

**Companies and Intellectual Property Commission**

**Republic of South Africa**

**Memorandum of Incorporation ("MOI") of**

**Apex Capital Partners Limited**

which is a public company, may have up to such number of director(s) as may be required in order to comply the requirements in the Act, is authorised to issue securities as described in Article 2, and is referred to in the rest of this MOI as "**the Company**".

Neither the short nor the long standard form of MOI for a Profit Company Forms CoR.15.1.A and respectively CoR15.1.B, as amended from time to time, shall apply to the Company.

This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act 2008, as amended.

**Adoption of MOI**

This MOI was adopted by special resolution of the shareholders of the Company, passed on 19 March 2025, in accordance with section 16(1)(c) and has been initialled by a director for purposes of identification.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line.

Director

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## **Interpretation**

In this MOI:

- (a) **"Act"** means the Companies Act No 71 of 2008, as amended from time to time;
- (b) **"Board"** means the board of directors of the Company from time to time;
- (c) **"ordinary shareholder"** means a shareholder reflected in the securities register as holding ordinary shares;
- (d) a reference to a section by number refers to the corresponding section of the Act;
- (e) words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Act shall, when used in this MOI in a similar context, bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;
- (f) a reference to "amended" in this MOI, refers to a provision of the type contemplated in section 15(2)(a); and
- (g) the Schedules attached to this MOI are part of the MOI.

## **1. Article 1 - Incorporation and nature of the Company**

### **1.1 Incorporation**

- 1.1.1 The Company is incorporated, as from the date of incorporation reflected in its registration certificate, as a public company.
- 1.1.2 The Company is constituted in terms of section 19(1)(c) in accordance with and governed by:
  - 1.1.2.1 the unalterable provisions of the Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii)); and

1.1.2.2 the alterable provisions of the Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii)); and

1.1.2.3 the provisions of this MOI (subject to and in accordance with section 15(2)).

## 1.2 **Powers of the Company**

1.2.1 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c).

1.2.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

## 1.3 **Memorandum of incorporation and Company rules**

1.3.1 This MOI may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b).

1.3.2 The authority of the Board to make rules for the Company, as contemplated in section 15(3) to (5A) is not amended in any manner by this MOI.

1.3.3 The Board must publish any rules made, amended or repealed in terms of section 15(3)(a) to (5A) in accordance with the requirements set out in Article 6.4.

1.3.4 The Company must publish a notice of any alteration of the MOI or the rules, made in terms of section 17(1) in accordance with the requirements set out in Article 6.4.

## 1.4 **Annual financial statements, company secretary and appointment of audit and social and ethics committees**

The Company is required to -

1.4.1 prepare annual financial statements which must be audited by an auditor appointed by the company (sections 30(1) and (2), section 90);

1.4.2 appoint a company secretary (sections 86-89);

- 1.4.3 establish an audit committee and procure the election or re-election of the members thereof by the ordinary shareholders at each annual general meeting (section 94); and
- 1.4.4 establish a social and ethics committee and procure the election or re-election of the members thereof by the ordinary shareholders at each annual general meeting, unless the Company has been exempted from the requirement to establish a social and ethics committee (section 72).

## **2. Article 2 - Securities of the Company**

### **2.1 Shares**

- 2.1.1 The Company is authorised to issue up to the maximum number of 1,000,000,000 ordinary shares.
- 2.1.2 The Company is authorised to issue up to the maximum number of each of the class(es) set out in Article 2.1.1 subject to the preferences, rights, limitations and other terms associated with such class, as set out in Schedule 1.
- 2.1.3 The Company may by special resolution -
  - 2.1.3.1 consolidate and divide all or any of its issued par value shares into shares having a larger par value than its existing par value shares or consolidate and reduce the number of issued no par value shares;
  - 2.1.3.2 sub-divide all or any of its issued no par value shares by increasing the number of its issued no par value shares without an increase of its stated capital.
- 2.1.4 The authority of the Board in terms of section 36(3) read with 36(2)(b) to: (a) increase or decrease the number of authorised shares of any class of shares, (b) reclassify any classified shares that have been authorised but not issued, (c) classify any unclassified shares that have been authorised as contemplated in section 36(1)(c) but are not issued, or (d) determine the preferences, rights, limitations or other terms of a class of shares contemplated in section 36(1)(d) is not amended by this MOI.

- 2.1.5 The pre-emptive rights of the Company's shareholders to be offered and to subscribe for additional shares, as set out in section 39(2) read with sections 39(3) and 39(4) do not apply.
- 2.1.6 The authority of the Board to authorise the Company to provide financial assistance in relation to the subscription of any option or securities, or for the purchase of any securities, of the Company or of a related or inter-related company, as set out in section 44 is not amended by this MOI.
- 2.1.7 The authority of the Board to approve the issuing of any authorised shares of the Company as capitalisation shares, to issue shares of one class as capitalisation shares in respect of shares of another class, and to resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47(1), is not amended by this MOI.

## 2.2 **Debt instruments**

- 2.2.1 The authority of the Board to authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2) is not amended by this MOI.
- 2.2.2 The authority of the Board to grant special privileges associated with any debt instruments to be issued by the Company, as set out in section 43(3) is not amended by this MOI.

## 2.3 **Registration of beneficial interests**

The authority of the Board to allow the Company's issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person, as set out in section 56(1) is not amended by this MOI.

## 2.4 **Securities register**

- 2.4.1 Any person who is entitled to have his name entered into the securities register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the securities register, including the name, business address, residential address, postal address and available e-mail address of that person. [Section 24(4)(a) and section 50, read with section 40(4)(b) or section 51(5). Also section 50(2)(b)(i) and (iv) read with Regulation 32(2)(a).]

2.4.2 In the case of any security registered in the names of two or more persons as joint holders, the person first-named in the securities register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such security and to the related certificate of title.

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

## 2.5 **Share certificates**

2.5.1 Securities of the Company are to be issued in certificated form, as contemplated in section 49(2)(a).

2.5.2 Every person to whom securities are issued and whose name is entered in the securities register shall be entitled to one certificate for all the securities in any class registered in his name, or to several certificates, each for a part of such securities.

2.5.3 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.

2.5.4 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the securities register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that security.

## 3. **Article 3 - Shareholders**

### 3.1 **Shareholders' right to additional information**

In addition to the rights to access information set out in sections 26(1) and 31, every person who has a beneficial interest in any of the Company's securities has the further rights to information, set out below:



3.1.1 the Board may, from time to time, in its discretion, grant a person who has a registered or beneficial interest in any of the Company's securities the right to access any information pertaining to the company in addition to that to which he is entitled in terms of section 26(1); and

3.1.2 the grant of any additional information right(s) shall be on such terms and subject to such conditions and for such period(s) as the Board may determine in writing, provided that the confidential information of the Company is adequately protected.

### 3.2 **Shareholders' authority to act**

3.2.1 If, at any time, there is only one shareholder of the Company, the authority of that shareholder to act without notice or compliance with any other internal formalities, as set out in section 57(2), is not amended by this MOI.

3.2.2 If, at any time, every shareholder of the Company is also a director of the Company as contemplated in section 57(4), the authority of the shareholders to act without notice or compliance with any other internal formalities as set out in that section, is not amended by this MOI.

### 3.3 **Representation by concurrent proxies**

The right of a shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a), is not amended by this MOI.

### 3.4 **Authority of proxy to delegate**

The authority of a shareholder's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b), is not amended by this MOI.

### 3.5 **Requirement to deliver proxy instrument to the Company**

The requirement that a shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the shareholder's rights at a shareholders meeting, as set out in section 58(3)(c), is amended such that a copy of the instrument appointing a proxy must be delivered to the Company, or to any other person specified to receive such instrument in the notice convening the meeting, before the scheduled time for commencement of the relevant meeting.

### 3.6 **Deliberative authority of proxy**

The authority of a shareholder's proxy to decide whether to exercise, or abstain from exercising any voting rights of the shareholder without direction, as set out in section 58(7) is not amended by this MOI.

### 3.7 **Record date for determining shareholder rights**

If, at any time, the Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be as determined in accordance with section 59(3).

## 4. **Article 4 - Shareholders' meetings**

### 4.1 **Right to call meeting**

The Company authorises any shareholder to call a shareholders' meeting for the purposes of section 61(11).

### 4.2 **Requirement to hold meetings**

The Company must convene an annual general meeting (AGM):

- 4.2.1 no more than 18 months after incorporation; and
- 4.2.2 after the first AGM, once per calendar year but not more than 15 months after the date of the previous AGM. [Section 61(7)]

### 4.3 **Shareholders' right to requisition a meeting**

The right of shareholders to requisition a meeting, as set out in section 61(3), may be exercised by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, as provided for in that section.

### 4.4 **Location of shareholders' meetings**

The authority of the Board to determine the location of any shareholders' meeting, and the authority of the Company to hold any such meeting in the Republic of South Africa or in any foreign country, as set out in section 61(9) is not amended by this MOI.

#### 4.5 **Notice of shareholders' meetings**

The minimum number of days for the Company to deliver a notice of a shareholders' meeting to the shareholders, as required by section 62(1)(b) is as provided for in section 62(1)(b).

#### 4.6 **Electronic participation in shareholders' meetings**

4.6.1 Every shareholders' meeting must be reasonably accessible within South Africa for electronic participation irrespective of where the meeting is held. [Section 61(10)]

4.6.2 The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63(2), is not amended by this MOI.

#### 4.7 **Quorum for shareholders' meetings**

4.7.1 The quorum requirement for a shareholders' meeting to begin, or for a matter to be considered are as set out in section 64(1) without variation.

4.7.2 The time periods allowed in section 64(4) and (5) apply to the Company without variation.

4.7.3 The authority of a meeting to continue to consider a matter, as set out in section 64(9) is not amended by this MOI.

#### 4.8 **Adjournment of shareholders' meetings**

The maximum period allowable for an adjournment of a shareholders' meeting is as set out in section 64(12), without variation.

#### 4.9 **Shareholders' resolutions**

4.9.1 For an ordinary resolution to be adopted, it must be supported by more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).

4.9.2 For a special resolution to be adopted, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9).

- 4.9.3 A special resolution is not required for any matter to be determined by the Company, except those matters set out in section 65(11) or elsewhere in the Act.

4.10 **Delays caused by identification process**

The provisions of section 64(5) are extended also to apply to delays caused by verification of any shareholders' identity as contemplated in section 63(1).

4.11 **Chair**

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

5. **Article 5 - Directors and officers**

5.1 **Composition of the Board**

- 5.1.1 The Board must comprise at least three directors subject to any provisions of the Act that require the Board to comprise of more than three directors in order to satisfy any committee requirements in terms of the Act or this MOI.
- 5.1.2 At least 50% of the directors (and at least 50% of any alternates) must be elected by holders of the Company's securities entitled to exercise voting rights, as contemplated in section 68 read with section 66(4)(b).
- 5.1.3 Each director elected as contemplated is entitled to nominate an alternate director to act in his or her stead for election in terms of Article 5.1.2.
- 5.1.4 Each alternate director is entitled to act as a director in the absence of the director for whom he or she is an alternate.
- 5.1.5 In addition to the elected directors there are no appointed directors, as contemplated in section 66(4)(a)(i).

5.1.6 In addition to satisfying the qualification and eligibility requirements set out in section 69, to be entitled to become or remain serving as a director or a prescribed officer of the Company, a person need not satisfy any further eligibility requirements or qualifications.

5.1.7 Each elected director of the Company serves for an indefinite term, as contemplated in section 68(1).

5.1.8 The manner of electing directors of the Company is as set out in section 68(2).

5.1.9 The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) is not amended by this MOI.

## 5.2 **Authority of the Board**

5.2.1 The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) is not amended by this MOI.

5.2.2 If, at any time, the Company has only one director, as contemplated in section 57(3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section is not amended by this MOI.

## 5.3 **Round robin resolutions**

The authority of the Board to pass a round robin resolution contemplated in section 74 is not amended by this MOI.

## 5.4 **Board meetings**

5.4.1 The right of the Company's directors to requisition a meeting of the Board, as set out in section 73(1)(b), may be exercised in terms of section 73(1)(b).

5.4.2 The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not amended by this MOI.

5.4.3 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not amended by this MOI.

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

#### 5.4.5 **Quorum for Board meetings**

The quorum requirement for a Board meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73(5), without variation.

##### 5.4.5.1 **automatic postponement of a meeting**

5.4.5.1.1 If within 30 minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for one week.

5.4.5.1.2 The 30 minute limit may be extended for a reasonable period not exceeding two hours by the chair of the meeting.

##### 5.4.5.2 **automatic adjournment of a meeting**

If at the time a matter is to be considered at a Board meeting, a quorum is not present and there is no other business on the agenda which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for one week.

##### 5.4.5.3 **voluntary postponement of a particular matter to later in the Board meeting**

If at the time a particular matter is to be considered at the Board meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion or vote) to the end of the Board meeting.

##### 5.4.5.4 **further notice required for postponed or adjourned meeting**

Further notice of a Board meeting that is postponed or adjourned is not required unless the location for the meeting is different from:

5.4.5.4.1 the location of the postponed or adjourned meeting; or

5.4.5.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting; or

5.4.5.4.3 it is necessary to inform directors of the availability of participation in the postponed or adjourned meeting by electronic communication.

5.4.5.5 **deemed quorum at a postponed or adjourned meeting**

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those directors present in person at the Board meeting including those participating electronically, will be deemed to constitute a quorum.

5.4.5.6 **continuing quorum during meeting**

After a quorum has been established for a Board meeting or for a matter to be considered at a Board meeting, the Board meeting may continue or the matter may be considered, so long as at least one director is present at the meeting.

5.4.5.7 **adjournment by directors**

A Board meeting may otherwise be adjourned by majority vote of the directors present at the meeting.

5.4.6 **voting at Board meetings**

Subject to the exclusions in the Act, each director has one vote on a matter before the Board.

5.4.7 **approval of resolutions**

A Board resolution shall be approved by a simple majority of the votes cast on that resolution.

5.4.8 **appointment of chair**

The chair of the Board annually at the first board meeting of the Company's financial year shall be elected by the directors provided that if the chair is

absent from a meeting for any reason, the directors shall elect one of their number to be chair of that meeting.

## **5.5 Directors' remuneration and financial assistance**

5.5.1 The authority of the Company to pay remuneration to the Company's directors for their services as directors of the Company, in accordance with a special resolution approved by the Company's shareholders within the previous two years, as set out in section 66(8) and (9) is not limited or restricted by this MOI.

5.5.2 The authority of the Board, as set out in section 45, to authorise the Company to provide financial assistance to a director, prescribed officer or other person referred to in section 45(2) is not limited or restricted by this MOI.

## **5.6 Indemnification of directors**

5.6.1 The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(4) is not amended by this MOI.

5.6.2 The authority of the Company to indemnify a director in respect of liability, as set out in section 78(5) is not amended by this MOI.

5.6.3 The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78(7) is not amended by this MOI.

## **5.7 Committees of the Board**

5.7.1 The authority of the Board to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1), and to include in any such committee persons who are not directors, as set out in section 72(2)(a) is not amended by this MOI.

5.7.2 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c) is not amended by this MOI.



## 6. Article 6 - General provisions

### 6.1 Distributions

- 6.1.1 The application of the solvency and liquidity test contemplated in section 4, when applied in respect of a distribution contemplated in paragraph (a) of the definition of "distribution" in section 1 is not amended by this MOI as contemplated in section 4(2)(c).
- 6.1.2 Distributions shall be payable or distributable to shareholders registered as such on the record date determined in terms of Article 3.7
- 6.1.3 Distributions payable in monetary form shall be declared in the currency of the Republic of South Africa ("**ZAR**"). The Board may, acting reasonably determine the exchange rate applicable to distributions declared in ZAR and to be paid in another currency.
- 6.1.4 No distribution shall carry interest as against the Company.
- 6.1.5 Any distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways, subject to the provisions of the Act, as the Board may at the time of authorising the distribution determine and direct.
- 6.1.6 In the case where several persons are registered as the joint holders of any shares, any one of such persons may give to the Company effective receipts for all or any distributions and payments on account of distributions in respect of such shares.
- 6.1.7 All cash distributions, interest or other moneys payable to a registered shareholder may be paid by cheque or electronic funds transfer or otherwise, in such manner as the Board may from time to time determine. Payment may be sent by post to any of the registered address(es) of a registered shareholder specified in the securities register or, in the case of joint shareholders, to any of the registered address(es) of that one of them first named in the securities register in respect of such joint shareholdings. The payment of such cheque or payment by electronic transfer into the bank account recorded in the bank account register of the Company (if any) nominated by the shareholder, or in the case of joint shareholders into the bank account nominated by the shareholder whose name stands first in the

securities register in respect of the share, shall be a good discharge by the Company in respect thereof.

- 6.1.8 If as a result of the declaration of a distribution any registered shareholders become entitled to fractions of any specific assets of the Company, the Board may sell the assets represented by such fractions and after deducting the expenses of such sale distribute the balance of the proceeds of the sale amongst the shareholders entitled to the fractions in proportion to their entitlement.
- 6.1.9 For the purpose of this Article 6.1, any notice of a new registered address or a change of registered address or any notice of new bank account details or a change of bank account details or any instruction as to payment being made at any other address or into any other bank account, not reflected in the securities register or the bank account register of the Company (if any) at the time of declaration of the distribution, which is received by the Company between the time of declaration of the distribution and the applicable time of payment of the distribution, shall become effective only after such time of payment.
- 6.1.10 Every payment of a distribution made by cheque through the post or by electronic transfer shall be made at the risk of the shareholders or joint shareholders. The Company shall not be responsible for the loss in transmission of any cheque or other document sent through the post either to a registered address of any shareholder or to any other address requested by him or for the loss or misdirection of any electronic transfer.
- 6.1.11 Any unclaimed distributions payable or distributable to a registered shareholder may be invested or otherwise made use of by the Board, as it deems fit, for the benefit of the Company until it is claimed by the person entitled to the distribution in question at any time before that distribution has been declared forfeit in terms of Article 6.1.12.
- 6.1.12 Distributions unclaimed for a period of not less than 3 (three) years from the date on which such distributions became payable or distributable by the Company may be declared forfeit by the Board for the benefit of the Company.

## 6.2 **Access to Company records and accounting records**

6.2.1 The Board may from time to time in its discretion grant any person the right to access any information pertaining to the Company as contemplated in section 26(3) provided that the confidential information of the Company is adequately protected and subject to Article 6.2.3 below. No such right if conferred, may negate or diminish any mandatory protection of any record, required by or in terms of Part 3 of the Promotion of Access to Information Act, No. 2 of 2000, as amended.

6.2.2 The granting of the right of access referred to in Article 6.2.1 by the Board shall be on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing.

6.2.3 For the purposes of section 26(1), shareholders may be treated by the Company as constituting persons who hold or have a beneficial interest in securities issued by the Company, or to the extent necessary, shareholders, will be treated as being entitled in terms of section 26(3) to access to the Company records on the same basis provided for in, and subject to section 26(1).

## 6.3 **Winding up**

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

6.3.1.1 to repay to the ordinary shareholders the amount paid upon on the shares held by each of them; and

6.3.1.2 the balance (if any) shall be distributed among the ordinary shareholders in proportion to the number of shares held by each of them;

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

6.3.2 In a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution of the Company, be paid to the ordinary shareholders of

the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such ordinary shareholders, and the liquidation of the Company may be closed and the Company dissolved.

#### **6.4 Delivery and publication of notices and certain documents**

- 6.4.1 All notices and documents required to be published as contemplated in sections 15(3)(a) or 17(1)(a) of the Act shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11) read with Regulation 7 and Table CR3, to each shareholder to any of his registered addresses recorded in the securities register.
- 6.4.2 If a shareholder has not notified an address in terms of Article 2.4.1, he shall be deemed (for all purposes, including for the purposes set out in Article 6.4.1 above) to have waived his right to be served with notices.
- 6.4.3 All notices with respect to any shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such shares in terms of Article 2.4.2, as the case may be, and notice so given shall be sufficient notice to all the holders of such shares.
- 6.4.4 The notice may be given by the Company to the persons entitled to a share in consequence of the death or insolvency of a shareholder, or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been supplied) by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.
- 6.4.5 Where a notice is sent by post, the post office shall be the agent for the shareholder and the shareholder shall, from the time and date of delivery of the notice to the post office, bear all risks associated with that notice including of non-delivery or late delivery of the notice.
- 6.4.6 A notice given to any shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.

6.4.7            The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

6.5            **protection for whistle-blowers**

The Company must establish and maintain a system to receive disclosures contemplated in section 159 confidentially, and act on them. [Section 159(7)]

**Company Securities**

**1. *Pari passu***

All the shares of the Company shall rank *pari passu* in all respects, save to the extent provided for from time to time in this Schedule 1.

**2. Rights attaching to ordinary shares**

- 2.1 the right to be entered in the securities register of the Company as the registered holder of an ordinary share;
- 2.2 the rights to attend, participate in, speak at and vote on any matter to be considered at, any meeting of ordinary shareholders;
- 2.3 the right to receive any distribution by the Company, if and when declared on the ordinary shares, to be made in proportion to the number of ordinary shares held by each ordinary shareholder;
- 2.4 the right to receive a portion of the total net assets of the Company remaining upon its liquidation; and
- 2.5 any other rights attaching to the ordinary share in terms of the Act or any other law.

**3. Shareholders' rights of pre-emption on issue**

**3.1 fresh issue of an existing class of issued shares**

- 3.1.1 If the Company proposes to issue shares then the Company must first offer in writing to each shareholder in the same class as the proposed issue the right to subscribe, within 15 business days of the date of the offer, for that number of the shares of the proposed issue as each shareholder's shareholding in that class bears to the Company's issued shares of that class, both calculated as at the date of the offer, unless the ordinary shareholders have, at a general meeting, authorised the Board to issue shares of the Company at any time and/or grant options to subscribe for shares as the Board in its discretion thinks fit.

- 3.1.2 The written offer to each shareholder must stipulate at least the date of the offer, the subscription price per share, the number and class of shares for which the shareholder is entitled to subscribe, the total number of shares proposed to be issued, the date by which acceptances must be received and on which the subscription price is payable, as well as a copy of the provisions of this MOI which relate to the offer.

### 3.2 **delivery of offer and acceptance period**

The offer made by the Company in terms of paragraph 3.1 shall be delivered to each shareholder in the same class as the proposed issue, and is irrevocable and open for acceptance by notice of acceptance in writing ("**notice of acceptance**") which must in order to constitute valid acceptance:

- 3.2.1 specify whether the shareholder is accepting the number of shares offered or less than that number; or wishes to subscribe for more than that number; or wishes to subscribe for more than that number ("**excess shares**"); and
- 3.2.2 be received by the Company within seven business days of the date of the offer ("**acceptance period**").

### 3.3 **allocation of excess shares not subscribed for**

The Board shall within 10 business days of the date of the offer -

- 3.3.1 allocate the shares not subscribed for ("**excess shares**") among the shareholders who offered to subscribe for the excess shares in a notice of acceptance *pro rata* in the proportions that each of their shareholdings in the class offered bears to the aggregate number of shares of the class offered held by the shareholders who offered to subscribe for excess shares set out in paragraph 3.1.1.
- 3.3.2 in writing advise the relevant shareholders of the number of and subscription price payable for the excess shares allocated to each of them.

### 3.4 **payment for shares and excess shares subscribed for**

Payment of the subscription price for the number of shares recorded in a notice of acceptance and for excess shares must be made within 15 business days of the date of the offer and failing payment the Board will be entitled (but not obliged) to

offer the shares and excess shares for which a shareholder had submitted a notice of acceptance to any persons approved in accordance with paragraph 3.5.

### 3.5 **offer of remaining shares to approved persons**

3.5.1 If all the shares offered by the Company in terms of paragraph 3.1 are not subscribed for or if the Board exercises its rights under paragraph 3.4 ("**remaining shares**") and if the ordinary shareholders have by ordinary resolution approved any person or persons ("**approved persons**") to whom the remaining shares may be offered, the Board shall then offer these remaining shares to the approved persons.

3.5.2 The offer to the approved persons must be made within the five business 10 days immediately following the due date for payment of the subscription price set out in paragraph 3.4 at the same issue price per share and on the same terms and conditions no more favourable than those as provided for in this paragraph 3 except that -

3.5.2.1 the acceptance period may be extended at the discretion of the Board by no more than 90 days or such longer period (not exceeding an additional 90 days) as the Board may allow if any of the approved persons requires an extension to obtain any regulatory approvals; and

3.5.2.2 payment of the subscription price must be made within seven business days of delivery of the notice of acceptance or obtaining the required regulatory approvals, whichever is the later.

### 3.6 **pre-emption provisions to apply again**

If after the relevant shares have been offered in accordance with paragraph 3 there are shares which have not been subscribed for, then such shares may be offered to persons other than existing shareholders or approved persons on the same basis as set out in paragraph 3.5.

## 4. **Transfer of shares**

The following provisions apply to the transfer of any class of shares:

### 4.1 **proper instrument of transfer**



For purposes of section 51(6)(a), a "proper instrument of transfer" means an instrument in writing, in any form, specifying: (a) the full name of the transferor (being the name of a person entered in the securities register as the registered holder of the securities being transferred); (b) the full name of the transferee; and (c) the number of the class of shares being transferred; which has been signed by or on behalf of the registered securities holder as transferor and signed by or on behalf of the transferee.

#### **4.2 Board's power to decline to register a transfer**

The Board may not decline to register the transfer of any shares in terms of a proper instrument of transfer unless (and for so long as) the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this paragraph 4. The transferor shall be deemed to remain the holder of and shall remain the registered shareholder in respect of such shares until the name of the transferee is entered in the securities register in respect thereof.

#### **4.3 documents required for registration of transfer**

4.3.1 Any person wishing the Company to register the transfer of any shares shall deliver to the Company:

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

4.3.1.2 the original certificate (or a duplicate certificate issued pursuant to Article 2.5.3) of the shares being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the shares.

4.3.2 Where an instrument of transfer is signed by a person other than the relevant shareholder, a copy of the authority granted by the shareholder for the purpose of transferring shares, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.

4.3.3 Such authorities shall, as between the Company and the grantor of such authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the shareholder as

transferor pursuant to such authority to be acted upon, until express written notice of its revocation signed by or on behalf of the shareholder is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.

- 4.3.4 The copy of the instrument of transfer, original or duplicate share certificate, other documentary evidence and a copy of any authority to transfer the shares shall remain in the custody of the Company at its registered office.

#### 4.4 **recognition of title**

The parent or guardian of a shareholder who is a minor, the executor or administrator of a shareholder who is deceased, the trustee of a shareholder who is an insolvent or the *curator bonis* of any registered shareholder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered shareholder shall, subject to the provisions of Articles 2.4.2 and 2.4.3, be the only person recognised by the Company as having any title to any shares registered in the name of such shareholder, including for voting purposes.

#### 4.5 **transmission of shares**

The following provisions relating to the transmission of shares shall apply:

- 4.5.1 Subject to section 51(6)(b) and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of Articles 2.4.2 and 2.4.3 or paragraph 4.4 as having any title to any shares (and also the legal guardian of any minor shareholder and any person who obtains title to any shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this paragraph or as to his or her title to any shares, and subject to the transfer provisions in this MOI, transfer such shares to himself or to any other person.

- 4.5.2 A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a registered shareholder who is deceased or the estate of a shareholder whose estate has been sequestrated or who is otherwise under a disability or of his appointment as the liquidator of any body corporate which is a shareholder, shall be entered in the securities register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a shareholder.