

COMPANIES ACT, 2008

**MEMORANDUM OF INCORPORATION
OF A PROFIT COMPANY**

(PRIVATE COMPANY)

**NAME OF COMPANY:
ZARCLEAR HOLDINGS PROPRIETARY LIMITED
("Company")**

**REGISTRATION NUMBER:
2000/013674/07**

TABLE OF CONTENTS

Clause	Headings	Page
1.	INTRODUCTION	3
2.	INTERPRETATION	3
3.	GENERAL	3
4.	SECURITIES OF THE COMPANY	4
5.	SHAREHOLDERS RIGHTS AND PROXY FORMS.....	6
6.	SHAREHOLDERS MEETINGS.....	7
7.	DIRECTORS AND OFFICERS	9
8.	TRANSFER OF SHARES AND LOAN ACCOUNT	11
9.	RECIPROCAL RIGHTS OF PRE-EMPTION BETWEEN THE SHAREHOLDERS.....	11
10.	COME-ALONG RIGHTS	14
11.	TAG-ALONG RIGHTS.....	14
12.	DEEMED OFFERS.....	15
13.	MARKET VALUE OF ANY EQUITY INTEREST	16
14.	DISPUTE RESOLUTION	17
15.	ADDRESSES FOR LEGAL PROCESS AND NOTICES.....	17
	SCHEDULE 1 AUTHORISED SHARES.....	19
	SCHEDULE 2 MATTERS REQUIRING SPECIAL RESOLUTION.....	20

1. INTRODUCTION

- 1.1 The Company is a private company in terms of the Act and, accordingly:
- 1.1.1 the Company is prohibited from offering any of its securities to the public; and
 - 1.1.2 the transfer of the Company's securities is restricted in accordance with this Memorandum.
- 1.2 This Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Act and does not prohibit the amendment of any particular provision of this Memorandum.

2. INTERPRETATION

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

- 2.1 each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:
- 2.1.1 "**Act**" means the Companies Act, 2008, together with the Companies Regulations, 2011, as amended or substituted from time to time;
 - 2.1.2 "**Net Asset Value**" means the value of the assets of the Company less the value its liabilities as determined by the Company's auditors, or if the Company does not have statutory auditors, as determined by the board;
 - 2.1.3 "**Equity Interest**" means, in relation to a shareholder, all (and not fewer than all) of its shares and the whole of its loan account (if any) owed to it at the time in question;
 - 2.1.4 "**Loan Account**" means, in relation to a shareholder, its loan account for loans made to the Company by it and by any company which is a Member of the Same Group as it where the loans are made with the written consent of or by written agreement with the other shareholders;
 - 2.1.5 "**Member of the Same Group**" means, in relation to a shareholder, any subsidiary of such shareholder or the holding company of such shareholder or any subsidiary of such holding company;
 - 2.1.6 "**Memorandum**" means this Memorandum of Incorporation and includes its Schedules, which form part of it;
 - 2.1.7 "**Republic**" means the Republic of South Africa;
 - 2.1.8 "**Transfer**" means any cession or other form of delivery or transfer, whether actual or symbolic, resulting in a change of ownership, and includes any underlying contract for any such cession, delivery or transfer including without being limited to any sale, donation or other contract for a disposal of ownership;
- 2.2 words importing any one gender shall include any other gender;
- 2.3 the singular shall include the plural and *vice versa*;
- 2.4 any word or expression that is defined in the Act and is not defined in 2.1 shall bear that statutory meaning in this Memorandum; and
- 2.5 the headings have been inserted for convenience only and shall not be used for or assist or affect the interpretation of this Memorandum.

3. GENERAL

3.1 Liability of incorporators, shareholders and 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.

3.2 **Powers of the Company**

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

3.3 **Memorandum of Incorporation and Company Rules**

3.3.1 This Memorandum does not provide any different requirements than those set out in section 16(1)(c)(i) of the Act regarding proposals for amendments to this Memorandum.

3.3.2 This Memorandum does not restrict, limit or qualify the power of the board 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) and 15(5)(A) of the Act.

3.3.3 If the board makes any rules, it must file a copy of those rules in the manner prescribed in the Act and must publish a copy of those rules by sending them electronically to each shareholder.

3.3.4 If the board, or any individual authorised by the board, alters this Memorandum or any rules made by it 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 sending a copy of the altered Memorandum or rules, as the case may be, electronically to each shareholder, and must file a notice of alteration in the manner prescribed by the Act.

3.4 **Accounting Requirements**

3.4.1 Save as required in terms of the Act or otherwise determined by resolution of the shareholders of the board, the annual financial statements of the Company need not be audited.

3.4.2 The extended accountability requirements set out in Chapter 3 of the Act shall not apply to the Company, except as provided in section 84(1)(c)(i) of the Act.

3.5 **Takeover Regulations**

Part B and Part C of Chapter 5 of the Act, and the Takeover Regulations, shall not apply to the Company except to the extent provided in section 118(1)(c)(i) of the Act.

3.6 **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.

3.7 **Solvency and Liquidity Test**

This Memorandum does not alter the application of the solvency and liquidity test provided in section 4 of the Act.

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**.

4.1.2 This Memorandum does not limit, restrict or qualify the authority of the board to:

- (A) increase or decrease the number of authorised shares of any class of shares;
- (B) reclassify any shares that have been authorised but not issued;
- (C) classify any unclassified shares that have been authorised but not issued;

- (D) determine the preferences, rights, limitations or other terms of any class of authorised shares or amend any preferences, rights, limitations or other terms so determined.

4.2 Issue of Shares

- 4.2.1 The pre-emptive rights of the shareholders to be offered and to subscribe for additional shares, as provided in section 39 of the Act, do not apply and instead the provisions of the remainder of this clause 4.2 shall apply.
- 4.2.2 If any shares of the Company are to be issued (whether to existing shareholders or to any third party by the Company), each shareholder shall, except in the circumstances contemplated in clause 4.2.3 and clause 4.2.4, have the right ("**the Pre-emptive Issue Right**") to be offered to subscribe for a pro rata percentage of any shares to be issued by the Company, in proportion to its then shareholding in the Company, in accordance with the provisions of clause 4.2.5.
- 4.2.3 The shareholders shall not have a Pre-emptive Issue Right if any shares are to be issued by the Company to any person for cash consideration for any of the following purposes:
 - (A) acquiring any asset or undertaking; or
 - (B) an amalgamation or merger with another company; or
 - (C) as part of a reorganization or restructuring; or
 - (D) the providing of funding to the Company by a third-party funder.
- 4.2.4 No shareholder shall have a Pre-emptive Issue Right or any other right to subscribe for shares in relation to any issue of shares made for non-cash consideration.
- 4.2.5 In circumstances where the shareholders enjoy a Pre-emptive Issue Right, the following provisions shall apply:
 - (A) Prior to the issue of new shares by the Company, the Company shall issue a written offer to each shareholder, which offer shall specify:
 - (1) the date of the offer;
 - (2) the number of shares in the Company offered; and
 - (3) the subscription price for such shares, as determined by the board.
 - (B) Subject to clause 4.2.5(D), the offer shall be open for a period of 20 (twenty) business days for acceptance by notice in writing to be received by the Company prior to the expiry of the 20 (twenty) business day period, and each shareholder shall be entitled to subscribe for all (but not some) of the shares that it has been offered.
 - (C) Each shareholder shall be obliged to pay for any shares that it has agreed to subscribe for within 5 (five) business days of the expiry of the 20 (twenty) business day period referred to above, and the Company shall issue the relevant shares to the shareholder in question against payment in full being made.
 - (D) If the offer to the shareholders is not accepted within the period and/or in the manner specified in clause 4.2.5(B) or paid for by the shareholder in full ("**the Non-Funding Shareholder**") within the period and in the manner specified in clause 4.2.5(C), then:
 - (1) the shares in respect of which the offer has not been so accepted by the Non-Funding Shareholder or for which payment has not been so made by the Non-Funding Shareholder; plus

- (2) any shares in respect of which the other shareholders have accepted the offer in terms of clause 4.2.5(B),

may, at the election of the other shareholders, either be issued to the other shareholders, pro rata to their shareholding at the price referred to in clause 4.2.5(A)(3) or issued to the persons/third party to whom the Company was to issue those shares in terms of clause 4.2.2 above.

4.3 **Financial assistance for the subscription or purchase of securities or options**

This Memorandum does not limit, restrict or qualify the authority of the board in terms of section 44 to the Act to authorise the Company to provide financial assistance 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 securities of the Company or any related or inter-related company, in accordance with the Act.

4.4 **Capitalisation shares**

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

- 4.4.1 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;
- 4.4.2 approve the issue shares of one class as capitalisation shares in respect of shares of another class; or
- 4.4.3 permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, at a value determined by the board.

4.5 **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 with such special privileges regarding the attending and voting at general meetings of the Company or the allotment of securities, their redemption by the Company, or the substitution of any debt instrument for shares in the Company in accordance with section 43 of the Act, as the board may determine.

4.6 **Registration of beneficial interests**

This Memorandum prohibits 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.

4.7 **Restriction on transfer of securities**

Subject to 8, 9, 10 and 11, no securities may be transferred without the approval of the board, who shall be entitled to refuse transfer without giving reasons therefor.

5. **SHAREHOLDERS RIGHTS AND PROXY FORMS**

5.1 **Shareholders' right to information**

- 5.1.1 Each director nominated for election to the board by a shareholder shall be entitled to disclose to the shareholder that nominated him or her all information which the director receives as a director of the Company and to furnish to the shareholder in question copies of all documents containing any such information.
- 5.1.2 Subject to 5.1.1, 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.

5.2 **Shareholders' authority to act**

If, at any time, every shareholder of the Company is also a director of the Company, any matter that is required by the Act or this Memorandum to be referred by the board to the shareholders for a decision may be decided by the shareholders at any time after being referred by the board, without notice or compliance with any other internal formalities but subject to the provisions of section 57(4) of the Act.

5.3 **Representation by concurrent proxies**

This Memorandum does not limit or restrict the right of a shareholder to appoint:

- 5.3.1 two or more persons concurrently as proxies, provided that the instrument appointing the proxies clearly states the order in which the concurrent proxies are to take precedence in the event that both or all of the concurrent proxies are present, and vote, at the relevant meeting, failing which the concurrent proxy whose name stands first in the instrument appointing the proxies, will alone be entitled to vote; or
- 5.3.2 more than one proxy to exercise voting rights attached to different securities held by that shareholder.

5.4 **Authority of proxy to delegate**

This Memorandum prohibits the right of a proxy to delegate the proxy's authority to act on behalf of the shareholder appointing him to another person.

5.5 **Requirement to deliver proxy instrument to the Company**

A copy of the instrument appointing a proxy must be delivered to the office of the Company, or to any other person on behalf of the Company before that proxy may exercise any rights of the shareholder at a shareholder meeting.

5.6 **Proxy without direction**

This Memorandum does not limit or restrict the right of a proxy to exercise, or abstain from exercising, any voting right of the shareholder appointing him without direction, except to the extent that the instrument of proxy provides otherwise.

5.7 **Record date for exercise of shareholder rights**

If the board fails to determine a record date for any action or event, the record date shall be determined in accordance with the Act.

6. **SHAREHOLDERS MEETINGS**

6.1 **Convening of shareholders meetings**

In addition to the board, any shareholder or shareholders holding more than 10% of the voting rights in the Company may call a shareholders meeting, upon written notice to the other shareholders in accordance with the provisions of the Act, *mutatis mutandis*.

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 shareholders meeting.

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 the Republic or in any foreign country.

6.4 **Notice of shareholders meetings**

This Memorandum does not provide a different period of notice of shareholders meetings to the period prescribed by the Act.

6.5 **Electronic participation in shareholders meetings**

This Memorandum does not prohibit the Company from providing for any shareholders meeting 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, subject to the provisions of the Act.

6.6 **Quorum for shareholders meetings**

6.6.1 In terms of section 64(2) of the Act:

- (A) a shareholders meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- (B) a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.

6.6.2 This Memorandum specifies a time period of 30 minutes in place of the one hour provided for in sections 64(4) and 64(5) of the Act.

6.6.3 This Memorandum does not specify a different period than the period of one week provided in section 64(4) of the Act for the adjournment of a shareholders meeting.

6.6.4 This Memorandum does not restrict or prohibit 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, or for such matter to be considered, provided at least one shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

6.7 **Voting at shareholders meetings**

Subject to any special terms as to voting upon which any share may be issued or which may from time to time attach to a share, on a show of hands, every shareholder present in person or by proxy and entitled to vote on a resolution shall have one vote, and on a poll, every shareholder present in person or by proxy and entitled to vote on a resolution shall have one vote for each share held by it.

6.8 **Adjournment of shareholders meetings**

This Memorandum does not provide different maximum periods for adjournment than those specified in section 64(12) of the Act.

6.9 **Shareholders resolutions**

6.9.1 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.

6.9.2 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.

6.9.3 This Memorandum requires, in addition to the matters contemplated in section 65(11) of the Act, a special resolution for the matters set out in **Schedule 2**.

7. DIRECTORS AND OFFICERS

7.1 Composition of the board of directors

- 7.1.1 This Memorandum does not specify a higher number in substitution for the minimum number of directors required in terms of section 66(2) of the Act.
- 7.1.2 Subject to 7.1.6, 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.
- 7.1.3 This Memorandum does not provide for:
- (A) the direct appointment or removal of any director or alternate director by any particular person, except as provided in 7.1.7; or
 - (B) the appointment of any person as an *ex officio* director of the Company.
- 7.1.4 This Memorandum does not stipulate any additional qualifications or eligibility requirements other than those set out in the Act for a person to become or remain a director or a prescribed officer of the Company.
- 7.1.5 Subject to the Act and this Memorandum, each director of the Company shall serve for an indefinite term or a term set out in any contract between that director and the Company.
- 7.1.6 The board may appoint any person who satisfies the requirements for election as a director to fill any vacancy and serve as a director on a temporary basis until the vacancy is filled by election in accordance with section 68(1) of the Act.
- 7.1.7 Without derogation from the provisions of the Act, a director shall cease to be a director if a written notice to that effect signed by the shareholders that nominated that director for election is delivered at the registered office, with effect from the date stipulated in that notice.

7.2 Authority of the board of directors

- 7.2.1 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.
- 7.2.2 If, at any time, the Company has only one director, this Memorandum does not restrict that director from exercising any power or performing any function of the board at any time, without notice or compliance with any internal formalities.

7.3 Directors meetings

- 7.3.1 Notwithstanding the provisions of section 73(1)(a) of the Act, any director nominated by the Majority Shareholder for election may call a meeting of the board at any time.
- 7.3.2 This Memorandum does not restrict the directors from acting otherwise than at a meeting, as contemplated in section 74(1) of the Act
- 7.3.3 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.
- 7.3.4 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.
- 7.3.5 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.
- 7.3.6 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.

7.3.7 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.

7.4 Directors compensation and financial assistance to directors and related persons

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

7.4.2 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 directors or prescribed officers or any person related to any director or prescribed officer contemplated in section 45 of the Act.

7.5 Ability to indemnify 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.

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.

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.

7.6 Committees of the board

7.6.1 Without derogating from the provisions of the Act, nothing in this Memorandum limits, restricts or qualifies the authority of the board to appoint any number of committees of directors, or to delegate to any such committee or to any person any of the authority of the board, with or without the power to sub-delegate.

7.6.2 Except to the extent that a board resolution establishing a committee provides otherwise, the committee:

- (A) 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, and any such persons shall not have a vote on any matter to be decided by the committee;
- (B) may consult with or receive advice from any person;
- (C) has the full authority of the board in respect of any matter referred to it.

7.7 Nomination and election of directors

7.7.1 Each shareholder shall be entitled (but not obliged) to nominate for election one director and one alternate director to the board for each 15% (fifteen percent) of the general voting rights in the Company held by it and each shareholder undertakes to the other shareholder to exercise all of its voting rights in respect of all of its shares and as expeditiously as possible do everything else that may be required should the election of the director in question be conducted by written polling, so as to ensure that any person so nominated is duly elected as a director of the Company.

7.7.2 Each shareholder undertakes to the other shareholder not to vote in favour of any resolution for the removal of any director nominated for election by such other shareholder in terms of clause 7.7.1, unless such other shareholder itself votes in favour of such resolution or unless such director is disqualified to act as a director in terms of section 69 of the Act.

7.7.3 Each shareholder undertakes in favour of the other shareholder to vote in favour of any resolution for the removal of any director nominated for election by such other shareholder in terms of clause 7.7.1 should such other shareholder itself propose, or vote in favour of, the resolution to remove that director at any shareholders meeting held in terms of section 71 of the Act.

8. TRANSFER OF SHARES AND LOAN ACCOUNT

8.1 A shareholder shall not, except in accordance with the provisions of this Memorandum or with the written consent of the other shareholders, and subject to any conditions the consenting shareholder may impose:

8.1.1 pledge, mortgage or otherwise hypothecate or encumber its shares or Loan Account or any of the rights attached to its shares or Loan Account; or

8.1.2 Transfer or otherwise dispose of its shares or Loan Account or any of the rights attached to its shares or Loan Account; or

8.1.3 enter into any agreement in respect of the votes attached to its shares or any of the other rights attached to its shares; or

8.1.4 agree, whether or not subject to any suspensive or resolute condition, to do any of the foregoing.

8.2 The Company shall not register any Transfer of shares made in breach of this Memorandum; and the shares comprised in any Transfer so made shall carry no rights whatsoever unless and until, in each case, the breach is rectified.

9. RECIPROCAL RIGHTS OF PRE-EMPTION BETWEEN THE SHAREHOLDERS

Each shareholder grants to the other a right of pre-emption over the whole of its Equity Interest from time to time, upon and subject to the following terms and conditions:

9.1 Each shareholder ("**the Offeror**") undertakes, subject to the provisions of 9.5, not to Transfer any share owned by it to anyone (including the other shareholders) ("**the Offeree**") without first offering to sell the whole of its Equity Interest to the Offeree at the same price as that and on the same terms and conditions as those on which the Offeror is prepared to sell its Equity Interest under a *bona fide* transaction to such other person.

9.2 Any offer ("**the Offer**") in terms of 9.1 shall:

9.2.1 be for the whole (and not part only) of its Equity Interest;

9.2.2 be made in writing to the Offeree and be delivered personally or sent by registered mail to the Offeree at its address referred to in 15.1;

9.2.3 specify whether or not the Offeror has received an offer from a third party for its Equity Interest and, if it has, the identity of the third party and the price offered by the third party for the Equity Interest;

9.2.4 be irrevocable for a period of 30 (thirty) days from its receipt by the Offeree;

9.2.5 specify the purchase price for which the Offeror is willing to sell its Equity Interest to the Offeree which must be a cash price payable in South African Rands;

9.2.6 be subject to the condition that the whole (and not a part only) of the Offer is accepted; and

9.2.7 be capable of being accepted by the Offeree by written notice only given at the Offeror's address referred to in 15.1 within the 30 (thirty) days referred to in 9.2.4 above.

- 9.3 If the Offer is duly accepted by the Offeree, then the sale and purchase of the Equity Interest offered that would result shall be subject to the following terms and conditions:
- 9.3.1 the Equity Interest shall be sold and purchased free from all claims, liens, pledges and other hypothecations and encumbrances;
- 9.3.2 the purchase price of the Equity Interest, payable by the Offeree to the Offeror, shall be the price specified by the Offeror in the Offer and shall be payable in South African Rands only;
- 9.3.3 completion of the sale and purchase of the Equity Interest shall be effected within 30 (thirty) days from the date on which the Offer is accepted (or as soon thereafter as any necessary legal or regulatory approvals have been obtained and subject to compliance by the Offeree with its obligations under this 9) at a meeting to be held at such reasonable time and place as the Offeree may specify by not less than 36 (thirty six) hours prior written notice to the Offeror and at which meeting:
- (A) the Offeror shall deliver the relevant share certificate(s) to the Offeree or any nominee(s) for the Offeree, together with such duly executed instruments of transfer as may be required by law for the transfer of all the Offeror's shares included in the Equity Interest to the Offeree or any nominee(s) for the Offeree, and an irrevocable power of attorney in such form and in favour of such person as the Offeree may nominate authorising the Offeree, pending the registration of transfer of the shares in question, to exercise all rights of ownership in respect of those shares, including, without limitation, their voting rights;
- (B) the Offeror shall cede to the Offeree in writing all its rights in respect of its Loan Accounts included in its Equity Interest;
- (C) the Offeree shall pay the purchase price to the Offeror on the date of completion, without deduction or set-off, by electronic funds transfer of immediately available funds into a bank account to be designated in writing by the Offeror but only against such delivery of the Offeror's Equity Interest;
- (D) the Offeror and the Offeree shall procure (insofar as they are able) that such Transfer or Transfers are duly registered;
- (E) the Offeror shall do all such things and execute all such other documents as the Offeree may require to give effect to the sale and purchase of the Offeror's Equity Interest; and
- (F) if requested by the Offeree, the Offeror shall procure the resignation of all the directors nominated by it and such resignation shall take effect without any liability on the Company for compensation for loss of office, loss of employment or otherwise;
- 9.3.4 each of the shareholders shall use its reasonable endeavours to obtain any regulatory or other consents that are needed to enable the sale and purchase of the relevant Equity Interest to be completed; if such consents are refused the purchase and sale shall become void and the Offeror and the Offeree shall be released from their obligations under this 9.3 but they shall negotiate with each other in good faith with a view to achieving an alternative solution;
- 9.3.5 a consent shall be deemed to be refused at the election of either shareholder if it is granted subject to a condition that is unacceptable to the shareholder for good reason, provided that the shareholder exercises its election by written notice to the other shareholder within 5 (five) Business Days from the date it receives the consent in writing;
- 9.3.6 If the Offeror fails or refuses to transfer any shares or Loan Accounts in accordance with its obligations hereunder, the Company shall authorise some

person who is, as security for the Offeror's obligations, irrevocably and *in rem suam* appointed as the agent of the Offeror to execute and deliver on the Offeror's behalf the necessary cessions, instruments of transfer and other documents required for the transfer of the shares or Loan Accounts and the Company shall receive the purchase money in trust for the Offeror and in the case of any such shares cause the Offeree to be registered as the holder thereof, whereupon it shall pay the purchase money so received by it to the Offeror and the receipt of the Company for the purchase money shall be a good discharge to the Offeree (who shall not be bound to see to the application thereof) and in the case of any such shares after the Offeree has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person;

- 9.3.7 Simultaneously with the completion of the sale and purchase of the Offeror's Equity Interest in terms of 9.3.3:
- (A) the shareholders shall procure that the Offeror's obligations for all loans, loan capital, borrowings and indebtedness in the nature of borrowings owed to the Company by the Offeror (together with any accrued interest) are either delegated, or sold by the Offeror to the Offeree at such value as may be agreed between the Offeror and the Offeree, or failing agreement between them, are repaid by the Offeror to the Company;
 - (B) the Offeree shall agree to the assignment to it of all rights and obligations under any suretyships, guarantees or indemnities given by the Offeror to or in respect of the Company (or the conclusion of new suretyships, guarantees or indemnities in respect of the Company's obligations in question) and, pending such assignment (or conclusion) and consequent release of the Offeror, shall indemnify the Offeror in respect thereof;
- 9.3.8 the Offeror's obligation to transfer its Equity Interest to the Offeree in terms of this 9.3 shall be conditional on the compliance by the Offeree with its obligations under 9.3.7.
- 9.4 Should the Offer not be accepted by the Offeree in full within the period applicable under 9.2.4, then the Offeror shall be entitled to Transfer the whole (and not a part only) of its Equity Interest to a third party, provided that:
- 9.4.1 if the Offeror will have received an offer from a third party, the sale may not be made to anyone other than that third party who will have been identified in terms of 9.2.3;
 - 9.4.2 the sale is entered into within 30 (thirty) days from the date on which the Offeror receives written notification from the Offeree of its rejection of the Offer or the Offer expires, whichever is the earlier;
 - 9.4.3 the sale is not effected at a price (sounding in money) and on terms and conditions which are more favourable to the third party than those first offered to the Offeree in terms of the Offer;
 - 9.4.4 simultaneously with the completion of the sale in terms of this clause 9.4:
 - (A) the shareholders shall procure that the Offeror's obligations for all loans, loan capital, borrowings and indebtedness in the nature of borrowings owed to the Company by the Offeror (together with any accrued interest) are either delegated, or sold by the Offeror to the Offeree at such value as may be agreed between the Offeror and the Offeree, or failing agreement between them, are repaid by the Offeror to the Company;
 - (B) the Offeree shall agree to the assignment to it of all rights and obligations under any suretyships, guarantees or indemnities given by the Offeror to or in respect of the Company (or the conclusion of new suretyships, guarantees or indemnities in respect of the Company's obligations in

question) and, pending such assignment (or conclusion) and consequent release of the Offeror, shall indemnify the Offeror in respect thereof;

9.4.5 should the sale or other disposal to the prospective transferee named in the Offer not be entered into within the 30 (thirty) days referred to in 9.4.2, all the provisions of this 9 shall continue to remain in force.

9.5 Notwithstanding anything else in this 9, it shall not apply to and therefore not preclude any Transfer of any shares in the Company by a shareholder to any other company which is a wholly owned subsidiary of that shareholder, or is a Member of the Same Group as that shareholder, provided that:

9.5.1 the prospective transferee continues to be a wholly owned subsidiary or Member of the Same Group of such shareholder for as long as it holds any shares; and

9.5.2 the Offeree shall continue to be bound by this Memorandum and undertakes that if the prospective transferee, after having taken Transfer of the shares in question, ceases to be a wholly owned subsidiary of the Offeror, it will prior to so ceasing Transfer all shares it may then be holding back to the Offeree in accordance with the requirements of 9.5.1.

10. **COME-ALONG RIGHTS**

10.1 If a shareholder holding more than 75% of the general voting rights in the Company ("**the Selling Shareholder**") agrees at any time to sell to any purchaser who is not already a shareholder in the Company all the shares owned by it, then the Selling Shareholder shall be entitled to require the other shareholders to sell all of their shares too, either to the same purchaser (or his nominee) or to the Selling Shareholder itself for resale to the purchaser (or his nominee), as the Selling Shareholder may elect, at the same price per share and subject to the same terms and conditions, *mutatis mutandis*, as the price per share at which and the terms and conditions on which the Selling Shareholder itself agrees to sell its own shares to the purchaser (or his nominee) in question.

10.2 If the Selling Shareholder elects to exercise either of the rights conferred upon it in terms of 10.1 above, the other shareholders shall be obliged to sell their shares either to the purchaser in question (or his nominee) or to the Selling Shareholder itself, as the Selling Shareholder will have elected in accordance with the provisions of 10.

10.3 The Selling Shareholder's rights under this 10 may be exercised at any time up to 45 (forty five) days after the date on which it enters into any agreement for the sale of all of its shares and, if exercised, shall be exercised by written notice given during that period.

10.4 Notwithstanding anything to the contrary anywhere else in this 10, the rights of the Selling Shareholder in terms of this 10 shall be subject to the rights of the other shareholders in terms of 9, which shall take precedence over the rights in this 10.

11. **TAG-ALONG RIGHTS**

If at any time shareholders individually or collectively holding more than 35% of the general voting rights in the Company ("**the Majority Shareholders**") receives an offer for at least 35% of the issued Shares in the Company ("**the Offer**") from a third party dealing *bona fide* and at arm's length ("**the Offeror**") which they wish to accept, then the following provisions shall apply:

11.1 the Majority Shareholders shall forthwith and in writing furnish the other shareholders ("**the Minority Shareholders**") with full details of the Offer including, without limitation, the price, terms of payment, terms of security for payment (if any) and the identity of the Offeror and his/its direct or indirect controllers (where applicable);

11.2 the Minority Shareholders shall be entitled, by notice in writing to such effect to the Majority Shareholders, within 30 (thirty) days of receipt of the notice contemplated in 11.1, to require that his/its Shares in and Loan Account against the Company ("**the Minority Equity**") be acquired by the Offeror at the same price and upon the same terms and conditions *mutatis mutandis* as are contained in the Offer; and

11.3 the Majority Shareholders shall not be entitled to accept the Offer unless the Offeror purchases the Minority Equity offered for sale in terms of clause 11.2.

12. DEEMED OFFERS

12.1 For the purposes of this 12, a "Relevant Event" means any of the following events:

12.1.1 in the case of individuals, if they die, or if they commit an act of insolvency within the meaning of that expression in terms of the Insolvency Act, 1936, or if their estate is placed under provisional or final order of sequestration in terms of that Act;

12.1.2 in the case of a company, if it is placed under any provisional or final order of winding-up or judicial management or enters into a voluntary winding-up other than a voluntary winding-up for the purposes of a *bona fide* scheme of solvent amalgamation or reconstruction;

12.1.3 in the case of a company, if the company commences business rescue proceedings in terms of Chapter 6 of the Act;

12.1.4 in the case of a company, if the company undergoes a change of control without the prior written consent of the other shareholders, which consent shall not be unreasonably withheld. For the purposes of this 12.1.4, control shall have the meaning set out in section 2(2) of the Act;

12.1.5 in the case of a trust, if it commits an act of insolvency within the meaning of that expression in terms of the Insolvency Act, 1936, or if the estate of the trust is placed under any provisional or final order of sequestration in terms of that Act or if the trust deed constituting such trust is varied or cancelled without the prior written consent of the other shareholders, which consent shall not be unreasonably withheld.

12.2 Upon the happening of any Relevant Event, the shareholder in respect of whom the Relevant Event occurred or, if applicable, the executor or liquidator of the estate of the such shareholder, as the case may be ("**the Offeror**"), shall be deemed to have immediately offered to sell the whole of its Equity Interest to the other shareholders, *pro rata* to their existing shareholding in the Company ("**the Offeree/s**") on the terms and conditions set out below:

12.2.1 the purchase of the Offeror's shares shall be in respect of the Relevant Event referred to in 12.1 the market value of the Equity Interest in question as determined in accordance with 13;

12.2.2 the purchase price of the Offeror's loan account shall be the face value thereof as at the Effective Date referred to in 12.2.6 as reflected in the books of account of the Company;

12.2.3 the offer shall be irrevocable and open for acceptance for a period of 20 (twenty) Business Days from the date of the happening of the Relevant Event or the date on which the Offeree/s becomes aware of the happening of the Relevant Event, whichever is the later;

12.2.4 the Offeree/s shall be entitled to accept the offer at any time before the expiry of the 20 (twenty) Business Day period referred to in 12.2.3 by written notice to the Offeror at its address referred to in 15.1;

12.2.5 if the offer is not accepted by an Offeree that Offeree's shareholding shall be offered to the other Offerees *pro rata* to their shareholding, until the whole (and not part only) of the offer shall have been accepted;

12.2.6 the effective date of the sale shall be the date of the happening of the Relevant Event or the date on which the Offeree/s becomes aware of the happening of the Relevant Event, whichever is the later; and

12.2.7 the whole (and not part only) of the offer shall be accepted.

12.3 Should the Offeree/s accept the whole of the offer made to it in terms of 12.2, then the provisions of 9.3, *mutatis mutandis*, apply.

13. MARKET VALUE OF ANY EQUITY INTEREST

13.1 Whenever the purchase price of an Equity Interest is required to be determined in terms of 12, then that purchase price shall be determined in accordance with the following provisions, unless otherwise agreed in writing by the shareholders:

13.1.1 it shall be determined by an independent auditor ("**the Valuer**") who shall act as an expert and not as an arbitrator and whose written determination shall be final and binding on the shareholders in the absence of any clerical or manifest error appearing within 30 (thirty) days from the date the shareholders receive the determination;

13.1.2 the Valuer will be appointed by agreement between the shareholders or, failing agreement between them, on the application of either shareholder, by the Chairman for the time being of The South African Institute of Chartered Accountants;

13.1.3 the Valuer will determine and certify the fair market value of the Equity Interest as at the effective date of the purchase on the following assumptions and bases:

(A) 90% of the Net Asset Value per Ordinary share;

(B) if the Company is then carrying on business as a going concern on a sustainable basis, the Equity Interest shall be valued on the assumption that the Company will continue to do so;

(C) the rights and any restrictions attached to the shares forming part of the Equity Interest and whether the shares in question do or do not (taken as a whole) confer any right of control over the Company shall be taken into account;

13.1.4 if any difficulty shall arise in applying any of the foregoing assumptions or bases then the difficulty shall be resolved by the Valuer in such manner as it in its absolute discretion thinks fit;

13.1.5 the Valuer may call upon any professional advisers of the Company, including the auditors of the Company or any of their predecessors, for such documents and information as the Valuer may reasonably require for the purposes of this determination and the shareholders shall give or, so far as they are able, procure that appropriate authority is given to those advisers to make the disclosures required of them and that they, as far as they are able, give the Valuer all such facilities and information as the Valuer may reasonably require for the purposes of its determination;

13.1.6 for the purposes of its determination the Valuer shall be entitled to consult any other valuers and take account of any valuations obtained from any other valuer, but not necessarily be bound by them;

13.1.7 the Valuer shall afford the shareholders the opportunity to make such written and, at its discretion, oral representations as they or either of them wish, subject to such reasonable time and other limits as the Valuer may prescribe, and it shall have regard to any such representations but not be bound by them;

13.1.8 all the shareholders will use their best endeavours to procure that the Valuer will determine the purchase price within 30 (thirty) days of being requested to do so.

13.2 If the determination of the purchase price is referred to the Valuer in terms of 13.1 the date of determination of the purchase price ("**the Determination Date**") shall be the date on which both shareholders receive the Valuer's determination of the purchase price in writing. If the purchase price is determined by written agreement between the shareholders, the Determination Date shall be the date on which the agreement is made.

- 13.3 Where the Valuer has determined a purchase price in accordance with the provisions of 13.1 then the shareholder which will have accepted the offer under 11 shall be entitled, if the purchase price is not acceptable to it, to cancel the applicable purchase and sale by giving written notice to that effect to the other shareholder (against whom the option will have been exercised) within a period of 14 (fourteen) days after the Determination Date.
- 13.4 The cost and expenses of a valuer appointed in terms of this 13 in determining the purchase price and its appointment shall be borne equally by both shareholders unless the purchasing shareholder cancels the purchase in terms of 13.3, in which event it shall pay all those costs and expenses.

14. **DISPUTE RESOLUTION**

- 14.1 Any dispute, claim, controversy or difference arising out of or in connection with this Memorandum, or an agreement between the shareholders and the Company ("**the Parties**"), including any question regarding its existence, validity, interpretation or termination or any dispute regarding any non-contractual obligations arising out of or in connection with it (a "**Dispute**"), shall be referred to and finally resolved by arbitration under the Arbitration Foundation of Southern Africa Rules ("**Rules**"), which Rules are deemed to be incorporated by reference into this clause.
- 14.2 The seat or legal place shall be Johannesburg, South Africa.
- 14.3 The number of arbitrators shall be one, one each appointed by the Arbitration Foundation of South Africa.
- 14.4 Each Party expressly agrees and consents to this process for nominating and appointing the arbitrator and, in the event that this clause 14.4 operates to exclude a Party's right to choose an arbitrator, irrevocably and unconditionally waives any right to do so.
- 14.5 The language to be used in the arbitration shall be English.
- 14.6 The law of the arbitration agreement shall be the law of South Africa.
- 14.7 This agreement to arbitrate shall be binding upon the Parties, their successors and assigns.
- 14.8 Each Party agrees that without preventing any other mode of service, any document and any claim form or other originating process or any third or other party notice may be served on any Party by being delivered to or left for that Party at its address for service of notices under clause 15.
- 14.9 Nothing contained in this clause 14, shall prohibit a Party from approaching any court of competent jurisdiction for urgent relief pending determination of the dispute by arbitration.

15. **ADDRESSES FOR LEGAL PROCESS AND NOTICES**

- 15.1 The shareholders choose for the purposes of this Memorandum the addresses and e-mail addresses reflected in the Company's securities register, and the Company chooses for the purposes of this Memorandum its registered address, for the purpose of any notices.
- 15.2 Any legal process to be served on any of the Parties may be served on it at the address referred to in 15.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Memorandum.
- 15.3 Any notice or other communication to be given to any of the Parties in terms of this Memorandum shall be valid and effective only if it is given in writing, provided that any notice given by e-mail shall be regarded for this purpose as having been given in writing.
- 15.4 A notice to any Party which is delivered to the Party by hand at the address referred to in 15.1 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 15.5 A notice by e-mail to a Party at the e-mail address referred to in 15.1 shall be deemed to have been received within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 4 (four) hours of the beginning of the next

business day at the destination after it is transmitted, if it is transmitted outside those business hours.

- 15.6 Notwithstanding anything to the contrary in this 15, a written notice or other communication actually received by any Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

**SCHEDULE 1
AUTHORISED SHARES**

- (A) Classified shares
- [Authorised share capital on registration of MOI] ordinary shares, 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:
 - o to vote on any matter to be decided by shareholders in accordance with the Act and this Memorandum;
 - o to receive any distribution in accordance with the holder's voting power;
 - o on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;
 - o to all of the preferences, rights or other terms set out in the Act or this Memorandum;
 - o to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.

SCHEDULE 2
MATTERS REQUIRING SPECIAL RESOLUTION

1. Any voluntary liquidation or any application for the judicial management of the Company.
2. The listing of the Company's shares on any stock exchange.