and the Listings Requirements, the shareholders shall elect the directors, and shall be entitled to elect one or more alternate directors, in accordance with the provisions of section 68(1) of the Act.**[Sections 68(1)]**

7.1.3 This Memorandum does not provide for:

7.1.3.1 the direct appointment or removal of any director or alternate director by any particular person; or**[Section 66(4)(a)(i) and (iii)]**

7.1.3.2 the appointment of any person as an *ex officio* director of the Company.**[Section 66(4)(a)(ii)]**

7.1.4 This Memorandum does not stipulate any additional qualifications or eligibility requirements than those set out in the Act for a person to become or remain a director or a prescribed officer of the Company, provided that, for as long as the Listings Requirements requires it, the Board, through the nomination

committee, should recommend eligibility of directors, taking into account past performance and contributions. **[Section 69(6)]**

- 7.1.5 Subject to the Act and this Memorandum, at every annual general meeting one third of the non-executive directors (or such other number of directors determined in terms of the Listings Requirements) for the time being or, if their number is not a multiple of 3 (three) (or such other number determined in terms of the Listings Requirements), then the number nearest to, but not less than one third (or such other number determined in terms of the Listings Requirements), or if there are less than three (or such other number determined in terms of the Listings Requirements), then all of the non-executive directors, shall retire from office. The non-executive directors (determined in terms of the Listings Requirements) so to retire at every annual general meeting shall be those who have been longest in office since their last election, but as between persons who become or were last elected directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot, provided that notwithstanding anything in this Memorandum:
- 7.1.5.1 if at the date of any annual general meeting any director shall have held office for a period of 3 (three) years since his last election or appointment (or such other period determined in terms of the Listings Requirements), he shall retire at such meeting either as one of the directors to retire in pursuance of the foregoing or additionally thereto;
- 7.1.5.2 a director who intends to retire voluntarily at the meeting may be taken into account in determining the number of directors to retire at such meeting in terms of the Listings Requirements;
- 7.1.5.3 the identity of the directors to retire at such annual general meeting shall be determined as at the date of the notice convening such meeting; and
- 7.1.5.4 the length of time a director has been in office shall be computed from his last election, appointment or date upon which he was deemed re-elected. A director retiring at a meeting shall retain office until the close or adjournment of the meeting. **[Section 68(1)]**
- 7.1.6 Retiring directors shall be eligible for re-election but no person, other than a director retiring at the meeting, shall, unless recommended by the directors, be eligible for election to the office of a director at any shareholders meeting.
- 7.1.7 The Board may appoint any person who satisfies the requirements for election as a director or alternate director to fill any vacancy and serve as a director or alternate director on a temporary basis until the vacancy is filled by election in accordance with section 68(1) of the Act. **[Section 68(3)]**
- 7.1.8 Life directorships and directorships for an indefinite period are not permissible.

## 7.2 **Vacancies**

If the number of directors falls below the minimum provided for in this Memorandum or those .00.0.

0.required in terms of the Listings Requirements, the remaining directors must as soon as possible and in any event not later than 3 (three) months from the date that the number of directors falls below the minimum, fill the vacancies or call a general meeting for the purpose of filling the vacancies. If required by the Listings Requirements:

7.2.1 the appointment of a director to fill a vacancy or as an addition to the Board must be confirmed by shareholders at the next annual general meeting; and

7.2.2 after the expiry of the 3 (three) month period referred to above, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of shareholders.

## 7.3 **Authority of the board of directors**

The authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66(1) of the Act, is not limited, restricted or qualified by this Memorandum. **[Section 66(1)]**

## 7.4 **Directors compensation and financial assistance to directors**

7.4.1 This Memorandum does not limit, restrict or qualify the power of the Company to pay remuneration to its directors for their service as directors in accordance with section 66(9) of the Act. **[Section 66(8)]**

7.4.2 The appointment and remuneration of directors employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a major subsidiary of, the Company must be determined by a disinterested quorum of directors.

7.4.3 The directors may be paid all their travelling and other expenses, properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Board or of committees thereof; and, if any director is required to perform extra services, to reside abroad or be specifically occupied about the Company's business, he may be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable.

## 7.5 **Indemnification of directors**

7.5.1 This Memorandum does not limit, restrict or qualify the ability of the Company to advance expenses to a director to defend any legal proceedings arising from his service to the Company, or to indemnify a director against such expenses if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director in terms of sections 78(5) and 78(6) of the Act. **[Section 78(4)]**

7.5.2 This Memorandum does not limit, restrict or qualify the power of the Company to indemnify a director in respect of any liability arising out of the director's service to the Company to the fullest extent permitted by the Act. **[Section 78(5)]**

7.5.3 This Memorandum does not limit, restrict or qualify the power of the Company to purchase insurance to protect a director against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Act and this Memorandum, or the Company against any contingency. **[Section 78(7)]**

7.5.4 Every director, alternate director, manager, secretary and other officer of the Company and any person employed by the Company as its auditor shall be indemnified out of the Company's funds against all liability incurred by him in defending any proceedings (whether civil or criminal) arising out of any actual or alleged negligence, default, breach of duty or breach of trust on his part in relation to the Company in which judgment is given in his favour or in which he is acquitted or in connection with any matter in which relief is granted to him by the court in terms of the Act.

## 7.6 Chairman

7.6.1 The directors may elect from their number a Chairman and a Deputy Chairman, or two or more Deputy Chairmen, and decide the period for which each is to hold office. The directors may also remove any of them from such office at any time. If neither a Chairman nor a Deputy Chairman has been appointed or if at any meeting of the directors, neither the Chairman nor a Deputy Chairman is present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

7.6.2 If at any time there is more than one Deputy Chairman, the right in the absence of the Chairman to preside at a meeting of the directors or of the Company shall be determined as between the Deputy Chairmen present, if more than one, by seniority in length of appointment or otherwise as resolved by the Directors.

## 7.7 Directors' meetings

7.7.1 This Memorandum does not restrict the directors from acting otherwise than at a meeting, as contemplated in section 74(1) of the Act. **[Section 74(1)]**

7.7.2 This Memorandum does not specify a different percentage or number of directors upon whose request a meeting of the Board must be called in terms of section 73(1) of the Act. **[Sections 73(1) and 73(2)]**

7.7.3 This Memorandum does not restrict the Board from conducting meetings, or directors from participating in meetings, by electronic communication, as contemplated in section 73(3) of the Act. **[Section 73(3)]**

7.7.4 This Memorandum does not limit, restrict or qualify the authority of the Board to determine the manner and form of giving notice of its meetings. **[Section 73(4)]**

7.7.5 This Memorandum does not limit, restrict or qualify the authority of the Board to proceed with a Board meeting in accordance with the requirements of section 73(5)(a) of the Act, despite a failure or defect in giving notice of the meeting. **[Section 73(5)(a)]**

7.7.6 The quorum requirement for a directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, as set out in section 73(5) of the Act, are not varied by this Memorandum. **[Sections 73(5)(b), 73(5)(c), 73(5)(d) and 73(5)(e)]**

7.7.7 Subject to the Listings Requirements, in the case of an equality of votes at

any meeting of the directors, the Chairman shall have a second or casting vote, except where the necessary quorum for a directors' meeting is 2 (two), in which event the Chairman shall not be permitted to have a casting vote if only two directors are present at a directors' meeting.

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

## 7.8 Committees of the board of directors

7.8.1 This Memorandum does not limit, restrict or qualify the authority of the Board to appoint any number of committees of directors, or to delegate to any such committee any of the authority of the Board.**[Section 72(1)]**

7.8.2 Except to the extent that a Board resolution establishing a committee provides otherwise, the members of the committee:

7.8.2.1 may include persons who are not directors of the Company but any such person must not be ineligible or disqualified to be a director in terms of section 69 of the Act. Any such persons shall not have a vote on any matter to be decided by the committee;

7.8.2.2 may consult with or receive advice from any person;

7.8.2.3 may be remunerated for their services as such; and

7.8.2.4 provided that the committee is duly constituted, have the full authority of the Board in respect of any matter referred to it.**[Section 72(2)]**

7.8.3 The Board may from time to time, where it has appointed a committee in terms of 7.8.1 and 7.8.2, include in any such delegation the power to sub-delegate the powers referred to in 7.8.1 and 7.8.2 to such person or persons as the Committee thinks fit, subject to such terms and conditions as the Committee for the time being may think fit, and may from time to time revoke, withdraw, alter or vary all or any such powers.

## 7.9 Termination of office

7.9.1 Without prejudice to any provisions for retirement contained in this Memorandum or the Act, the office of a director is vacated if:

7.9.1.1 he becomes prohibited or disqualified by the Act from acting as a director, ceases to be a director by virtue of any provision of the Act or is removed from office pursuant to this Memorandum or the Act,

7.9.1.2 he gives notice to the Company of his resignation as a director with effect from the date of, or such later date as provided for in, such notice;

7.9.1.3 he is absent from meetings of the directors for 6 (six) consecutive months without permission of the Board and the directors have resolved that his office be vacated, provided that this provision shall

not apply to a director who is represented by an alternate director who does not so absent himself; or

7.9.1.4 he is removed by an ordinary resolution of the shareholders in accordance with section 71 of the Act.

7.9.2 If a director holds an appointment to executive office which terminates on termination of his office as director, his removal from office pursuant to this 7.9 shall be deemed an act of the Company and shall take effect without prejudice to any claim for damages for breach of any contract of service between him and the Company.

7.9.3 If the office of a director is vacated for any reason he shall cease to be a member of any committee of the Board.

7.9.4 A resolution of the Board declaring a director to have vacated office under the terms of this 7.9 shall be conclusive as to the facts and grounds of vacation stated in the resolution.

## 8. GENERAL PROVISIONS

### 8.1 Amendment of class, preferences, rights, limitations or other terms

8.1.1 If any amendments proposed to any preferences, rights, limitations or other terms of any class of shares, such amendment would be subject to the prior sanction of a resolution passed at a separate class meeting of the holders of that class of shares in the same manner, *mutatis mutandis*, as a special resolution:

8.1.1.1 where the amendment relates to any preferences, rights, limitations or other terms associated with any class of Shares already in issue, such amendment requires a Special Resolution adopted at a separate meeting of the Holders of shares in that class; and

8.1.1.2 the holder of the shares referred to in 8.1.1.1 shall, in addition be entitled to vote at any other meeting of shareholders which such amendment is to be approved.

8.1.2 At every meeting of the holders of that class of shares, the provisions of this Memorandum relating to general meetings of ordinary shareholders shall apply, *mutatis mutandis*, except that a quorum at any such general meeting shall be the quorum specified for that class of shares, provided that if at any adjournment of such meeting a quorum is not present, the provisions of this Memorandum relating to adjourned meetings shall apply, *mutatis mutandis*.

### 8.2 Fractions of securities

If, on any capitalisation issue, consolidation, subdivision, re-designation of securities, or for any other reason, any shareholder would, but for the provisions of this 8.2, become entitled to fractions of securities, the directors may, subject to compliance with the JSE Listing Requirements, to the extent applicable,

8.2.1 arrange that the security or fraction shall be consolidated with any other security or fraction, or make arrangements for the allocation or sale thereof;



8.2.2 appoint a person to sell or transfer it, and

8.2.3 pay the proceeds of such sale to the holders of the consolidated security.

8.3 **Dividends**

8.3.1 A general meeting or the Board may declare cash or scrip dividends, in accordance with the Act, to any one or more classes of shareholders from time to time:

8.3.1.1 registered as such at a date which shall be not less than 14 (fourteen) days after the date of publication of the announcement of the declaration of the dividend on the basis that the securities register may not be closed between the date of publication of such announcement and the record date for the payment of the dividend; and

8.3.1.2 with the sanction of a general meeting, any dividend declared may be paid either wholly or in part by the distribution of such specific assets in such manner as the directors may determine,

provided that no greater dividend shall be declared by a general meeting than is recommended by the Board.

8.3.2 The Company may transmit any dividend or other amount payable in respect of a security by Electronic Funds Transfer to the bank account of the security holder thereof recorded in the securities register as the holder thereof may previously have given to the Company in writing, and the Company shall not be responsible for any loss in transmission due to the incorrect bank account or any incorrect information given to the Company by the security holder.

8.3.3 All distributions, including dividends and other monies, that are due to any shareholder/s and which are unclaimed:

8.3.3.1 Shall be subject to the laws of prescription;

8.3.3.2 will be held in trust by the Company in favour of such shareholder/s until claimed by the shareholder concerned [LR 10.17(c)];

8.3.3.3 for a period of 3 (three) years from the date on which dividends are declared, only such dividends may be declared forfeited by the Board for the benefit of the Company. The Board may at any time annul such forfeiture upon such conditions (if any) as they think fit [10.17(c)]; and

8.3.3.4 subject to clause 8.3.3.1, shall not bear any interest against the Company,

and the Company shall, for the purpose of facilitating its winding-up or deregistration, or the reduction of its share capital, be entitled by special resolution to delegate to any bank, registered as such in accordance with the laws of the Republic, the liability for payment of any such distribution, payment of which has not been forfeited in terms of the foregoing.

8.4 **Rights attaching to securities**

- 8.4.1 Subject to any restriction as to voting to which any shareholder or security may be subject, a shareholder who is present in person or by proxy shall:
- 8.4.1.1 have 1 (one) vote on a show of hands; and
- 8.4.1.2 on a poll have 1(one) vote for each ordinary share held.
- 8.4.2 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of shareholders if a demand is made for such a vote by:
- 8.4.2.1 at least 5 (five) persons having the right to vote on that matter, either as shareholders or as proxies representing shareholders; or
- 8.4.2.2 a shareholder who is, or shareholders who together are, entitled, as shareholders or proxies representing shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 8.4.2.3 the chairperson of the meeting.
- 8.4.3 In all other respects, and in particular, but without limiting the generality of the foregoing, in respect of the redeemable preference shares set out Schedule 1, the rights, privileges and obligations attaching to such shares are set out in Schedule 2 attached hereto.

## 8.5 **Winding-up**

If the Company is wound-up, whether voluntarily or by court order, the assets remaining after payment of the liabilities of the Company and the costs of winding-up shall be distributed amongst the shareholders in proportion to the number of securities respectively held by them, subject to the rights of any shareholders to whom securities have been issued on special conditions and subject to the Company's right to apply set-off against the liability, if any, of any shareholders for unpaid capital.

## SCHEDULE 1 – AUTHORISED SHARES

### A. Classified shares

1. 1,000,000,000 (one billion) ordinary shares of 1 (one) cent each, each of which shall entitle the holder, subject to any preferences, rights or other share terms of any class of shares in the Company ranking prior to the ordinary shares:
  - (i) to receive any distribution in accordance with the holder's voting power;
  - (ii) on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;
  - (iii) to all of the preferences, rights or other terms set out in the Act or this Memorandum; and
  - (iv) to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.
  
2. 60,000,000 (sixty million) redeemable participating preference shares of 1 (one) cent each, each of which shall entitle the holder, subject to any preferences, rights or other share terms of any class of shares in the Company ranking prior to the redeemable participating preference shares:
  - (i) to receive any distribution in accordance with the holder's voting power;
  - (ii) on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;
  - (iii) to all of the preferences, rights or other terms set out in the Act or this Memorandum; and
  - (iv) to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.

### B. Unclassified shares

None.

## **SCHEDULE 2 – RIGHTS, PRIVILEGES AND OBLIGATIONS OF THE REDEEMABLE PREFERENCE SHARES**

- 1 For the purposes of this Appendix:
  - 1.1 "business day" means any day other than a Saturday, Sunday or public holiday in the Republic;
  - 1.2 "CSDP" means a central securities depository participant;
  - 1.3 "preference dividend" means a preferential cash dividend per preference share determined pursuant to the formula contained in 2 below;
  - 1.4 "the redeemable preference shares" means 60,000,000 (sixty million) redeemable participating preference shares in the issued share capital of the Company of a nominal value of 1 (one) cent each which have the rights set out in this Appendix;
  - 1.5 "the rights offer" means the rights offer to be implemented by the Company commencing on or about 16 May 2006.

2. If the Company declares dividends or makes any payment to the holders of the ordinary shares in respect of any financial year, then the holders of the redeemable preference shares shall be entitled to a preferential dividend or payment calculated in accordance with the following formula:

$$\text{Pref Div / Payment} = P \times 0.15 \times R / S$$

Where

Pref Div / Payment = the total dividend or payment to be declared by board in respect of the redeemable preference shares as a class.

P = the total dividend or payment to be declared by board in respect of ordinary shares and redeemable preference shares.

R = the redeemable preference shares in issue at record date of the relevant dividend or payment.

S = the total number of redeemable preference shares issued in terms of the rights offer.

To calculate the preference dividend payable per redeemable preference share, the Rand value derived from applying the above formula is divided by "R".

3. The redeemable preference shares will rank as regards arrear dividends and return of capital on a winding-up in priority to the ordinary shares and in priority to the holders of any other shares in the capital of the Company to repayment of an amount equal to the greater of: (a) the sum of the subscription price of the redeemable preference shares and any arrears in the preference dividends or (b) the amount the holders of the redeemable preference shares would otherwise be entitled to receive had the holders thereof elected to exercise their options to purchase ordinary shares immediately prior to the date it is determined to wind-up the affairs of the Company (whether or not such date is an option exercise date detailed in 8.1 below).

4. The Company in general meeting or the directors of the Company shall be entitled to declare dividends in respect of the redeemable preference shares on the basis that the preference dividend payable in respect of any financial year shall be payable at the same time as the payment of the dividend in respect of ordinary shares to the holders of the redeemable preference shares registered as such at a reasonable date chosen by the Company in general meeting or by the directors, as the case may be, which date shall be subsequent to the date of the declaration of such dividends or the date of the confirmation of such dividends, whichever is the later. Any arrear preference dividends shall rank for payment in priority to the declaration or payment of any dividends in respect of the ordinary shares.
5. With respect to voting rights in the Company, the holders of the redeemable preference shares shall not be entitled to receive notice of and to attend and vote at any general meeting of the Company unless any one or more of the following circumstances prevail at the date of the meeting –
  - 5.1 the preference dividend or any part thereof whether declared or not or redemption payment thereon remains unpaid after 60 (sixty) days from the due date thereof **[LR S10.5(h)(i) and (iii)]**;
  - 5.2 a resolution of the Company is proposed which directly affects the rights attached to the redeemable preference shares or the interests of the holders thereof, limited to a resolution for the winding-up of the Company or for the reduction of its share capital **[LR S10.5(h)(ii)]**;
  - 5.3 a resolution of the Company is proposed for the disposal of the whole or substantially the whole of the undertaking of the Company, or the whole or the greater part of the assets of the Company which shall include a resolution of the Company for the disposal of the undertaking or assets of a subsidiary of the Company, if such undertaking or assets constitute the whole or substantially the whole of the undertaking or assets of the Company and all its subsidiaries considered as one entity for this purpose.
6. Subject to the Act, holders of any redeemable preference share shall, when such holders are entitled to vote at any general meeting or annual general meeting of the Company in terms of clause 5 above, shall:
  - 6.1 not have any special rights and/or privileges attached to their vote/s; and
  - 6.2 be entitled to 1 (one) vote for each share that they hold, provided that their total voting right at such a general meeting or annual general meeting, may never be more than 24.99% less one vote of the total voting rights of all shareholders at such meeting. **[LR S10.5(c)]**
7. Payment in respect of preference dividends and any other payments shall be made in the currency of South African Rand at the risk of the relevant holder of redeemable preference shares either by cheque sent by ordinary post to the address of each holder of redeemable preference shares as recorded in the register of the Company's shareholders or by electronic transfer to such bank account nominated in writing by any holder of redeemable preference shares for such purpose. Payment in respect of shareholders whose redeemable preference shares have been dematerialised will be made to the relevant CSDP or broker.
8. All or any of the rights attaching to the issued redeemable preference shares may not be modified, altered, varied, added to or abrogated, without the prior written consent of the holders of at least three-quarters of the issued redeemable preference shares or the sanction of a resolution of the holders of the issued redeemable preference shares passed at a separate general meeting of such holders and at which redeemable preference shareholders holding in the aggregate not less than one quarter of the total votes of all the redeemable preference shareholders holding securities entitled to vote at that meeting are present in person or by proxy and the resolution has been passed by not less than three quarters of the

total votes to which the redeemable preference shareholders are present in person or by proxy are entitled.

9. The holder of each redeemable preference share is granted the right and option ("the call option") to subscribe for such number of ordinary shares at the prices set out below. The call option may be exercised by the holder of each redeemable preference share upon the following terms and conditions:

9.1 the call option may be exercised by the relevant shareholder giving written notice to that effect to the Company in accordance with the procedure set out in paragraph 11 below, in respect of each of the periods ending on 30 November 2010, 2011, 2012 and 2013 ("the option exercise dates");

9.2 the number of ordinary shares that will be issued to the holder of each redeemable preference share if the call option is exercised in respect of that redeemable preference share at the relevant time shall be calculated in accordance with the following formula:

$$\{(A - B)/0.85 - (A - B)\} \times C/D$$

Where:

- A = the total ordinary shares in issue at time of exercise of the call option.
- B = the total ordinary shares issued in terms of previously exercised call options.
- C = the number of redeemable preference shares in respect of which the call option is exercised.
- D = the total number of redeemable preference shares originally issued in terms of the rights offer.

9.3 the subscription price per ordinary share payable by the shareholder to the Company shall be calculated in accordance with the following formula:

$$A = B \div C$$

Where

- A = the subscription price per ordinary share at which the call option may be exercised.
- B = the aggregate subscription price at which the preference shares associated with the options that were exercised were subscribed for by the relevant shareholder;
- C = the number of ordinary shares that will be issued by the Company upon the exercise of the call option;

9.4 the call option may be exercised in whole or in part;

9.5 any call option that is not exercised by 31 December 2013 shall lapse.

10. From the date upon which ordinary shares are issued pursuant to the exercise of the relevant call options, the preference shares to which the exercised call options relate shall cease to be entitled to any dividend or other distribution. The only monies to which holders of those redeemable preference shares shall be entitled are the redemption monies provided for in 10 below.

11. The redeemable preference shares to which that call option relate shall be redeemed out of the proceeds of the issue of the ordinary shares that will be subscribed for by the holders of the redeemable preference shares on the exercise of the option on the following basis –
  - 11.1 the price payable for each redeemable preference share on redemption of same will be at a redemption price equal to the subscription price paid per redeemable preference share;
  - 11.2 the Company shall be deemed to have given notice of such redemption simultaneously with the exercise of the call option;
  - 11.3 the redemption shall take place in accordance with the procedures set out in paragraph 11 below.
12. The procedures for enabling redeemable preference shareholders to exercise their options and enable the Company to redeem the redeemable preference shares are as follows –
  - 12.1 not less than 30 (thirty) days before the occurrence of any option exercise date, the Company shall post a notice to redeemable preference shareholders;
  - 12.2 the notice shall advise redeemable preference shareholders of the salient features of the call option attaching to the redeemable preference shares, shall set out a timetable and the specific procedures approved by the JSE for the exercise of the call option, for the issue and allotment of the ordinary shares that will result should a call option be exercised and the redemption of the preference shares;
  - 12.3 the call option may be exercised on behalf of a redeemable preference shareholder whose redeemable preference shares have been dematerialised by the CSDP of such redeemable preference shareholder;
  - 12.4 the notice shall contain a form for completion by any certificated redeemable preference shareholder wishing to exercise the call option in respect of the relevant option exercise date and for return to the Company or its authorised representative by a time and date which shall be not later than 14 (fourteen) days prior to the close of business on the relevant option exercise date; and
  - 12.5 certificated redeemable preference shareholders shall be required to deliver their share certificates together with the completed form referred to above.
13. On the lapsing of the call option the Company shall redeem the redeemable preference shares out of monies which may be lawfully applied for that purpose on the basis that the price payable for each redeemable preference share on redemption of same will be at a redemption price equal to the subscription price paid per redeemable preference share, provided that should the Company not have sufficient reserves to redeem the redeemable preference share at a redemption price equal to the subscription price of the redeemable preference share then the price at which each redeemable preference share shall be redeemed shall be calculated by taking the reserves available for the redemption of the redeemable preference shares and dividing that amount by the number of redeemable preference shares to be redeemed.
14. Upon the date of redemption of any redeemable preference shares there shall be paid all preference dividends (including any which are in arrear) outstanding in respect of the same, up to the date fixed for redemption thereof.
15. In respect of redeemable preference shares where the call option has lapsed, the preference dividends thereon shall cease to accrue from that date unless, upon surrender of the share certificate in respect of the preference shares, payment of the redemption monies is not effected by the Company.

16. The Company shall not be liable to a redeemable preference shareholder for interest on any unclaimed redemption monies and arrear dividends.
17. Any preference dividends (including any which are in arrear) that remain unclaimed for 3 (three) years may become the property of the Company.
18. The redeemable preference shares will, subject to the approval of the JSE, be listed on the JSE.
19. Any redeemable preference shares in the authorised capital of the Company that are not issued in the rights offer will be automatically cancelled on completion of the rights offer.